

Legal analysis to guide the mortgage industry and protect its interests.

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Is HAMP Constitutional?

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The Home Affordability Modification Program (HAMP) is a federally funded program designed to help reduce the rising number of foreclosures and stabilize the real estate market by assisting qualified homeowners in refinancing so as to obtain lower mortgage rates. Currently, interested participants apply for HAMP and are then notified in writing as to whether they meet the underwriting and eligibility standards of the program.

In August 2009, class action complaint *Nichole Williams, et al. v. Timothy F. Geithner, as United States Secretary of the Treasury; the U.S. Department of the Treasury, et al.* was filed in the U.S. District Court for the district of Minnesota alleging that the plaintiffs' constitutional rights to procedural due process were violated after the plaintiffs were denied a loan modification under HAMP. Specifically, the plaintiffs alleged that their rights were violated because the notice of denial that was sent to the plaintiffs did not provide any specific reason for their denial and there was no opportunity to appeal the decision.

The named plaintiffs all shared similar fact situations. All had defaulted on mortgage loans after falling upon tough financial times. All the plaintiffs met the HAMP eligibility requirements and all were denied a loan modification under HAMP. The plaintiffs are bringing this action because they believe the United States Constitution requires servicers to provide a meaningful notice of a specific reason as to why a person has been denied a loan modification under HAMP and an opportunity to appeal an adverse decision as well as notice of such an opportunity. Further, the plaintiffs contend that the defendants are constitutionally obligated to provide program regulations, guidelines or rules that comport with procedural due process by creating a uniform process to provide homeowners an unbiased and uniform process to evaluate and reverse adverse decisions related to HAMP.

It is important to remember that this litigation is in its infancy and may not survive a Motion to Dismiss. We will continue to monitor this litigation and keep you up to date on any impact it may have on the industry.