

**The Unchecked Discriminatory Impact  
of the Foreclosure Crisis on  
Minority Families and Communities in the United States**

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**Summary:** Laws and policies of the United States federal and state governments regarding home foreclosures violate obligations under a ratified human rights treaty, the International Convention on the Elimination All Forms of Racial Discrimination (ICERD), by failing to abate the racially discriminatory effect of mortgage servicers' practice of refusing to modify loans and instead to foreclose and then sell the foreclosed property at reduced rates to new, often non-minority, purchasers.

**I. Introduction**

The United States, through its federal and various state governments, has adopted and maintains laws which prescribe and authorize the mortgage and eviction processes that mortgage servicers use to foreclose and evict. In addition, through ineffective and unenforced policies that were adopted with the expressed but unfulfilled promise of protecting families from foreclosure and maintaining them in their homes (most recently the Making Home Affordable Modification Program or HAMP), the United States continues to allow mortgage servicers to foreclose home mortgages and evict families at historic levels. [Footnote 1 omitted] The United States maintains these policies without regard for the disproportionate negative impact of such policies (policies of commission and omission) on families and communities of color.

**II. Failure to Acknowledge & Prevent Disproportionate Impact of Mortgage Crisis on Minority Families and Communities**

The United States' failure to acknowledge and prevent the disproportionate negative impact of these mortgage foreclosure laws and policies on families and communities of color is particularly egregious in light of

1) the well-documented disparate impact of mortgage foreclosures and associated evictions on families and communities of color;

["In every study I've seen, the foreclosure crisis and the housing crisis disproportionately impact people of color and communities of color."  
Testimony of Mark Ireland, Housing Preservation Project, Footnote 2 omitted]

2) the historical exclusion of families of color from homeownership;[Footnote 3 omitted]

3) the fact that subprime loans were five times more likely to be made in neighborhoods of African American people, were particularly marketed to minorities even in cases where individuals qualified for traditional loan products,[Footnote 4 omitted] and were even more particularly marketed to minority women; [Footnote 5 omitted] and

4) the common observation that many buyers of foreclosed properties formerly owned by minority families, buyers that purchase these homes at substantially discounted prices (far below what the foreclosed families were being required to pay by the mortgage servicers to avoid foreclosure/sale/eviction) and often at prices subsidized by government funding, are non-minority individuals or businesses.

In doing so, the United States is failing to abide by obligations it undertook when it ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The ICERD forbids policies that have the effect of nullifying or impairing the exercise of human rights and fundamental freedoms by minority persons on an equal footing with all other members of society. [Footnote 6 omitted]

By its laws authorizing foreclosure and eviction and its *de facto* policy of not protecting minority families from the disparate harm summarized above, the United States is engaging in acts of racial discrimination as defined in ICERD, Article 1 (1) [Footnote 7 omitted] against persons and groups of persons (minority families) and institutions (minority communities) in violation of ICERD's Article 2 (1)(a) and is supporting racially discriminatory action (as defined in the ICERD) by persons or organizations (in this instance, by mortgage servicers).

In addition, the United States' above-referenced foreclosure policies (*de lege* and *de facto*) violate Article 5 of the ICERD by failing to ensure that racial minorities experience "equality before the law" with respect to the right to own property (Article 5(d) (v)) and the right to housing (Article 5(e)(iii)). Specifically, minority persons owning homes that are being foreclosed are not being accorded "equality before the law" *vis a vis* persons purchasing the property post-foreclosure (often white) because current law allows mortgage servicers to require the family to pay per the full face amount of their mortgage as a condition of their continued ownership of the foreclosed premises, while subsequent purchasers (often white) are not required to meet the same condition (price) and are allowed to purchase and live in (or simply own and hold on speculation) the foreclosed home for a significantly reduced amount, in many instances additionally aided by a significant government subsidy to do so. [Footnote 8 omitted]

### **III. Transfer of Property from Minority Families and Communities: The Current Foreclosure Cycle**

Viewed in aggregate, the cycle of foreclosure/eviction/subsequent-purchases-at-reduced -prices (market prices) has transferred and continues to transfer significant amounts of home ownership property from minority families to non-minority ownership, reversing the tentative gains in homeownership that minority families have made in recent years to overcome the legacy of discriminatory laws and practices that has largely excluded minorities from homeownership.

This disproportionate loss of minority homeownership, while not necessarily intended by any party, is an inevitable by-product of the foreclosure/eviction/subsequent-purchases-at-reduced (market)-prices cycle. The cycle is sanctioned, legalized, and enforced by current state and federal foreclosure and eviction laws. Because of its commitments under the ICERD to eliminate all forms of racial discrimination, the United States has an obligation to prevent, through it federal and state governments, the perpetuation of that cycle and that cycle's racially discriminatory results.

The United States, however, has failed and continues to fail to do so, as reviewed in the following section.

#### **IV. Ineffective Government Steps to Protect**

Examples of ineffective measures to prevent foreclosures at the federal and state level include foreclosure mediation programs, [Footnote 9 omitted] HOPE NOW (2007), Hope for Homeowners (July 2008), [Footnote 10 omitted] and the Making Home Affordable Modification Program (HAMP) (February 2009) [Footnote 11 omitted].

[List of servicer practices evading HAMP omitted from this abbreviated version. See Testimony of Diane E. Thompson, National Consumer Law Center, U.S. Senate Committee on Banking, Housing & Urban Affairs July 16, 2009. "Servicer practices like these have been endemic since the announcement of the HAMP program." Geoffrey Walsh, National Consumer Law Center, Footnote 12 omitted. ]

Despite promising language in the HAMP program, achievements have been hampered by implementation problems, on-going mortgage servicer resistance, and lack of effective oversight. The United States, however, has failed and continues to fail to correct HAMP's deficiencies, as reviewed in the following section.

#### **V. Government Steps to Increase the Pace of Home Loss by Current Homeowners**

Rather than working to overcome HAMP's deficiencies (slow implementation and lack of enforcement) as initially reported,[Footnote 14 omitted] the Obama Administration announced in late February a new policy to deal with the foreclosure crisis, effective April 5, 2010. [Footnote 15] The new federal policy undertakes to resolve the foreclosure crisis by facilitating short-sales of the homeowner's property and the quiet departure of the homeowner to make way for the new owner, the short-sale purchaser.

This was a regrettable turn, since for all its shortcomings, the HAMP program did enunciate the goal of maintaining families in their homes and required (on its face) that mortgage servicers modify the terms of a mortgage in distress if, based on an objective present value test, foreclosure would produce a greater loss to investors than an affordable loan modification. By contrast, the new policy is actually likely to accelerate the loss of homes by current owners through expediting short sales of their homes.

On March 26, 2010, Treasury Department and HUD officials discussed the short-sale policy in the context of a set of new HAMP foreclosure policies that they promised would expand the effectiveness of HAMP and help families retain their homes, so that the short sale would be the last resort. These attempted assurances did not alter the analysis that the previously announced short-sale policy would have a detrimental and discriminatory impact on minority homeownership.

- First: the implementation of all these new policies remains largely in the hands of the mortgage servicers that have foreclosed the largest number of home mortgages since the Great Depression and have effectively thwarted significant permanent mortgage modifications to date. [Footnote 16 omitted.]

- Second, the new policies will not be accompanied by any new measures to enforce compliance with HAMP I or HAMP II.
- Third, while the short-sale policy will be implemented April 5, 2010, the new HAMP home protection policies will not go into effect until several months later and the most substantive of these policies (the principal reduction policy) will not go into effect, the Treasury Department official said, until sometime in “the summer ... or fall” and then will only apply to homeowners who are current on their mortgage payments. Rather than being a last resort, short-sale promotion is being fast-tracked, with mortgage reduction coming along a distant and narrowly scoped third.
- Fourth, no provision has been made to overcome the mortgage servicers’ established pattern of ignoring of the HAMP guidelines identified by the National Consumer Law Center [Footnote 17 omitted] and to counter the racial discriminatory results of the servicers’ HAMP activities identified in the NCRC survey.

In light of these facts, it is inevitable that home losses through foreclosure will continue the historic pattern of falling disproportionately on minority families and their communities.

### **Conclusion**

United States laws and policies at the state and federal regarding home foreclosures include those which 1) allow foreclosure and eviction even when those homes have been foreclosed in disregard of HAMP standards and will undoubtedly be sold at prices far below what the foreclosed family is required to pay to maintain ownership and occupancy; 2) provide subsidies to purchasers of homes even when those homes have been foreclosed in disregard of HAMP standards; and 3) provide financial incentives to homeowners to acquiesce to loss of their homes regardless of whether the HAMP standards have been observed and regardless of the manifest injustice of their having been required to pay a substantially higher amount to save their home than is required of any subsequent purchaser.

Objectionable practices engaged in by mortgage services that result in the disproportionate loss of homeownership by minority families and their communities include 1) refusal to modify loans and requiring payment of full mortgage amount, 2) foreclosing when they should modify, 3) selling the foreclosed property at market (substantially reduced) rates to new purchasers, and 4) the HAMP-evading practices listed above in Section IV.

In sum: United States laws and policies, by effectively condoning and reinforcing the mortgage servicers’ practices that have a disproportionately negative impact upon minority families and their communities, violate the nation’s obligations under ICERD to eliminate the racial discriminatory effect of these practices [Footnote 18 omitted] on minority families and their communities.

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