

HUD Withholds Refunds Due To Homeowners, Suit Says

By **Carolina Bolado**

Law360 (March 12, 2024, 9:49 PM EDT) -- The U.S. Department of Housing and Urban Development was hit Tuesday with a proposed class action in Florida accusing the agency of failing to refund homeowners \$384 million in mortgage insurance premium overpayments when they terminated their government-backed mortgages early.

In a suit filed in federal court in Tampa, Florida, lead plaintiff Tricia Sarmiento said HUD fails to comply with its statutory requirements to refund unearned mortgage insurance premiums when homeowners end their Federal Housing Authority-insured mortgage loans, either by selling the property or paying the loan balance early.

Sarmiento said the suit demands not only the overdue refunds but also "reform of a system which has been plagued by failure."

"This lawsuit is not just about reclaiming unearned premiums; it is a fight for transparency, accountability and fairness," Sarmiento said. "The federal agency's failure to uphold its duties has deprived thousands of homeowners of substantial refunds."

When an FHA-backed mortgage — usually provided to first-time home buyers — is terminated within seven years of the purchase or refinancing of the property, the early termination results in an overpayment of the mortgage insurance premium, according to the suit. HUD is required by law to refund the unearned premiums to the homeowner.

But HUD does not automatically refund the premiums, according to the complaint. Instead, a borrower has to request the refund, and HUD responds by mailing an application for the refund, which the borrower must then complete and return by mail, according to the suit.

HUD also fails to mail refund applications to the borrower's current address, does not honor borrowers' attorneys' requests to have the refund applications mailed to the legal representatives and refuses to send refund applications by email when requested, according to the complaint.

Sarmiento said the result is a process of "burdensome and unnecessary paperwork" that has left 754,730 borrowers with unclaimed refunds. Of those, 200,576 are for loans that were terminated more than 20 years ago, according to the suit.

Sarmiento's own claim for a refund dates to April 2001, when she sold her home in Port Richey, Florida. She did not learn that she was owed a refund of \$1,023 until 2022, when she requested a refund application that she says she has not yet received.

HUD's data show that the agency is holding \$384.7 million in refunds due to borrowers as of 2020, according to the suit.

The Office of the Inspector General audited HUD's oversight of FHA refunds in 2022 and found that the agency did not have adequate controls in place to ensure that refunds were tracked, monitored and issued, according to the complaint.

Sarmiento is requesting a writ of mandamus requiring HUD to refund all of the unearned premium charges paid on all terminated mortgages. She is also bringing a claim for unjust enrichment alleging

HUD has retained earned interest on the money that should have been refunded to homeowners.

"Instead of receiving their refunds upon termination of their loans, plaintiff's and class members' monies remained in the possession of defendant, and plaintiff and class members have been deprived of the benefit of using, investing, saving and spending their money," Sarmiento said.

Joshua Eggnatz, who represents Sarmiento, told Law360 that the case is an important one for homeowners.

"We are seeking return of our client's and class members' unused premiums that should have been refunded to them long ago, and a change at HUD so future buyers are protected," Eggnatz said.

A representative for HUD did not respond to a request for comment.

Sarmiento is represented by Joshua H. Eggnatz of Eggnatz Pascucci, Seth M. Lehrman of Lehrman Law and David La Croix.

Counsel information for HUD was unavailable.

The case is Sarmiento et al. v. U.S. Department of Housing and Urban Development et al., case number 8:24-cv-00651, in the U.S. District Court for the Southern District of Florida.

--Editing by Rich Mills.