



NCLC Survey Reveals Ongoing Problems with Mortgage Servicing May 2015

The National Consumer Law Center (NCLC)¹ conducted a nationwide survey from February 24 to March 3, 2015, of more than 100 attorneys and housing counselors representing homeowners. The survey's results show significant ongoing problems with mortgage servicing. While the CFPB's mortgage servicing regulations have made important progress in standardizing industry practices, enhancing procedural transparency, and improving servicer accountability, many challenges remain.

Key Findings

NCLC's survey examined a number of questions relating to current CFPB mortgage servicing rules to explore the need for further improvements. The results indicate an urgent need for enhanced protections to:

- Help successors in interest (widows, orphans, or other heirs) avoid foreclosure;
- Close the loopholes created by the CFPB's requirement to submit a "complete application" before accessing important mortgage protections; and
- Remove the CFPB's current exemption from servicing protections for so-called "duplicative" applications for loan modifications or other assistance where the homeowner faces a new hardship.

The survey does not focus on all aspects of the CFPB's rulemaking nor on problems outside the scope of the rulemaking, such as problems for borrowers with limited English proficiency, issues with force-placed insurance, or the ever-present need for a mandate for sustainable loan modifications. The latter issue will become more urgent as the Home Affordable Modification Program (HAMP), the only uniform set of sustainable loan modification standards, approaches its sunset date in December 2016.

¹ Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. www.nclc.org More survey details, and narratives, are available in NCLC's comments to the CFPB's proposed amendments to the 2013 TILA and RESPA mortgage servicing regulations, *available at* <http://www.nclc.org/images/pdf/rulemaking/comments-servicing-cfpb-march16-15.pdf>.

Successors in Interest Still Face Major Challenges

The problem. One of the unresolved issues of the recent financial crisis is the challenge faced by people who inherit a home or are awarded it in a divorce, but are not the original borrower on the mortgage (so called “successors in interest” or “successor homeowners”) and are seeking to keep their homes. A substantial number of these homeowners are currently facing foreclosure due to widespread industry confusion about these homeowners’ rights and options.² Attorneys and counselors representing homeowners continue to cite successor problems as among the most difficult problems they face as they work to save homes from foreclosure.³

Even where reduced income or other economic hardship qualifies them for a loan modification, successors face hurdles that too often leave them without any viable options for retaining the home. This is true despite requirements built into HAMP, Fannie Mae, Freddie Mac, and FHA rules that require servicers to evaluate successors for loan modifications as if they were the borrower.

Survey results. The NCLC survey demonstrated that successors face widespread challenges in obtaining loss mitigation and particular issues in demonstrating their successor status.

- 55% of respondents were asked by the servicer to supply a quitclaim deed where one was not needed or available because a divorce decree clearly transferred the property.
- 63% were asked to provide probate documents or proof that the client was the estate representative where such proof was irrelevant because the property passed through a right of survivorship deed or tenancy by the entireties.
- 66% were asked to submit the same documents over and over again in an attempt to prove their ownership interest to the servicer.

The survey responses also revealed serious problems with getting servicers to communicate with successors and postpone foreclosure sales in order to review successors for potential loan modifications.

- 61% of respondents said that the servicer refused to stop the foreclosure until the homeowner sought court intervention or the case was escalated (internally or with the HAMP Solutions Center, Fannie Mae, or Freddie Mac).

² See *Are Mortgage Servicers Following the New Rules? A Snapshot of Compliance with CFPB Servicing Standards*, National Council of La Raza and National Housing Resource Center (Jan. 9, 2015), available at http://www.nclr.org/images/uploads/publications/mortgageservicesreport_11215.pdf; *Chasm Between Words and Deeds X: How Ongoing Mortgage Servicing Problems Hurt California Homeowners and Hardest-Hit Communities*, California Reinvestment Coalition (May 2014), available at <http://www.calreinvest.org/publications/california-reinvestment-coalition-research>.

³ *Id.* See also National Consumer Law Center, *Examples of Cases Where Successors in Interest and Similar Parties Faced Challenges Seeking Loan Modifications and Communicating with Mortgage Servicers* (July 1, 2014), available at http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/successor-stories-2014.pdf.

Homeowners who are joint owners of the home but who are not obligated on the loan face challenges when the borrower has left the home, especially in cases of abandonment or domestic violence.

- 74% of respondents who were contacted by such joint owners said they were having difficulty getting servicers to communicate with their client regarding a loan.
- 82% said they had difficulty getting servicers to let these clients apply for a loan modification.

Homeowners Face Substantial Roadblocks in Completing Loss Mitigation Paperwork

The problem. It is well established that homeowners seeking loan modifications from a mortgage servicer often are required to repeatedly submit the same paperwork or face a long string of document requests.⁴ Without arriving at the “complete application” landmark, these homeowners cannot avail themselves of dual tracking protections, resulting in the foreclosure proceeding alongside the loss mitigation review. As a result, homeowners face increased default servicing fees and greater challenges avoiding unnecessary foreclosures. These problems persist despite the CFPB’s requirement that servicers make reasonable efforts to obtain a “complete application” and notify the borrower in writing within five business days of receipt of an application of any documents still needed to complete that application.

Survey results. NCLC’s survey shows that homeowners still often face a maze of document requests, from repeat requests for the same documents to serial requests made after initial requirements appear to have been satisfied. These servicer practices result in protracted loan modification review timelines.

- 82% of respondents stated that they “often” or “most of the time” face servicers requesting documents piecemeal.
- 69% of respondents said that “often” or “most of the time” servicers repeatedly request the same documents.
- 67% of respondents said servicers “often” or “most of the time” ask for additional documents after the homeowner has submitted everything the servicer requested in the 5-day letter.
- 23% of respondents stated that servicers “often” or “most of the time” initiate foreclosure after the homeowner was told the application was complete and the servicer then requested additional information. Another 39% responded that servicers “sometimes” do this.

⁴ See *Are Mortgage Servicers Following the New Rules? A Snapshot of Compliance with CFPB Servicing Standards*, National Council of La Raza, and National Housing Resource Center (Jan. 9, 2015), available at http://www.nclr.org/images/uploads/publications/mortgageservicesreport_11215.pdf; Katherine Porter, *The Third Report of the California Monitor: The Complete Application Problem: A Solution to Help Homeowners and Banks Work Together* (June 19, 2013).

In addition, the timeline for applying for a modification and receiving an answer is still markedly extended.

- 19% of respondents reported that the loan modification process generally takes six to nine months from start to finish with the help of a housing counselor or attorney.
- 38% of respondents reported that the process takes four to five months on average.

Servicers Review Loan Modification Applications Made After a Subsequent Hardship

The problem. Current CFPB rules only apply the first time a servicer reviews a complete loss mitigation application. Yet, some homeowners face subsequent hardships resulting in a need for additional loss mitigation. Homeowners who have suffered through loss of a spouse, loss of a job, or significant medical debt may find themselves later dealing with additional hardship while still maintaining enough income to retain the home with a modification. These situations create the opportunity both to help homeowners save their homes and to reduce financial losses to the owners of the loans by reviewing certain subsequent applications. In fact, such reviews are required in many instances, including under HAMP and FHA rules. In other cases, servicers voluntarily undertake such reviews. While the CFPB’s procedural protections and limits on dual-tracking foreclosures alongside loan modification reviews are inapplicable to these subsequent reviews, homeowners may erroneously believe they can rely on these protections.

Survey results. NCLC’s survey shows that in many instances servicers already review applications for loss mitigation submitted after an earlier complete application was submitted.

- 52% of respondents stated that “often” or “most of the time” a servicer reviews a loss mitigation application even where a decision was made on an earlier complete application submitted after January 10, 2014.
- 28% reported servicers “sometimes” conduct such a review.

For questions related to this survey, contact NCLC Staff Attorney Alys Cohen: acohen@nclc.org or (202) 595-7852.

Survey Highlights

Chart 1: Which of the following have you experienced when trying to get the servicer to acknowledge your client as a successor? (Check all that apply.)

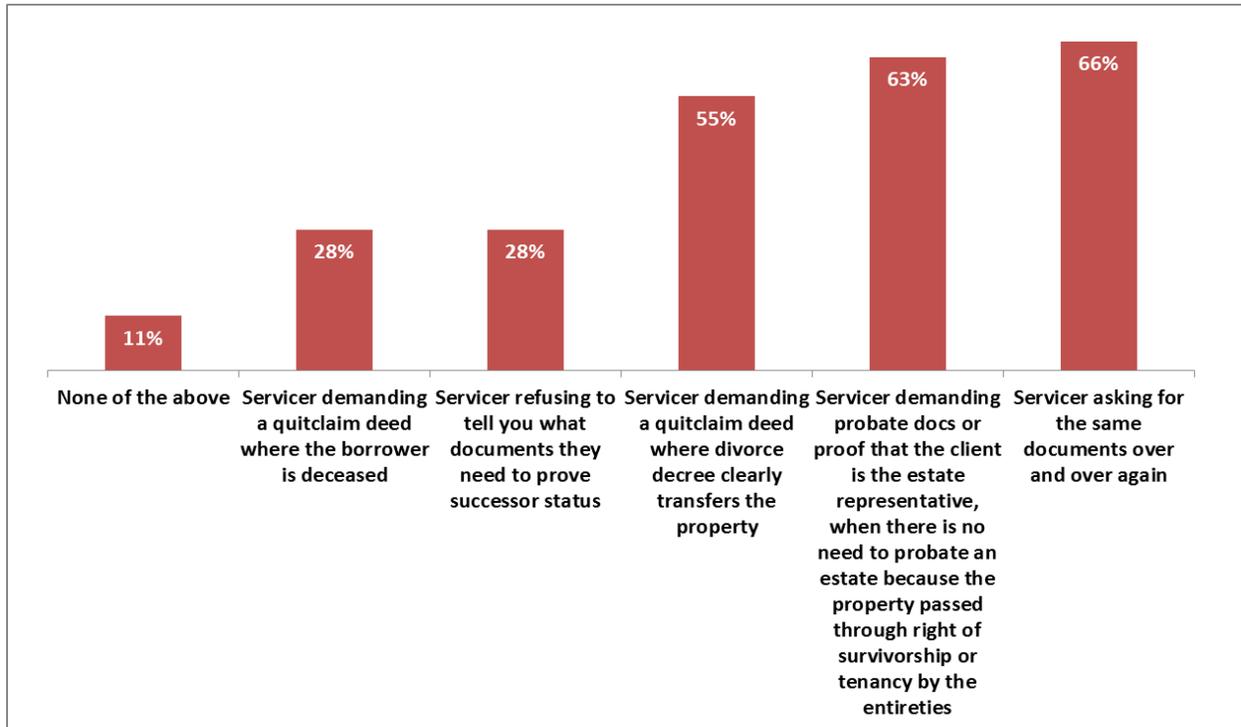


Chart 2. Where you have been contacted by a successor who needs a loan modification and is facing the risk of foreclosure, how did the servicer respond?

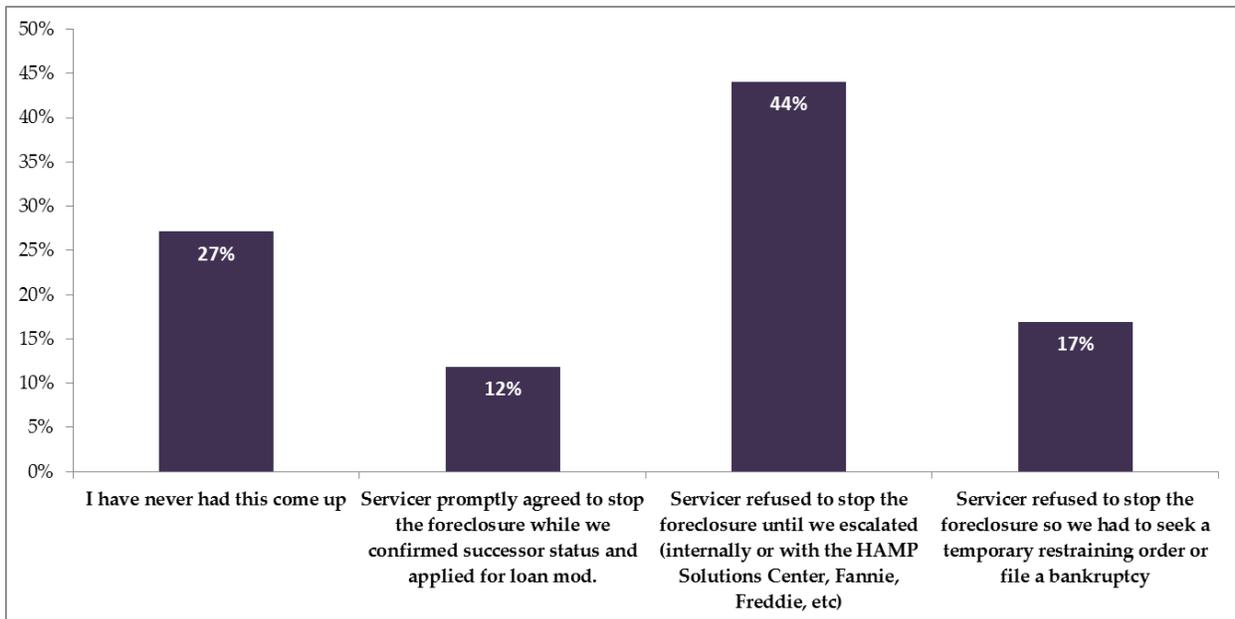


Chart 3: Have you been contacted by a joint owner of the house who is on the mortgage/deed of trust but not on the note, where your client is a co-owner and there has been no recent transfer of the house? This may come up in cases of separation, abandonment, domestic violence, unmarried partners, etc.

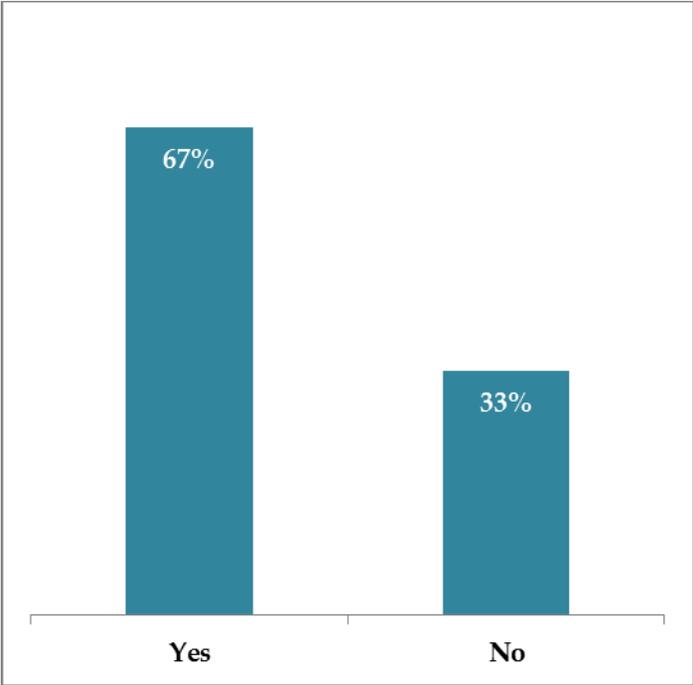


Chart 4: If yes, did you have difficulty trying to get the servicer to communicate with your client?

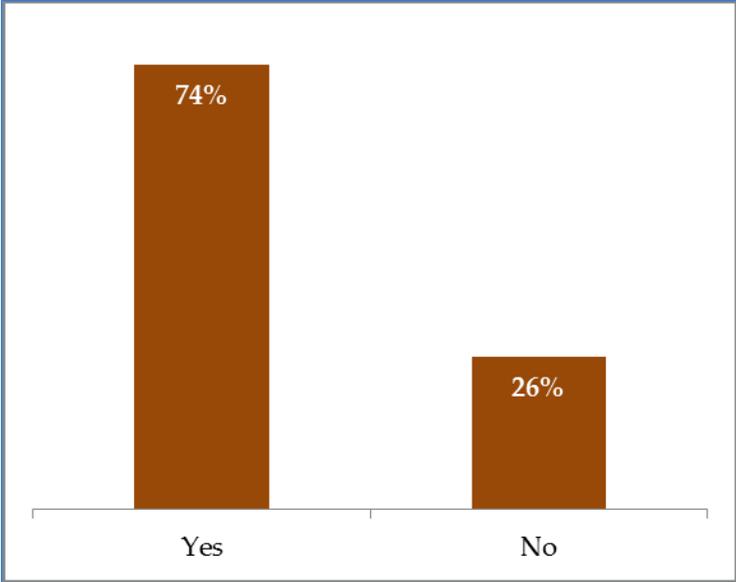


Chart 5: If yes, did you have difficulty getting the servicer to let your client apply for a loan modification?

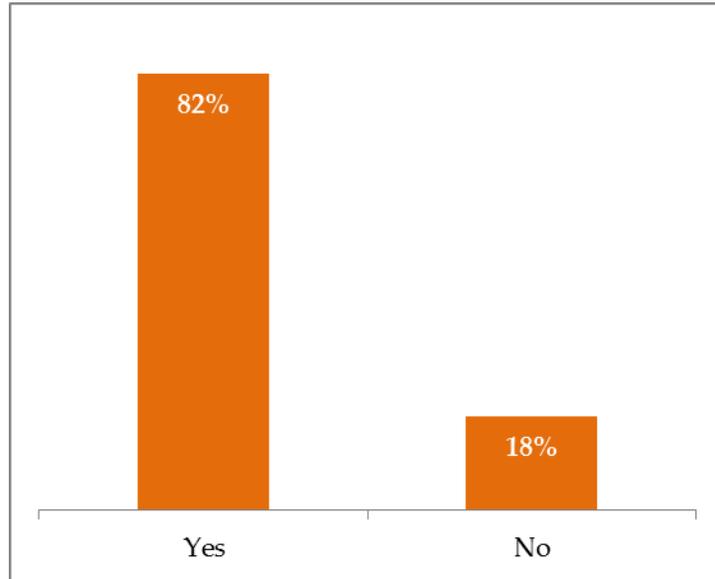


Chart 6: In the past year, how often have you had trouble with servicers requesting some documents, then requesting others (piecemeal)?

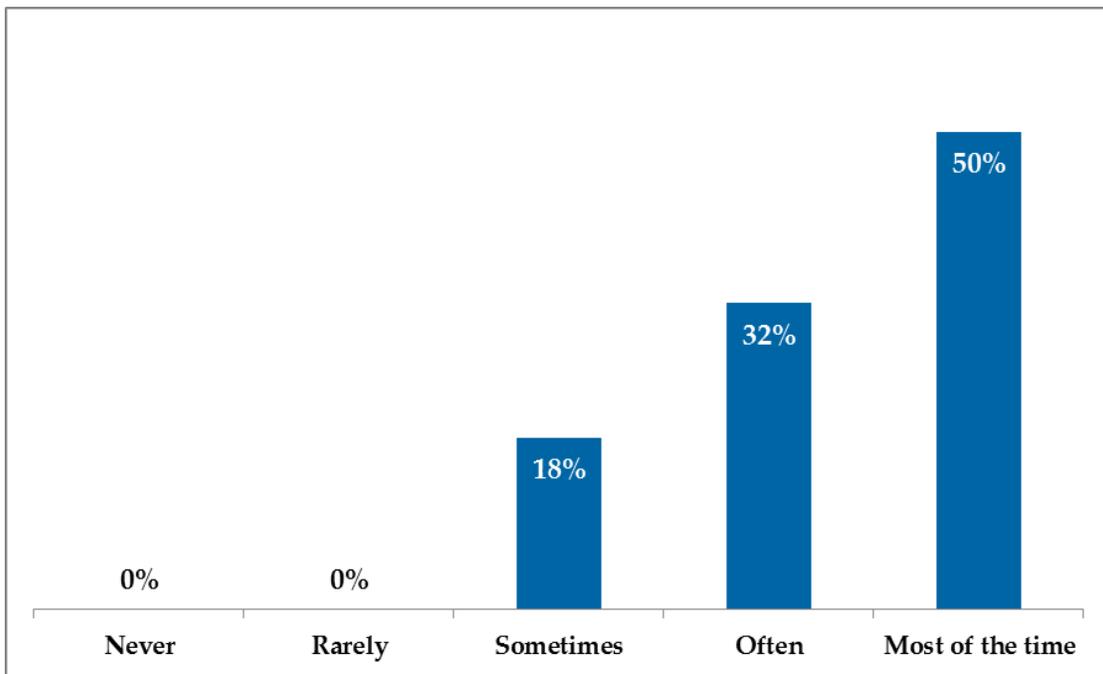


Chart 7: In the past year, how often have you had trouble with servicers asking for the same documents over and over again?

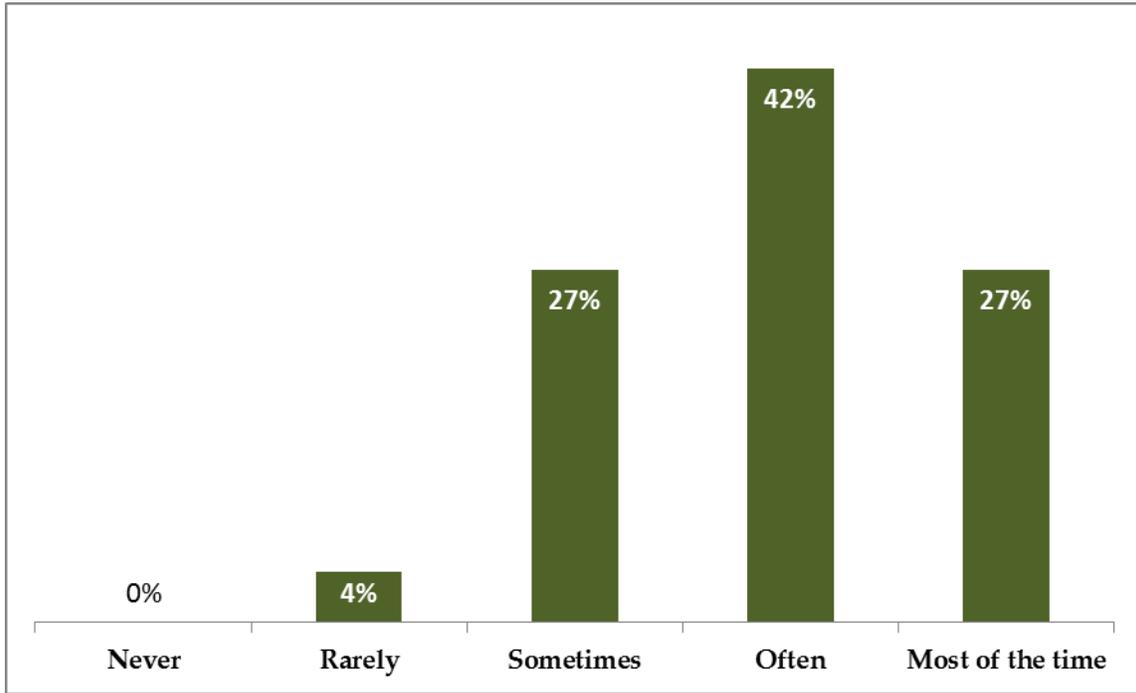


Chart 8: How often does a servicer ask for additional documents after your client has submitted everything the servicer requested in the 5-day letter?

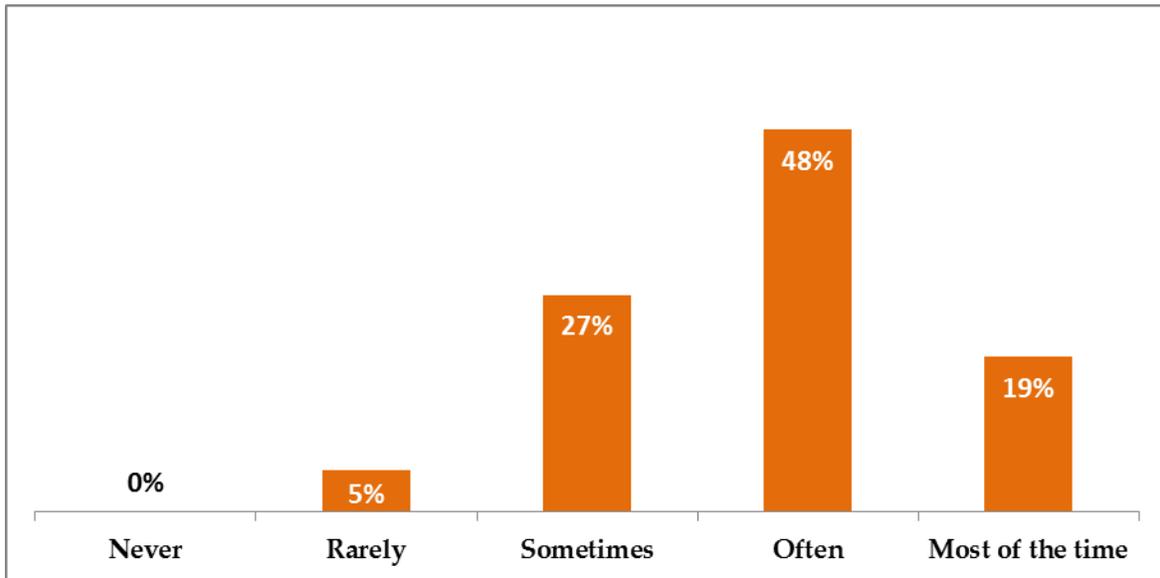


Chart 9: How often do servicers initiate foreclosure after you have been told (for the first time) that the application is complete (or your client has provided everything the servicer requested in the 5-day letter) but the servicer then requested additional or duplicative information?

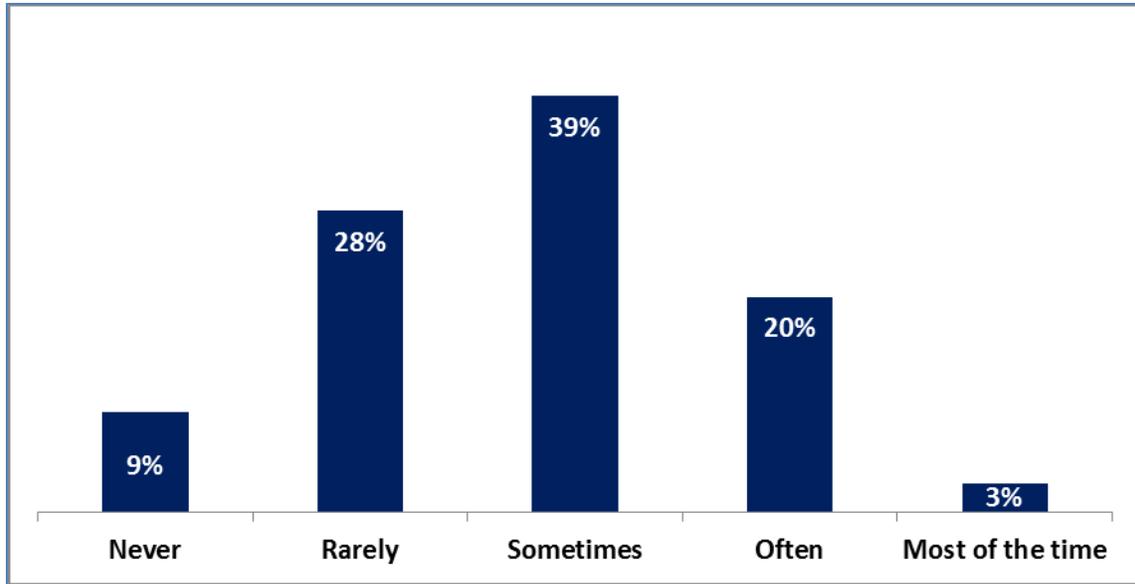


Chart 10: On average, how long is it taking for your clients to get their loan modifications reviewed, from start to finish?

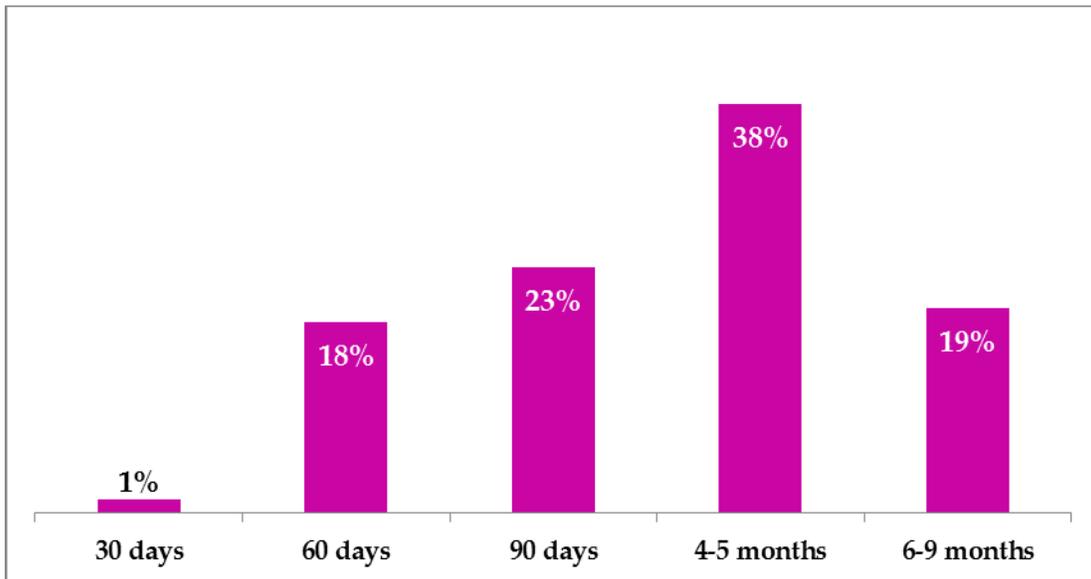


Chart 11: How often in the cases you are handling has a servicer reviewed an application from your client (where one was submitted) even though a decision was made on an earlier complete application submitted after 1/10/14? (In other words, how often are you representing people with "subsequent applications," and servicer does not object to reviewing the application?)

