















Total Savings and Investment Reported by Workers, (not including value of primary residence or defined benefit plans)

In total, about how much money would you say you (and your spouse) currently have in savings and investments, not including the value of your primary residence? (2013 workers n=1003)

	2003	2008	2009	2010	2011	2012	2013
Less than \$1,000	55%	36%	20%	27%	29%	30%	28%
\$1,000 - \$9,999			19	16	17	18	18
\$10,000 - \$24,999		13	13	11	10	12	11
\$25,000 - \$49,999	15	12	11	12	11	10	9
\$50,000 - \$99,999	11	12	12	11	9	10	10
\$100,000 - \$249,999	11	15	12	11	14	11	12
\$250,000 or more	7	12	12	11	10	10	12

Source: Employee Benefit Research Institute and Mathew Greenwald & Associates, Inc., 2003-2013 Retirement Confidence Surveys.

\$50,000

\$8,278

50/34

Employment Benefits Research Institute, DEMOS

Home Equity Conversion Mortgages

Eligibility	Proceeds
Repayment	Fees

Please rate your familiarity with reverse mortgages on a scale of 1-5.

1= I know nothing.
 2= I've heard about them.
 3= I know enough to be dangerous.
 4= I'm comfortable discussing reverse mortgages with clients.
 5= I'm an expert.

Please rate your familiarity with bankruptcy on a scale of 1-5.

- 1= I know nothing.
- 2= I've heard about it.
- 3= I know enough to be dangerous.
- 4= I'm comfortable counseling client in bankruptcy.
- 5= I'm an expert.

ELIGIBILITY

- At least 62 years of age
- Eligible properties
- Adequate counseling
- No credit or income requirements***

PROCEEDS

- Payable as lump sum, monthly payments, line of credit or combination
- Maximum claim amount, age of youngest borrower, expected average interest rate

PROCEEDS

Borrower's Age at Origination	Expected Mortgage Interest Rate	Principal Limit Factor (as of Sept. 30, 2013)	Initial Principal Limit Based on a MCA of \$250,000
65	5.5%	0.484	\$120,750
65	7.0%	0.364	\$ 90,750
75	5.5%	0.541	\$135,000
75	7.0%	0.439	\$109,500
85	5.5%	0.598	\$149,250
85	7.0%	0.515	\$128,750

FEES

- Origination Fees
 - \$2,500 or 2% of maximum claim amount up to \$200,000, plus 1% of portion of maximum claim amount greater than \$200,000. Overall cap \$6,000
- Mortgage Insurance Premiums
 - Upfront MIP -- .5% or 2.5% of MCA; 60% rule
 - Ongoing MIP – 1.25%
- Monthly Servicing Fee

REPAYMENT

- No payments due until maturity
- Maturity = borrower dies, borrower fails to continue to occupy the home for 12 months, or borrower sells
- No prepayment penalty
- Non-recourse

Bankruptcy



CHAPTERS

Chapter 7
"Liquidation"

Chapter 13
Adjustment of debts
Plan of repayment over 3 to 5 years

BANKRUPTCY ESTATE

The estate is comprised of

“all legal or equitable interests of the debtor in property as of the commencement of the case”

11 U.S.C. § 541(a)(1)

AUTOMATIC STAY

- Triggered instantly upon the filing of a bankruptcy petition in most cases.
- Stops creditors from taking collection actions, pursuing or continuing a court case against the debtor, or seizing property of the debtor based on debts that arose before the petition was filed.

EXEMPT PROPERTY

- Property essential to a “fresh start”
- Federal exemptions or state exemptions plus federal non-bankruptcy exemptions.
 - 33 states debtors may not use federal exemptions.
 - Remaining states debtors may choose between federal and state exemption schemes.
- Exempt property is removed from the bankruptcy estate and not subject to administration by the trustee.

Reverse Mortgage Foreclosures

Property Charge Default

PROPERTY CHARGE DEFAULTS

- Taxes and insurance can be escrowed or must be paid by the borrower.
- As of June 2012, about 10% of active reverse mortgage were in default for failure to pay property charges.
- Mortgagee Letter 2011-01 sets forth guidance for dealing with property charge defaults.

PROPERTY CHARGE DEFAULTS

- Refer to third party to resolve delinquency or obtain funds to cure default.
- Refinance reverse mortgage with new reverse mortgage.
- Establish a repayment plan.

PROPERTY CHARGE DEFAULTS

Corporate Amount Advanced	Repayment Schedule
\$1 - \$500	up to 3 months
\$501 - \$1,000	up to 6 months
\$1,001 - \$5,000	up to 12 months
\$5,001 or more	up to 24 months

HUD Mortgagee Letter 2011-01

PROPERTY CHARGE DEFAULTS

- Property charge defaults may be cured through a chapter 13 bankruptcy
- 11 U.S.C. § 1322(b)(5) permits debtors to "provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due."
- *In re Bordreaux*, 2010 WL 724355 (Bankr. E.D. La. Feb. 24, 2010).

Reverse Mortgage Maturity

MATURITY

- Heirs want to keep home, but have insufficient cash on hand to pay large lump sum payment or are unable to obtain refinancing.
- In chapter 13, heirs may be able to pay off the amount due over a longer period of time, not exceeding five years.

MATURITY

- Bankruptcy allows debtors to modify the rights of holders of secured and unsecured claims, with limited exception. 11 U.S.C. § 1322(b)(2). Exception relates to real property that is the debtor's principal residence.
- The exception to the exception: when the last payment on the original payment schedule is due before the due date of the final plan payment. 11 U.S.C. § 1322(c)(2)

MATURITY

- Courts have consistently held heirs may pay amount due on a matured reverse mortgage through a chapter 13 plan. See *In re Griffin*, 498 B.R. 638 (Bankr. D. Md. 2013); *In re Domingue*, 2012 WL 3961212 (Bankr. S.D. Tex. 2012); *In re Brown*, 428 B.R. 672 (Bankr. D.S.C. 2010).

Reverse Mortgage Borrowers in Financial Distress

FINANCIAL DISTRESS

- Bankruptcy is not an event of default under a HECM.
- HECM Loan Agreement provides that lender "shall have no obligation to make further Loan Advances on or following the date that a petition for bankruptcy of Borrower is filed."

EXEMPT PROPERTY?

- Federal homestead exemption - \$22,975.
- State homestead exemptions vary widely
 - Florida and Texas provide an unlimited dollar amount for homestead exemptions
 - Alabama has a homestead exemption that is limited to \$5,000.
- Are debtor's other assets also exempt?

MYTH OF REAFFIRMATION

- One goal of bankruptcy is the discharge, which effectively eliminates personal liability on almost all debt.
- Reaffirmation is a promise by a debtor to pay a debt despite its discharge.
- Because reverse mortgages are nonrecourse, reverse mortgage lenders should not require reaffirmation, borrowers should not sign them, and courts should not approve them.

MYTH OF REAFFIRMATION

"There is nothing here to reaffirm because there is nothing to discharge. Section 524(c) defines a reaffirmation agreement as one the consideration for which is based on a debt *that is dischargeable*. See 11 U.S.C. § 524(c). That section further elaborates that such an agreement is "enforceable only to any extent enforceable under applicable nonbankruptcy law..." *Id.* As this nonrecourse debt is enforceable only as an *in rem* claim in any event, reaffirmation is at best a useless act." *In re Rios*, 2007 WL 2409547 (Bankr. W.D. Tex. Aug. 20, 2007).

MYTH OF CMI

- Speculation that monthly payments made under a reverse mortgage are "current monthly income" for purposes of the means test in chapter 7 or disposable income test in chapter 13.
- Conversion of exempt pre-petition assets from one form to another, even to cash, does not produce income. See, e.g., *In re Zahn*, 391 B.R. 840 (B.A.P. 8th Cir. 2008); *In re Breeding*, 366 B.R. 21 (Bankr. E.D. Ark. 2007).

Working Together

WORKING TOGETHER

Dorothy Boxley, age 75, owns her home free and clear. Her only source of income is her social security benefits of \$1270 per month. For more than a year, Mrs. Boxley has been making ends meet by charging groceries, and other necessities to her credit cards. Her outstanding credit card balance is currently \$13,700. Mrs. Boxley would like to use a reverse mortgage to pay off her credit card debt, supplement her monthly income, and provide her with a line of credit for unexpected future expenses.

Mrs. Boxley	
Youngest Borrower	75
Expected Interest Rate	5.5%
Appraised Home Value	\$180,000
Maximum Claim Amount	\$180,000
Principal Limit (PLF = 0.541)	\$ 97,380
<i>Less Fees and Costs</i>	
Upfront MIP (0.5%)	\$ 900
Loan Origination Fee	\$ 3,600
Other Closing Costs	\$ 1,721
Net Principal Limit	\$ 91,159
<i>Less Credit Card Payoff</i>	\$ 13,700
<i>Less Line of Credit</i>	\$ 20,000
Amount Remaining for Monthly Payments	\$ 57,459
Monthly Tenure Payments	\$ 403

Mrs. Boxley	
Youngest Borrower	75
Expected Interest Rate	5.5%
Appraised Home Value	\$180,000
Maximum Claim Amount	\$180,000
Principal Limit (PLF = 0.541)	\$ 97,380
<i>Less Fees and Costs</i>	
Upfront MIP (0.5%)	\$ 900
Loan Origination Fee	\$ 3,600
Other Closing Costs	\$ 1,721
Net Principal Limit	\$ 91,159
<i>Less Credit Card Payoff</i>	\$ 0
<i>Less Line of Credit</i>	\$ 20,000
Amount Remaining for Monthly Payments	\$ 71,159
Monthly Tenure Payments	\$ 499

*The
Financial
Assessment
Caveat*
