

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

In re: EVELYN SAMPLE,  
  
Debtor.

**Bankruptcy No.: 25-72166-SCS**

**Chapter 7**

EVELYN SAMPLE; ESTATE OF JAMES  
SAMPLE, by and through its Administrator  
EVELYN SAMPLE,

Plaintiffs,

**Adversary No.:**

v.

**JURY TRIAL DEMANDED**

UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT;  
SCOTT TURNER, in his official capacity as  
Secretary of the UNITED STATES  
DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT; MORTGAGE ASSETS  
MANAGEMENT, L.L.C.; and METAMERICA  
MORTGAGE BANKERS, INC.,

Defendants.

**COMPLAINT**

Mrs. Evelyn Sample (“Mrs. Sample”) and the Estate of James Sample, by and through its Administrator, Mrs. Sample (collectively, “Plaintiffs”), bring this action, by counsel, against Defendant United States Department of Housing and Urban Development; Defendant Scott Turner, in his official capacity as Secretary of the United States Department of Housing and Urban Development; Defendant Mortgage Assets Management, L.L.C.; and Defendant MetAmerica Mortgage Bankers, Inc., and pleads as follows:

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## I. PRELIMINARY STATEMENT

1. Mrs. Sample's husband of twenty-two years, Mr. James Sample, sadly passed away on January 15, 2025. Mrs. Sample was devastated. Compounding this grief, and to her surprise, a few weeks later Mrs. Sample learned she was at risk of losing the home she has continuously resided in with her husband since 2003.

2. Contrary to what she and her husband were told in 2009, in January 2025 Mrs. Sample was informed that the reverse mortgage Mr. Sample took out to pay for medical expenses was due and payable as a result of Mr. Sample's death.

3. Mrs. Sample, a 72-year-old widow, sought to resolve what she thought was an obvious misunderstanding with the lender, servicer, and HUD to no avail.

4. Given her dire financial circumstances, Mrs. Sample filed for bankruptcy and now files this adversary proceeding against the Department of Housing and Urban Development ("HUD"), the initial lender, and the current holder of the reverse mortgage and note.

5. As to HUD, Mrs. Sample seeks relief under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et. seq.* She seeks judicial review of HUD's final agency action on federally insured reverse mortgages under the Home Equity Conversion Mortgage ("HECM") program. Mrs. Sample challenges HUD's ongoing failure to protect non-borrowing spouses of federally-insured reverse mortgages from foreclosure and displacement upon their loved ones' deaths. As several courts have recognized within the past decade or so, HUD's duty to protect such non-borrowing spouses has been beyond peradventure since Congress enacted this program. For 12 U.S.C. § 1715z-20(j) directs HUD to *only* insure reverse mortgages that protect not only the borrower, but also the non-borrowing spouse, from foreclosure and displacement. In other words, assuming no other default or triggering event occurs, the reverse mortgage only becomes due upon the death of the borrower *and* non-borrowing spouse.

6. Since the statute's enactment, however, HUD blithely ignored this directive: it insured countless reverse mortgages that purported to become due and payable upon the borrower's death, even where the borrower was survived by their non-borrowing spouse.

7. To be sure, following several successive lawsuits, HUD amended its regulations to ensure that moving forward, it would only insure reverse mortgages that protect non-borrowing spouses from displacement. Yet in doing so HUD refused to extend critical relief to non-borrowing spouses with pre-2014 loans who were not the named plaintiffs in prior lawsuits. Specifically, HUD continues to refuse to provide that a borrower's death doesn't "trigger" its regulations that *require* the mortgagee to foreclose unless the loan is paid off or assigned to HUD. Among other downstream consequences for non-borrowing spouses, this refusal means that unless a mortgagee, within a set time frame, pursues one of these options, it loses the right to accrue interest that's insured by the government. All told, HUD's ongoing failure to protect non-borrowing spouses in Mrs. Sample's circumstances continues to cause concrete harm. As a result, many non-borrowing spouses are still, contrary to Congressional intent, being forced to vacate their home on the heels of their loved one's death.

8. Mrs. Sample also brings claims sounding in fraud against the non-government defendants. In discussing the terms of the reverse mortgage with a representative from Defendant MetAmerica Mortgage Bankers, Inc. in 2009, Mr. and Mrs. Sample were assured that Mr. Sample's death wouldn't render the loan due and payable. Put another way, they were assured Mrs. Sample wouldn't be displaced because of Mr. Sample's death. At the time, the Samples had no reason to question such representations.

9. Whether the 2009 representations were made innocently, negligently, or with intent to defraud, Mrs. Sample is entitled (amongst other relief) to a court order reforming the reverse

mortgage to accord with what the Samples reasonably understood to be the agreement all along: that Mr. Sample's death wouldn't result in Mrs. Sample's displacement.

## II. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 157(a) and 1334. This is a core proceeding.

11. This action is properly instituted as an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001.

12. Venue is appropriate under 28 U.S.C. § 1409(a).

## III. PARTIES

13. Plaintiff, Mrs. Evelyn Sample, is a 72-year-old widow who has been married to her husband, Mr. James Sample, since May 24, 2003. Since then, Mr. and Mrs. Sample resided at [REDACTED] ("Property"). Although Mr. Sample owned the Property as a legal matter, the couple considered the Property their home and expected that Mrs. Sample could remain following his death. Mr. Sample tragically passed away on January 15, 2025. The only mortgage on the Property is the reverse mortgage at issue in this case.

14. Plaintiff Estate of James Sample has as its Administrator Mrs. Sample. The Certificate of Qualification is attached as **Exhibit A**.

15. Defendant Scott Turner is the Secretary of HUD and is sued in his official capacity.

16. Defendant HUD is an executive branch agency of the United States government. HUD is a party to reverse mortgage transactions, including the instant one, because every reverse mortgage borrower executes two deeds of trust: one to the benefit of the primary lender; the other to the benefit of HUD. For the remainder of the Complaint, Mrs. Sample will refer to these documents, along with the promissory note, which were executed in 2009, as the "reverse mortgage." The deeds of trust and promissory note are attached as **Exhibit B**.

17. Defendant MetAmerica Mortgage Bankers, Inc. (“MetAmerica”) originated the reverse mortgage at issue in this case and was the original holder of the reverse mortgage. MetAmerica, a non-depository lender, was in the business of helping individuals and businesses secure loans, primarily mortgages. MetAmerica was incorporated in, and authorized to do business in, the Commonwealth of Virginia. Sometime before the events alleged herein, MetAmerica was known as First Fidelity Mortgage, Inc. Upon information and belief, MetAmerica surrendered its mortgage license in 2011, is no longer authorized to do business in the Commonwealth of Virginia, and no longer exists as a corporate entity. Even so, MetAmerica remains liable for the misconduct alleged herein. *E.g.* Va. Code § 13.1-755.

18. Since October 20, 2022, Defendant MetAmerica Mortgage Bankers, Inc. (“MAM”) has been the mortgagee and holder of the reverse mortgage at issue in this case. MAM is a residential mortgage services company that primarily is in the business of managing mortgage servicing rights. MAM is organized under the laws of Texas and is headquartered in Houston, Texas. MAM is authorized to do business in the Commonwealth of Virginia.

#### **IV. FACTUAL BACKGROUND**

##### **A. THE HECM PROGRAM**

19. Reverse mortgages allow older homeowners—those ages 62 and up—to receive a loan secured by the equity in their primary residence. *E.g.* Tara Twomey, *Crossing Paths: The Intersection of Reverse Mortgages and Bankruptcy*, 89 AM BANKR. L.J. 363, 368 (2015). Unlike traditional mortgages, reverse mortgages do not require monthly mortgage payments. *E.g.* Consumer Fin. Prot. Bureau, *Reverse Mortgages: Report to Congress 5* (2012), <https://perma.cc/E2GY-RASW> [hereinafter, “CFPB, *Reverse Mortgages: 2012 Report to Congress*”]. Rather, the loan generally only matures upon the homeowner’s death or transfer

of the property. *Id.* Until then, the loan balance grows on account of its accumulating interest. *Id.* In fact, a given loan may even “eventually grow to exceed the value of the home.” *Id.*

20. Because reverse mortgages are non-recourse loans, the lender “can only recover the value of the home upon sale.” Note, *Reverse Mortgages and Elderly Americans: Protecting the Greatest Asset From Potentially Misleading Advertising Practices*, 80 ALB. L. REV. 569, 571 (2017) (cleaned up).

21. In 1988, Congress created a temporary program to insure reverse mortgages originated by private lenders. Housing and Community Development Act of 1987, Pub. L. No. 100–242, 101 Stat. 1815 (1988) (codified at 12 U.S.C. § 1715z-20). This program, known as the Home Equity Conversion Mortgage (“HECM”) program, “came to dominate the reverse mortgage market after it was permanently authorized in 1998.” Note, *You Can Go Home Again: Achieving the Goals of HUD’s Reverse Mortgage Program While Protecting Non-Borrower Spouses and Other Heirs*, 37 REV. BANKING & FIN. L. 413, 418 (2017) (cleaned up); *see also* S. Rep. 110–227, at 15 (2007).

22. Although an aim of the program is to induce lenders to offer reverse mortgages, Congress plainly “wanted to more than just incentivize lenders.” *Reverse Mortgage Solutions, Inc. v. United States Department of Housing and Urban Development*, 365 F.Supp.3d 931, 936–37 (N.D. Ill. 2019). Above all, Congress enacted the HECM program “to meet the special needs of elderly homeowners by reducing the effect of economic hardship caused by the increasing costs of health, housing and subsistence needs at a time of reduced income[.]” 12 U.S.C. § 1715z-20(a)(1).

23. To that end, Congress instructed HUD to not insure any HECM unless “the mortgage provides that the homeowner’s obligation to satisfy the loan obligation is deferred

until the homeowner’s death, the sale of the home, or the occurrence of other events specified” by validly promulgated regulations. 12 U.S.C. § 1715z-20(j). In doing so Congress defined “homeowner”—for the purposes of subsection (j)’s displacement protection—as “includ[ing] the spouse of a homeowner[.]” *Id.*

24. The statute’s plain meaning is also clearly manifested in its legislative history. The senate report for the legislation expressed Congress’ intent that HECM mortgages shall “defer[] any repayment obligation until the death of the homeowner *and* the homeowner’s spouse[.]” U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Housing and Community Development Act of 1987*, report to accompany S. 825, 100th Cong., 1st. Sess., S. Rep. No. 100–21, at 28 (1987) (emphasis added).

25. Simply put, Congress recognized that in order for its aims to be fully implemented, it was imperative that both spouses be safe and secure in their home while either of them still lives there—irrespective of whether both appear as borrowers on the loan documents.

26. Congress tasked HUD with administrating and promulgating regulations that govern the HECM program. 12 U.S.C. § 1715z-20(a). *See also* 24 C.F.R. Pt. 206. HUD also regulates the HECM program through a HUD handbook, *see* HUD Handbook, 4235.1, REV-1 HECM (last revised 1994), as supplemented by a series of “mortgagee letters” directed to private lenders, 12 U.S.C. § 1715z-20(h)(3), and its online “HECM Servicing Frequently Asked Questions.”

27. Any lender intending to participate in the HECM program for a particular loan must extend the loan in compliance with the HECM statute and HUD regulations. If approved, HUD issues an insurance certificate for the loan. An initial mortgage insurance premium is paid from

the funds at closing, and ongoing monthly premiums are added to the loan's balance securing the borrower's residence.

28. No written binder or separate document sets forth the terms of the HECM insurance. Rather, the "contract of insurance" is the "agreement evidenced by the issuance of a Mortgage Insurance Certificate or by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, *incorporating by reference the regulations in this subpart and the applicable provisions of the Act.*" 24 C.F.R. § 203.251 (emphasis added).

29. HECM insurance provides a multitude of benefits for all parties involved. To name just a few, it protects borrowers and their heirs if the lender defaults on its obligations, 24 C.F.R. §§ 206.117, 206.121, and it generally ensures that HUD—rather than homeowners, their heirs, or the lender—are personally liable. 24 C.F.R. § 206.123(a) (setting forth the circumstances in which mortgagees "may submit claims for the payment of the mortgage insurance benefits[.]"); *id.* at § 206.125(c).

30. HUD's issuance of an insurance certificate for a given loan is "conclusive evidence of the eligibility of the loan or mortgage for insurance, and the validity of any contract of insurance so executed shall be incontestable . . . except for fraud or misrepresentation on the part of such approved financial institution or approved mortgagee." 12 U.S.C. § 1709(e).

**B. HUD HAS FAILED TO IMPLEMENT CONGRESS' DIRECTIVE TO PROTECT BORROWERS AND THEIR SPOUSES FROM DISPLACEMENT**

31. The federal reverse mortgage statute reflects Congress' significant concern for the welfare of elderly homeowners and their spouses. Since its enactment, Subsection (j), entitled "Safeguard to Prevent Displacement of Homeowner," has applied not only to the homeowner, but also to the homeowner's spouse. 12 U.S.C. § 1715z-20(j) (defining "homeowner").

32. From the very beginning, HUD refused to carry out this plain mandate. Instead, HUD’s regulations substituted the term “mortgagor” for “homeowner” and “spouse,” and stated that the mortgage matures when the “*mortgagor* dies and the property is not the principal residence of at least one surviving *mortgagor*[.]” 24 C.F.R. § 206.27(c)(1) (2017) (emphasis added). “Mortgagor,” as defined by HUD, encompassed “each original borrower under a HECM mortgage”; the term “borrower,” in turn, was defined as excluding the borrower’s “successors or assigns[.]” 24 C.F.R. § 206.3. Thus, HUD’s regulations did nothing to protect widows or widowers, in violation of 11 U.S.C. § 1715z-20(j).

33. HUD’s mortgage documents further swept away the displacement-protections Congress enacted. Until August 4, 2014, the “Standard Mortgage,” which HUD drafts and requires to be used in all HECM transactions, made the mortgage due and payable upon the borrower’s death—regardless of whether a non-borrowing spouse survived the borrower.

34. For these reasons, in 2013 the United States District Court for the District of Columbia sustained an APA challenge to 24 C.F.R. § 206.27(c)(1). *Bennett v. Donovan*, 4 F. Supp. 3d 5, 9–15 (D.D.C. 2013) (“*Bennett IP*”).<sup>1</sup> In doing so the district court found HUD acted contrary to 11 U.S.C. § 1715z-20(j) and thus found the regulation invalid as applied to the plaintiffs. *Bennett*, 4F. Supp. 3d at 14–15. The court consequently remanded the case to HUD so that it could fashion the appropriate relief. *Id.* at 15.

35. After the 2013 *Bennett II* ruling, HUD issued a mortgagee letter to private lenders. The directive brought mortgages that originated *after* August 4, 2014, into compliance with the HECM statute. Yet HUD took no action to bring its regulations and mortgages into

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<sup>1</sup> Commentators and courts refer to this case as *Bennett II*, as the district court initially dismissed the action for lack of standing but was later reversed by the D.C. Circuit. *Bennett v. Donovan*, 797 F.Supp.2d 69 (D.D.C. 2011), *rev’d* 703 F.3d 582 (D.C. Cir. 2013).

compliance with loans that originated *before* August 4, 2014. In particular, HUD announced that all reverse mortgages issued after August 4, 2014 had to include an automatic—not optional—deferral period. *See* HUD, M.L. 2014-07, at 1, 3 (Apr. 24, 2014), <https://perma.cc/DS8S-MXJW>. This deferral period postpones a reverse mortgage’s due and payable status (and subsequent foreclosure) until the death of the last eligible non-borrowing spouse. *See id.* To be eligible, the non-borrowing spouse must be identified as such at the time of closing. *Id.* at 4. Then, upon their spouse’s death, they had to establish that (1) they had a right to remain in the property within 90 days from the borrower’s death; (2) the deceased borrower’s obligations—namely, maintaining property insurance and property taxes—remained satisfied; and (3) the loan didn’t become due and payable for any reason other than the borrower’s death. *Id.* at 5. During the deferral period, the mortgage still “continue[s] to accrue interest[.]” *Id.* at 7. *See also Bennett II*, Civil No. 11-cv-0498, Status Report at 2, ECF No. 24 (recognizing that this mortgagee letter “thus implement[ed], prospectively, the interpretation of Subjection (j) adopted by th[e] Court in *Bennett II*,” and noting that on May 2, 2014, HUD published a Federal Register notice soliciting public comments on the letter).

36. While *Bennett II* was on remand to HUD, litigants filed a putative class action. *Plunkett v. Castro*, 67 F.Supp.3d 1 (D.D.C. 2014). The *Plunkett* plaintiffs were non-borrowing surviving spouses facing foreclosure on pre-2014 loans. They alleged the same violations of the HECM statute as the *Bennett* plaintiffs, as well as a claim that HUD’s failure to act as a result of the *Bennett II* violated the APA. The district court consolidated *Bennett* and *Plunkett*. In HUD’s subsequent summary judgment briefing, it argued the *Bennett-Plunkett* plaintiffs didn’t have standing. *Id.* at 9. Most notably, HUD maintained this was because the “automatic result” of the *Bennett II* ruling was that the deaths of the *Bennett-Plunkett* plaintiffs’ borrowing

spouses wasn't a "triggering" event that required foreclosure under 24 C.F.R. § 206.27(c)(1). *Id.* In effect, then, the mortgagee may "continue to hold on to the reverse mortgage (and earn interest insured by the government) without instituting immediate foreclosure." *Plunkett*, 67 F.Supp.3d at 19. HUD referred to this effect as the "Trigger Inapplicability Decision" ("TID"). *Id.* at 9. HUD averred, however, that the TID didn't extend beyond the *Plunkett* and *Bennett* plaintiffs. *Id.* at 19. The Court disagreed, finding that the plaintiff had standing, and that HUD's decision to limit the TID in this fashion was arbitrary and capricious. *Id.* at 22.

37. In the interim, a Georgia non-borrowing spouse of a reverse mortgage borrower sought declaratory relief against HUD, challenging the regulation that required foreclosure and displacement from her long-time home following her husband's death. *Harris v. Castro*, No. 1:14-cv-3110, 2015 WL 13547618, at \*8 (N.D. Ga. Nov. 19, 2015). Agreeing with the *Bennett* and *Plunkett* decisions, the Court affirmed that 24 C.F.R. § 206.27(c)(1) was invalid as applied to Mrs. Harris. *Id.* Therefore, the Court held that Mr. Harris' death did not trigger HUD regulations that would require the loan to be called due and payable, and that there was no basis for HUD to require foreclosure under its regulations. *Id.* (granting non-borrowing spouse's motion for judgment on pleadings).

38. More than three years after *Bennett* declared the regulation invalid, HUD amended 24 C.F.R. § 206.27(c). It largely codified the prior mortgagee letter. Effective September 19, 2017, the regulation provided a deferral period on foreclosure for eligible non-borrowing spouses but extended the deferral period *only* to loans originated on or after August 4, 2014. And it required all post-August 4, 2014, reverse mortgages to expressly provide a period of deferral for non-borrowing spouses.

39. In other words, the amended regulation still fails to incorporate any deferral period for non-borrowing spouses with loans issued before August 4, 2014, where no deferral period was expressly provided for in the loan documents.

40. As a result, for loans originated before August 4, 2014, the regulation, as applied to non-borrowing spouses like Mrs. Sample, still violates the HECM statute's non-displacement provision. For HECMs originated before August 4, 2014, various non-borrowing spouses have continued to face foreclosure and displacement due to HUD's continued failure to, *inter alia*, apply the TID to all non-borrowing spouses. Instead, HUD continues to maintain that a non-borrowing spouse's death, with respect to pre-2014 loans, triggers its regulations that require the loan to be called due and payable.

#### **C. THE MORTGAGEE OPTIONAL ELECTION ASSIGNMENT PROGRAM**

41. A brief explanation of this program provides helpful background.

42. During the *Plunkett-Bennett* litigation, HUD identified another remedy for non-borrowing spouses. Nearly two years after *Bennett* and almost a year after the *Plunkett* remand, HUD offered a version of this remedy to all via Mortgagee Letter 2015-15. *See* HUD, M.L. 2015-15 (June 12, 2015), <https://perma.cc/39RV-89FE>. The mortgagee letter created an alternative to foreclosure where a home is occupied by a non-borrowing spouse and the HECM originated before August 4, 2014. This option is the Mortgagee Optional Election ("MOE").

43. The MOE purportedly allows the mortgagee to assign the loan to HUD, so that the non-borrowing spouse can continue to live in the home. HUD imposed a deadline of 90 days from the borrower's death, among other requirements. For example, within 90 days of the borrower's death, the non-borrowing spouse was required to obtain "good and marketable title or a legal right to remain in the property." Many servicers construed this to require full probate.

44. HUD has since revised the MOE through Mortgagee Letter 2019-15. HUD, M.L. 2019-15 (Sept. 23, 2019), <https://perma.cc/EXV3-5BD9>. The marketable-title requirement was abolished. And lenders now have 180 days to assign the loan to HUD or initiate foreclosure. *Id.* at 2–3. Loans may be assigned after 180 days, but a financial penalty is imposed on a mortgagee’s insurance claim with HUD. *Id.* at 3–4. This penalty is referred to as interest curtailment, as the mortgagee can’t seek compensation for interest accrued after the 180 days.

45. All told, for a pre-2014 HECM to qualify for assignment, the following requirements must be satisfied: (a) the spouse must have been married to the borrower at the loan’s origination and at the borrower’s death; (b) the home must be the non-borrowing spouse’s principal residence; (c) if there has been a default on property taxes or homeowner’s insurance, the spouse must cure the default before the loan can be eligible for assignment; and (d) there must not be any claims that would invalidate the HECM, such as where a HECM is subordinate to another lien (or such claims must be resolved). *Id.* at 4–5. Completing probate or the like is not required. The mortgagee must ensure the non-borrowing spouse signs a form acknowledging these conditions are met and may request documentation. *Id.* at 5–8. Once validly assigned to HUD, the HECM enters a deferral period, meaning the loan is not due and payable until a triggering event, like the nonborrower’s death, transpires. *Id.* at 5.

**D. FROM THE 2000S THROUGH 2024, SOME BORROWERS AND THEIR SPOUSES WERE FALSELY LED TO BELIEVE THEIR NON-BORROWING SPOUSES WOULD NOT BE DISPLACED UPON THE BORROWER’S DEATH**

46. Reverse mortgages, by their very nature, are marketed towards the elderly. Often, those in need of reverse mortgages have a dire and urgent need for them. The population of reverse mortgage borrowers, moreover, overwhelmingly consists of low-income borrowers.

47. The affected population is thus inherently vulnerable to deceptive and fraudulent practices.

48. Before 2014, many borrowers and their non-borrowing spouses reported being misled or otherwise not understanding that upon the borrower's death the lending documents allowed the mortgagee to foreclose. *See, e.g.,* CFPB, *Reverse Mortgages: 2012 Report to Congress, supra*, at 133–35.

#### **E. THE REVERSE MORTGAGE TRANSACTION**

49. Although Mr. Sample involved Mrs. Sample in their finances, he generally took the lead on addressing the couple's finances.

50. Around 2009 or so, Mr. Sample's health worsened. By occupation, he was a commercial truck driver. But his health deteriorated such that he needed surgery.

51. The Samples needed money to pay for past and prospective accumulating medical expenses. But Mr. Sample was reticent to take out a conventional mortgage or other products, as he did not want to burden Mrs. Sample with it in the event he passed away before her. Mr. Sample eventually learned from a family member about reverse mortgages and received MetAmerica's contact information.

52. At the time, neither Mr. Sample nor Mrs. Sample had any significant previous experience or expertise in financial or real estate matters.

53. Mr. Sample contacted MetAmerica in or around early 2009.

54. In or around winter of 2009, a MetAmerica representative came to the Samples' Property to induce and assist the Samples in applying for the reverse mortgage. Mrs. Sample was present. Mrs. Sample distinctly recalls that this representative and Mr. Sample were sitting at their kitchen table. At one point, Mrs. Sample distinctly recalls that Mr. Sample expressly

sought assurance from the MetAmerica representative that, upon his death, Mrs. Sample would not be forced to leave the Property, since he had good reason to believe he would pass away before her. The MetAmerica representative, in so many words, assured him that Mrs. Sample could remain in the home even following Mr. Sample's death, and that the reverse mortgage would only become due if they both passed away and if no other reason to foreclose existed, such as failing to maintain property insurance. Mrs. Sample distinctly recalls that the MetAmerica representative had Mr. Sample sign various documents.

55. On one or two subsequent occasions someone from, or on behalf of or in conjunction with, MetAmerica came to the Property to conduct the appraisal and other ancillary matters. The Samples didn't substantially interact with anyone on those occasions. Otherwise, Mrs. Sample recalls that no one else from or on behalf of MetAmerica visited the Property before or after the reverse mortgage was executed.

56. Although Mrs. Sample did not immediately recall the MetAmerica representative's name, Mrs. Sample, by counsel, acquired the reverse mortgage application dated January 14, 2009. It indicates that a Mr. Scott Wilson on behalf of MetAmerica assisted Mr. Sample, in-person, in filling out the loan application. Mr. Scott Wilson also signed the application. Thus, on information and belief, Mr. Scott Wilson is the person who visited the Samples at the Property and who made the misrepresentation to Mr. Sample that Mrs. Sample recalls. The application is attached as **Exhibit C**. On information and belief, Mr. Wilson is presently a Senior Loan Officer for Atlantic Coast Mortgage in Virginia Beach, Virginia.

57. The reverse mortgage statute requires that borrowers receive counseling from HUD-certified counselors. Mrs. Sample does not recall ever receiving counseling herself. *See also* HUD, M.L. 2011-31, at 2 (Aug. 26, 2011), <https://perma.cc/8END-6M87> (noting that until

the issuance of this letter, non-borrowing spouses were not required to receive counseling for HECMs). However, she recalls that Mr. Sample received some type of counseling by phone in 2009. She distinctly recalls that notwithstanding that phone call—and throughout this period—Mr. Sample remained firmly convinced that Mrs. Sample would not be forced to leave solely as a result of his death. Had he been alerted otherwise, Mrs. Sample—and others, *see infra*—ever that he would've never agreed to take out a reverse mortgage. Thus, on information and belief, the counseling received by Mr. Sample did not include an explanation of the legal consequences that would come to fruition should Mr. Sample pass away.

58. Counsel for Mrs. Sample recently acquired a Certificate of HECM Counseling, dated February 3, 2009, signed by Mr. and Mrs. Sample. Although Mrs. Sample acknowledges the certificate bears her signature, she denies that she or Mr. Sample received counseling that advised them of the consequences of Mr. Sample passing away. Nor did they believe or have any reason to believe as laypersons with minimum education that such consequences would come to pass.

59. On or around February 19, 2009, the reverse mortgage application was approved.

60. On or around March 2, 2009, the deeds of trust indicate that Mr. Sample signed and executed the reverse mortgage with MetAmerica and HUD. Mrs. Sample cannot recall whether these documents were actually executed on that date as opposed to being signed and executed on or around January 14, 2009.

61. Between 2009 and January 2025, neither Mr. Sample nor Mrs. Sample received any communication or document that gave them reason to believe Mrs. Sample would face displacement or foreclosure upon Mr. Sample's death as a result thereof.

**F. MR. SAMPLE SADLY PASSES AWAY IN JANUARY 2025**

62. Mr. Sample passed away on January 15, 2025.

63. Because Mr. Sample died intestate, the Property, by law, passed to his children from a prior marriage—Mr. Kevin Walters, Ms. Teresa Mitchell, and Mr. Shirone Davis—and Mrs. Sample. The three children received two-thirds of the Property, while Mrs. Sample received one-third. Va. Code § 64.2-00.

64. Mr. Walters and Ms. Mitchell both aver that Mr. Sample would have never executed the reverse mortgage had he known Mrs. Sample would be displaced upon his death. Further, they are willing to assign any legal interest in the Property they have to Mrs. Sample. Counsel has not yet made contact with Mr. Davis.

65. Around January or February 2025, PHH Corporation (“PHH”), MAM’s mortgage servicer, initiated contact with Mrs. Sample. Mrs. Sample cannot recall whether she first learned of PHH’s intent to foreclose through letter or phone call, as, at the time, she was grieving the loss of her husband and doing her best to take care of the variety of tasks that arise when someone passes away. She does distinctly recall, however, that she was overcome with anxiety, as she and Mr. Sample always thought she would be entitled to remain in the home in the event Mr. Sample died.

66. Sometime in or around February 2025, Mrs. Sample called PHH. Mrs. Sample believes she called PHH several times between then and May 2025. In response to the claim that she faced foreclosure, she explained to PHH that it was her understanding that she could remain in the home. Initially, Mrs. Sample recalls that PHH did not really engage with her or provide information but instead requested documentation to confirm her identity as an heir and as Mr. Sample’s wife. PHH also requested a death certificate for Mr. Sample.

67. Mrs. Sample provided PHH with a real estate affidavit, which she recorded in Accomack County Circuit Court, a marriage license, and a death certificate. The affidavit attested that she, along with Mr. Water, Mr. Michell, and Mr. Davis, were heirs to the Property.

68. PHH acknowledged receipt of the real estate affidavit by way of a letter dated March 31, 2025. Mrs. Sample called PHH, and PHH confirmed that it also received the other documents she provided in or around late March or April 2025.

69. During subsequent conversations with PHH, Mrs. Sample continued to convey her desire to remain in the property and, indeed, her understanding that she had the right to remain in the property.

70. Yet Mrs. Sample received a letter dated April 14, 2025, informing her that PHH received notice of her “intent to sell or pay off the property.” She did no such thing. Perplexed, horrified, and feeling like she was getting nowhere, Mrs. Sample sought legal assistance.

71. Mrs. Sample’s counsel issued PHH a qualified written request (“QWR”) under the Real Estate Settlement Practices Act on July 8, 2025. Ultimately, PHH replied, stating that the “investor” declined to participate in the MOE program.

72. PHH has not informed Mrs. Sample that she in default of her obligation to maintain real estate taxes and insurance.

73. Around March 2025, PHH notified Mrs. Sample that it would no longer be accepting her monthly payments towards property insurance. Mrs. Sample pays the monthly property insurance premiums to PHH. If given the chance, Mrs. Sample is willing and able to resume payment. She is also willing to pay for months that PHH refused to accept payment, though avers she should not be assessed late fees.

74.

**V. CAUSES OF ACTION**

**COUNT I**

**Administrative Procedure Act, 5 U.S.C. § 706  
(against HUD and Scott Turner in his official capacity)**

75. Mrs. Sample restates each of the allegations in the preceding paragraphs as if set forth fully herein.

76. Under the APA, federal agency action is unlawful if it's arbitrary, capricious or otherwise not in accordance with law, or if it exceeds the agency's statutory authority. 5 U.S.C. § 706(2)(A), (C).

77. The HECM statute's anti-displacement provision provides the spouse of a HECM homeowner the same protection from displacement as the homeowner named on the mortgage. 12 U.S.C. § 1715z-20(j).

78. Under the anti-displacement provision, reverse mortgages must "provide[] that the homeowner's obligation to satisfy the loan obligation is *deferred* until the homeowner's death, sale of the property" or other occurrence to be identified by HUD. 12 U.S.C. § 1715z-20(j) (emphasis added). "[H]omeowner," for purposes of the anti-displacement provision, is defined as encompassing not only the homeowner, but also the homeowner's spouse—regardless of whether the spouse is a borrower. *Id.* So a spouse like Mrs. Sample who isn't named as a borrower on the HECM mortgage is nonetheless a "homeowner" entitled to this protection.

79. HUD failed to give effect to the plain meaning of the anti-displacement mandate. Instead, 24 C.F.R. § 206.27(c)(1) presently provides that the mortgage is due and payable, in full, if a "borrower dies and the property is not the principal residence of at least one surviving borrower[.]" *Id.* (emphasis added). "Borrower," in turn, is defined as the "mortgagor who is an original borrower" and excludes "successors or assigns of a borrower." 24 C.F.R. § 206.3.

Although the regulation, as amended September 2017, now provides a deferral period for an eligible surviving spouse, that provision only protects surviving spouses with post-August 4, 2014 loan transactions. 24 C.F.R. § 206.27(c)(1),(3). In other words, no automatic deferral period is provided for non-borrowing spouses with pre-August 4, 2024, loans.

80. Thus, the amended regulation and applicable mortgagee letters still fails to implement the HECM statute's anti-displacement provision for non-borrowing spouses of HECMs that originated before that date, including Mrs. Sample. Consequently, HUD's regulations and mortgagee letters, as applied to the 2009 Sample reverse mortgage, are arbitrary and capricious; contrary to law; and are in excess of its statutory authority. 5 U.S.C. § 706(2)(A), (C).

81. HUD's HECM foreclosure regulations are set forth in 24 C.F.R. § 206.125. This provision sets forth specific procedures and timelines for foreclosure whenever the mortgage is due and payable as a result of: (1) the conditions as required by § 206.27(c)(1) having occurred, or (2) the end of a post-August 2014 loan's deferral period. *Id.* at § 206.125(a)(1).

82. Because 24 C.F.R. § 206.27(c)(1), (3) is invalid as applied to Mrs. Sample, the reverse mortgage is not due and payable under that section as a result of Mr. Sample's death. Accordingly, there is no due and payable event that triggers the foreclosure provisions of 24 C.F.R. § 206.125. Indeed, on brief in *Plunkett*, HUD acknowledged as much, stating that Section 206.125 is "triggered only by a due and payable event described in 206.27(c) and, in the absence of 206.27(c)(1), no such event [would have] . . . occurred in plaintiffs' cases as a result of their spouses' deaths. Foreclosure on the mortgages at issue is not required on any time schedule (or at all). The mortgagees in plaintiffs' cases are not required by HUD to pursue

foreclosure to continue to get the benefits of their insurance contracts with HUD.” *Plunkett v. Donovan*, 1:14-cv-00326, HUD Br. at 24, ECF No. 37 (July 21, 2014). So too, here.

83. Had HUD properly implemented the anti-displacement provision, the reverse mortgage wouldn’t be due and payable, and Mrs. Sample’s home wouldn’t be threatened with foreclosure. Instead, MAM would have been required to place the loan into a deferral period, so long as Mrs. Sample qualified as a non-borrowing surviving spouse. As set forth above, Mrs. Sample does qualify as a non-borrowing surviving spouse. Yet because of HUD’s contravention of the anti-displacement provision, MAM was ostensibly imbued with discretion to participate in the MOE program or call the loan due and payable. Furthermore, HUD’s failure to notify MAM and/or PHH that it will not be financially penalized for failing to take one of two actions on the basis of Mr. Sample’s death—that is, assigning the loan through the MOE program or proceeding with foreclosure—has materially affected MAM’s decision to proceed with foreclosure. A declaration from this Court that Mr. Sample’s death did not “trigger” 24 C.F.R. § 206.125 would diminish MAM’s financial incentive to foreclose.

84. HUD is mandated by the HECM statute to take all actions necessary to effectuate the program’s purposes. 12 U.S.C. § 1715z-20(i)(1). Protection from displacement is one of those purposes. HUD thus must take action to ensure this core protection is afforded to Mrs. Sample. A declaration from this Court that HUD must consider and take all necessary and lawful steps to facilitate or encourage the assignment of the reverse mortgage—or any other option that would ensure Mrs. Sample isn’t displaced—would substantially increase the likelihood that Mrs. Sample wouldn’t be displaced.

**COUNT II**

**Reformation of Reverse Mortgage – Spousal Displacement Protection  
(against Mortgage Assets Management, HUD, and Scott Turner in his official capacity)**

85. Plaintiffs restate each of the allegations in the preceding paragraphs as if set forth fully herein.

86. In reverse mortgage transactions, a homeowner executes and records two mortgages: one is with the lender, while the other is with HUD. As explained earlier in the Complaint, then, the term “reverse mortgage,” whenever used, refers to both instruments recorded with respect to the Sample loan.

87. At the time of executing the reverse mortgage, the Samples, MetAmerica, and HUD intended for the loan to be eligible for HECM insurance and to comply with HECM insurance requirements.

88. Because the HECM insurance agreement expressly incorporates by reference all statutory mandates for federally insured reverse mortgages, it required that the Sample reverse mortgage protect non-borrowing spouses like Mrs. Sample from displacement and foreclosure.

89. Due to a mutual mistake of the parties, as well as a misunderstanding as to what federal law required for the loan to be eligible for HECM insurance, the required provision to protect Mrs. Sample from displacement was omitted from the reverse mortgage.

90. The anti-displacement protection for non-borrowing spouses was a key term of the HECM insurance contract, which was an integral part of the HECM.

91. Notwithstanding the absence of the spousal protection provision in the reverse mortgage, HUD’s issuance of an insurance certificate was “conclusive evidence” that the loan was eligible for HECM insurance, including the requirement for spousal displacement protection for Mrs. Sample.

92. Thus, the reverse mortgage should be reformed to protect Mrs. Sample from being displaced as a result of Mr. Sample's death. This will reflect the parties' intent that the loan would comply with HECM insurance requirements. In particular, the loan's due and payable provisions should be reformed to include the language applicable to non-borrowing spouses currently found at 24 C.F.R. § 207.27(c). All other provisions, including obligations that Mrs. Sample must abide by, such as maintaining property insurance and taxes, would remain intact.

93. In the alternative, a unilateral mistake of fact occurred as a result of MetAmerica's false misrepresentations in 2009. *See infra* Count III. As such, reformation of the reverse mortgage, as specified above, is appropriate. Although Mrs. Sample doesn't allege HUD engaged in any fraudulent course of conduct, in this circumstance reformation of the reverse mortgage between HUD and Mr. Sample would still be appropriate on account of HUD's and the Samples' mutual mistake. *See supra*.

94. If the reverse mortgage is not reformed, MAM would be unfairly advantaged by reaping the benefits of HECM insurance—or otherwise being afforded the opportunity to participate in the program—without having to comply with Congress' clearly expressed requirements for such benefits. Mrs. Sample, by contrast, wouldn't be unfairly advantaged by reforming the reverse mortgage. She is not, for example, seeking a court order that rescinds the mortgage in its entirety, all the while keeping the loan proceeds. She instead seeks the core protection Congress afforded to non-borrowing spouses like herself, and which was incorporated by reference into the insurance agreement in 2009.

**COUNT III**

**Actual and Constructive Fraud – 2009 Loan Origination Misrepresentations  
(against MetAmerica and Mortgage Assets Management)**

95. Plaintiffs restate each of the allegations in the preceding paragraphs as if set forth fully herein.

96. The acts and omissions of MetAmerica’s agent, representative, or employee on the occasions specified above in 2009 constitute false representations that, upon Mr. Sample’s death, Mrs. Sample—absent some other default or “triggering” event—would be able to remain at the Property.

97. Absent these false representations, Mr. Sample would have never applied for, and eventually executed, the reverse mortgage and would have sought other ways in which to procure financial assistance, as he never wanted Mrs. Sample to be displaced from their home upon his death. Thus, the representations were material.

98. These false representations were made knowingly and with the intent to induce Mr. Sample to enter the reverse mortgage, as it was clear that this matter was an overarching concern for him and would’ve been a deciding factor against taking out a reverse mortgage.

99. In the alternative, the false representations were made negligently or innocently but nonetheless were material and harmed the Samples, resulting in constructive fraud.

100. Given the overall circumstances, the Samples reasonably relied upon these false representations and had no reason to doubt them until 2025.

101. MAM is a successor-in-interest to the reverse mortgage and is liable for the actions described herein taken by MetAmerica, a predecessor-in-interest. At the very least, reformation of contract is an available remedy against MAM for the actions taken by its predecessor-in-interest, MetAmerica.

102. MetAmerica is vicariously liable for the actions described herein taken by its representative, employee, or agent in 2009.

103. This course of conduct evinces a conscious and/or malicious disregard for Mr. and Mrs. Sample's rights.

104. Plaintiffs therefore seek the remedy of reformation, as set forth above. Alternatively, Plaintiffs seek compensatory and punitive damages. In any event, she seeks reasonable attorney's fees and costs. *Prospect Dev. Co. v. Bershader*, 258 Va. 75, 92 (1999).

## **VI. JURY DEMAND**

Pursuant to Federal Rule of Bankruptcy Procedure 9015, Plaintiffs demand a trial by jury on all issues so triable.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court award them the following relief:

1. With respect to Count I:

a. Declare that HUD failed to properly implement the HECM's anti-displacement protections, has continued to enforce regulations and enact mortgagee letters that contravene this protection as to HECMs issued before August 4, 2014, and that Mrs. Sample is a "homeowner" entitled to the anti-displacement protections of 12 U.S.C. § 1715z-20(j);

b. Declare as unlawful and set aside 24 C.F.R. §§ 206.27(c) and 206.3—and applicable provisions of mortgagee letters described herein—as applied to pre-August 4, 2014, reverse mortgages such as the Sample reverse mortgage, pursuant to 5 U.S.C. § 706(2);

c. Declare that the Sample reverse mortgage will be eligible for assignment under the MOE program when the balance reaches 98% of the Maximum Claim Amount, *see* 24 C.F.R. § 206.107(a)(1), absent some future default or triggering event other than Mr. Sample's death;

d. Declare that the foreclosure provisions of 24 C.F.R. § 206.125 were not triggered by Mr. Sample's death—in other words, that the reverse mortgage is in a state of automatic deferral—and, therefore: (a) that HUD shall not compel MAM nor any future successor-in-interest or agents thereof to initiate foreclosure due to Mr. Sample's death; and (b) that HUD shall not financially penalize (*e.g.* curtailment of interest) MAM or any future successor-in-interest for failing to initiate foreclosure on account of Mr. Sample's death;

e. Enter preliminary and permanent injunctions preventing HUD from imposing any interest curtailment penalty (or any financial penalty) on MAM, PHH, or a future successor-in-interest or agents thereof for not foreclosing as a result of Mr. Sample's death;

f. Declare and order that to fulfill its statutory obligations to Mrs. Sample and MAM, HUD must consider (through remand or otherwise) and take all necessary and lawful steps to facilitate and/or encourage the assignment of the loan to HUD, or alternatively any other course of action that would result in Mrs. Sample not being displaced;

g. Award Mrs. Sample her reasonable attorney's fees and costs under 28 U.S.C. § 2412 or as otherwise permitted; and

h. Retain jurisdiction of this action to grant ongoing relief as may be required.

2. With respect to Count II, enter an order reforming the reverse mortgage to include provisions that protect Mrs. Sample from displacement upon Mr. Sample's death and, in the event the Court does so under the unilateral-mistake doctrine, award reasonable attorney's fees and costs;

3. With respect to Count III, reform the reverse mortgage, as set forth above, and award Mrs. Sample her reasonable attorney's fees and costs. In the event the Court declines to reform the reverse mortgage, award compensatory and punitive damages; and

4. Such other relief as this Court deems necessary and appropriate.

Dated: September 19, 2025

Respectfully submitted,

**EVELYN SAMPLE**

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