NHRC

National Housing Resource Center
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Servicer Compliance with CFPB Servicing Regulations

Introduction

Mortgage servicers are responsible for collecting mortgage payments from homeowners on behalf of mortgage holders (generally investors in mortgage-backed securities or lenders), processing payments, tracking principal and interest paid, and responding to homeowner inquiries. When a homeowner becomes delinquent or goes into default, it is also the mortgage servicer's responsibility to try to work with the borrower to get the borrower current or, as a last resort, to initiate and mange foreclosure proceedings.

In the fallout from the unprecedented wave of delinquency and foreclosure that has occurred since the financial crash of 2007-08, it became clear that mortgage servicers were often not complying with legal requirements. From "robo-signing" foreclosure documents to improperly applying payments to maximize penalties and fees, the scope of servicer misconduct made obvious the need for additional homeowner protections. As a result, since January, 2014, the Consumer Financial Protection Bureau ("CFPB") has had regulations in place to protect homeowners from abusive and deceptive mortgage servicing practices.

In October, 2015, the National Housing Resource Center (NHRC) conducted a national survey of housing counselors, as well as a small number of legal services lawyers who work with homeowners who are in foreclosure, to ask how well mortgage servicers were complying with the CFPB servicing rules. Housing counselors work with homeowners who are in delinquency or default to try to save their home. In the course of working with homeowners, housing counselors often act as the homeowner's representative to the mortgage servicer. As a result, housing counselors interact with and often have extensive knowledge of many different mortgage servicers. Housing counselors also have a good understanding of the requirements under CFPB's mortgage servicing rules, making them uniquely qualified to assess how well servicers are complying with the rules.

The NHRC mortgage servicing survey asked respondents to rate how well each of 11 servicers (Bank of America, Caliber, Citi, Green Tree, HSBC, JPMorgan Chase, Nation Star, Ocwen, Select Portfolio Servicing, Seterus, and Wells Fargo) complies with 12 of the servicing rules, with a one indicating poor compliance and a five indicating strong compliance. Respondents were also asked to rate each of the servicers with respect to several issues that are not addressed in the current rule, but which counselors and advocates report need to be addressed.[1] Additionally, respondents were given the opportunity to include additional information on any of the servicers that were asked about or to provide information on any servicers that were not specifically asked about. There were 200 survey responses, although not every

[1] These were the question about servicers requiring borrowers to resubmit documents that have already been submitted and the last three questions on accommodating borrowers' preferred non-English languages.

respondent responded to each question, so the range of responses for individual questions was from 123 to 169.

The information gathered from the surveys is useful for understanding two important facets of mortgage servicing. First, the survey helps us to better understand which of the servicing rules servicers are doing a good job of complying with and which rules servicers need to improve their compliance with. Second, the survey helps us to understand which servicers are generally doing a good job of complying with the servicing rules as a whole and which servicers generally need to improve.

Servicer Compliance with CFPB's Servicing Rules

The chart below summarizes the survey results for each of the servicing rules that were asked about. The average of all responses was used for each question and the columns below indicate the lowest and highest average ratings given for a servicer, as well as the median for all servicers. The results are presented from the regulations that received the highest median average rating to the lowest. (Please see the bar graphs starting on page 9 to see the average rating for each servicer on each question.)

Issue	Lowest Average Rating	Highest Average Rating	Median Servicer Rating
No Filing for Foreclosure Until 120 Days Delinquent	3.79	4.21	4.03
No Filing for Foreclosure while Borrower Performing on Loss Mitigation Agreement	3.39	4.14	3.83
No Foreclosure Sale While Loss Mitigation Application Pending	3.35	3.98	3.64
Servicer Communicates in Borrower's Preferred Language	3.39	3.89	3.6
Borrower is Able to Communicate with Servicer in the Borrower's Preferred Language	3.07	3.75	3.43
No Filing for Foreclosure while Loss Mitigation Application is Pending	2.93	3.74	3.31
Servicer Gives Specific Reasons for Denials	2.75	3.74	3.24
Decision on Loss Mitigation Application within 30 Days	2.73	3.6	3.09
Denial Includes NPV Calculation (if NPV is reason for denial)	2.51	3.61	3.02
Acknowledgement Letter Specifies Which Documents and Information Are Missing	2.51	3.56	3.00
Servicer Sends Written Acknowledgment of Receipt of Loss Mitigation Application within 5 Days	2.4	3.61	2.95
Point(s) of Contact Accessible to Borrower or Counselor	2.5	3.75	2.95
Servicer Accepts Non-English Documents	2.29	2.89	2.61
Transfers	2.01	2.74	2.35
Lost Documents	1.86	2.65	2.19
Promptly identifying and communicating with successors in interest	1.76	2.25	1.98

It is important to note here, that while servicers were rated relatively well on some of the rules that were asked about, there is room for improved compliance by all servicers with respect to all of the servicing rules. CFPB's servicing rules are intended to provide homeowners with critical protections against abusive mortgage servicing practices and it is critical that all servicers comply with all of the rules at all times. That the highest median rating for the servicers on any question was a 4.03 out of five demonstrates that even when servicers are complying with the rules relatively well, there is still room for improvement across the board.

The Good

The servicers were rated relatively well on several of the servicing rules we asked about. Importantly, the rules for which the servicers were rated the mostly highly have to do with servicers not moving for foreclosure improperly. With respect to the prohibition on servicers moving for foreclosure before the borrower is at least 120 days delinquent, the average rating for all servicers was 4.03 (on a scale of 1 to 5). Even the lowest-rated servicer, Green Tree, did relatively well on this question (average rating of 3.79), while the highest-rated servicer, Bank of America, did very well (average rating of 4.21).

The servicers performed relatively well on two other foreclosure-related questions. When asked about servicer compliance with the prohibition on filing for foreclosure while a borrower is performing pursuant to the terms of a loss mitigation agreement, the median average servicer rating was 3.83, with a low average rating of 3.39 (Green Tree) and a high average rating of 4.14 (Bank of America).

Servicers also performed relatively well when counselors were asked how well servicers were complying with the prohibition on servicers moving for a foreclosure judgment/order of sale or conducting a foreclosure sale if the borrower had submitted a complete loss mitigation package at least 37 days before the scheduled sale date,[2] with an average servicer rating of 3.64, a low of 3.35 (Seterus), and a high of 3.99 (Wells Fargo).

It is important to note here, however, that these are among the most important protections that the servicing rules provide homeowners; if servicers do not comply with these rules, the very real consequence can be homeowners unfairly losing their homes. While it is encouraging that counselors report that servicers are generally complying with these rules, the expectation should be that servicers are as close to perfect as possible in complying with these rules. In practice, no servicer scored even close to a perfect five score, which means that, even with the stronger CFPB servicing standards, homeowners went into foreclosure improperly and some lost their homes.

Dramatic Need for Improvement

The servicers were collectively rated very poorly on compliance with several of the servicing rules. First, when a servicer is notified of the death of a borrower, the servicer is required to promptly identify and

[2] The servicer can proceed once a determination has been made on the borrower's application and the borrower has exhausted any appeals to which the borrower is entitled.

facilitate communication with a successor in interest (for example, a surviving spouse, child, or heir of the borrower, or someone else with an interest in the property). This requirement is meant to address situations where, for example, the surviving spouse of a deceased borrower is not on the mortgage and, as a result, often has a very difficult time working with the servicer to work out a loss mitigation option. On average, counselors rated servicer compliance with this requirement as a 1.98 (on a scale of 1 to 5). Even Wells Fargo, the highest rated servicer on this question, received an average rating of only 2.25. Clearly, much more needs to be done to ensure that servicers promptly identify and communicate with surviving spouses, children, and others with ownership interests.

Another area counselors rated the servicers poorly on was their handling of servicing transfers. Under the servicing rules, when a loan is transferred from one servicer (the transferor servicer) to another (the transferee servicer), the transferee servicer is required to comply with the loss mitigation procedures and foreclosure prohibitions required under the rules. For example, the transferee servicer must treat a complete loss mitigation that was received by the transferor servicer as complete as of the date it was received by the transferor servicer. On average, counselors rated the servicers as a 2.35 in terms of their compliance with the rules' requirements with respect to servicing transfers. According to comments provided by a number of counselors, it is very common when a loan is transferred for homeowners to be required to start the loss mitigation application process all over again.

One area in which there is dramatic need for improvement is one on which the servicers were rated relatively highly, but the importance of which requires substantial improvement from the servicers: "dual tracking" or filing for foreclosure while a complete loss mitigation application is pending. Under the servicing rules, a servicer is prohibited from filing for foreclosure while a complete loss mitigation application is pending. This is perhaps the most important of the servicing rules as it encourages homeowners and servicers to find win-win alternatives to foreclosure, such as affordable loan modifications. On average, counselors rated servicer compliance with the requirement as a 3.31. The worst-rated servicer on this question was Green Tree (2.93), while the best was Wells Fargo (3.74). While the servicers' overall rating was relatively positive, it is critically important that servicers never file for foreclosure while a homeowner has a pending loss mitigation application.

A final area in which counselors rated the servicers very poorly is not one that is explicitly dealt with in the servicing rules: lost documents. Homeowners and counselors have long complained about being made to submit the same documents over and over again. Often times, in the course of being made to repeatedly re-submit documents, other documents become "stale," requiring the homeowner to once again re-submit those documents. In addition to being a source of major frustration for homeowners and counselors, lost documents have also resulted in homeowners missing their opportunity to work out a loss mitigation solution and, as a result, ending up in a foreclosure that should have been avoided. When asked whether each servicer requires homeowners to re-submit documents or information that have already been submitted, on average, counselors rated the servicers a 2.19. Even the best of the servicers on this question (Wells Fargo) was rated only a 2.65, while the worst (Caliber) was rated a 1.86.

Need for Improvement

For a number of the rules asked about in the survey, the servicers were rated close to "average." These were:

- Giving specific reasons when denying a loss mitigation application (median rating of 3.24);
- Making a decision on a complete loss mitigation application within 30 days (median rating of 3.09);
- Sending a written acknowledgement when the servicer has received a loss mitigation application that specifies which documents are needed to complete the application (median rating of 3.00);
- Sending the written acknowledgement that the servicer had received a loss mitigation application within 5 days (median rating of 2.95);
- Including in the denial letter the net present value (NPV) calculation that was used if the NPV calculation was the reason for the denial (median rating of 3.02); and
- Having one or more point(s) of contact who are easily accessible to the homeowner (median rating of 2.95)

Each of these rules is important to ensuring that homeowners are treated fairly by servicers during the loss mitigation process. Requiring servicers to give specific reasons for denials ensures homeowners have adequate information to decide whether to appeal a denial. Requiring servicers to make a decision on a complete application within 30 days protects homeowners against servicers taking months or even years to resolve a loss mitigation application, as was commonly the case before the CFPB rules. Requiring servicers to specify which additional documents are needed to complete an initial application helps to protect homeowners being told over and over that the servicer needs a new document that had not previously been requested. Requiring a written notice acknowledging receipt of a loss mitigation application helps to streamline the loss mitigation process. Requiring servicers to include the NPV calculation that was used if that is the reason for a denial helps to catch all-too-common errors and avoid improper denials. Requiring servicers to have accessible points of contact helps to ensure homeowners have someone they can reach to resolve questions or issues that frequently arise in the loss mitigation process.

Again, given the importance of these rules, it is necessary that servicers comply with them as nearly perfectly as is reasonable possible. That counselors reported that the servicers' compliance with these rules is merely around "average," i.e. three out of five, is not acceptable. More must be done to ensure that all homeowners are receiving all of the benefits of CFPB's mortgage servicing rules.

Language Access

In addition to asking about existing CFPB servicing rules, the survey asked about how well servicers work with homeowners whose preferred language is not English. For years, housing counselors, legal services providers, and other advocates have reported that homeowners with limited English proficiency (LEP) often face hardships when interacting with mortgage servicers. For example, servicers often fail to send written communications to LEP borrowers in a language they can understand. This can lead to disastrous results, such as a homeowner missing the deadline to accept a loss mitigation offer simply because the borrower did not understand what it was and ending up in a foreclosure that would have been easily avoided had the servicer communicated with the homeowner in their preferred language.

Servicers were rated poorly (median rating of 2.61) when asked about servicers accepting non-English documents from homeowners. Servicers were rated better with respect to communicating with borrowers in the borrowers' preferred language (median rating of 3.6) and borrowers being able to communicate with the servicer in the borrower's preferred language (median rating of 3.43), but there is still need for a significant improvement to ensure that LEP homeowners are effectively able to communicate with and understand communications from their mortgage servicers.

Servicers

In addition to better understanding how servicers are collectively complying with specific mortgage servicing rules, by asking about individual servicers the survey allowed for comparison of servicers with their peers. To understand how well servicers were complying with the servicing rules relative to each other, we looked at each servicer's overall average rating (on a scale of 1 to 5, with 1 being poor compliance and 5 being strong compliance), i.e. the servicer's average rating for all of the 16 questions we asked. Additionally, we also looked at how well each servicer ranked relative to the other servicers for each of the 18 questions. So, for each question each servicer was ranked from 1 (highest average rating) to 11 (lowest average rating). The chart below shows how the servicers performed by overall average rating and overall average rank.

When comparing the servicers on these metrics, the servicers clearly fell into 3 tiers.

Tier	Rank	Servicer	Overall Average Rating (1-5)	Overall Average Rank (1-11)
1	1	Wells Fargo	3.50	1.44
	2	Bank of America	3.39	1.94
	3	JPMorgan Chase	3.33	2.88
2	4	Ocwen	3.16	4.63
	5	Citi	3.13	5.13
	6	Nation Star	3.09	5.25
	7	Select Portfolio Services	3.04	6.38
3	8	Seterus	2.84	8.63
	9	HSBC	2.84	8.94
	10	Green Tree	2.76	9.88

	11	Caliber	2.75	10.19

For virtually every question, the servicers in tier 1 were ranked in some combination of 1-3, the servicers in tier 2 in some combination of 4-7, and the servicers in tier 3 in some combination of 8-11. The average rating and average rank for the servicers in each tier are also bunched closely together and there is a drop-off in average rating and average rank between each tier.

According to the survey results, Wells Fargo, Bank of America, and JPMorgan Chase are clearly doing the best job of complying with the servicing rules. At the bottom, Seterus, HSBC, Green Tree, and Caliber were clearly the servicers that counselors said are doing the worst job of complying with the servicing rules. Ocwen, Citi, Nation Star, and Select Portfolio Services fall between the two.

Recommendations

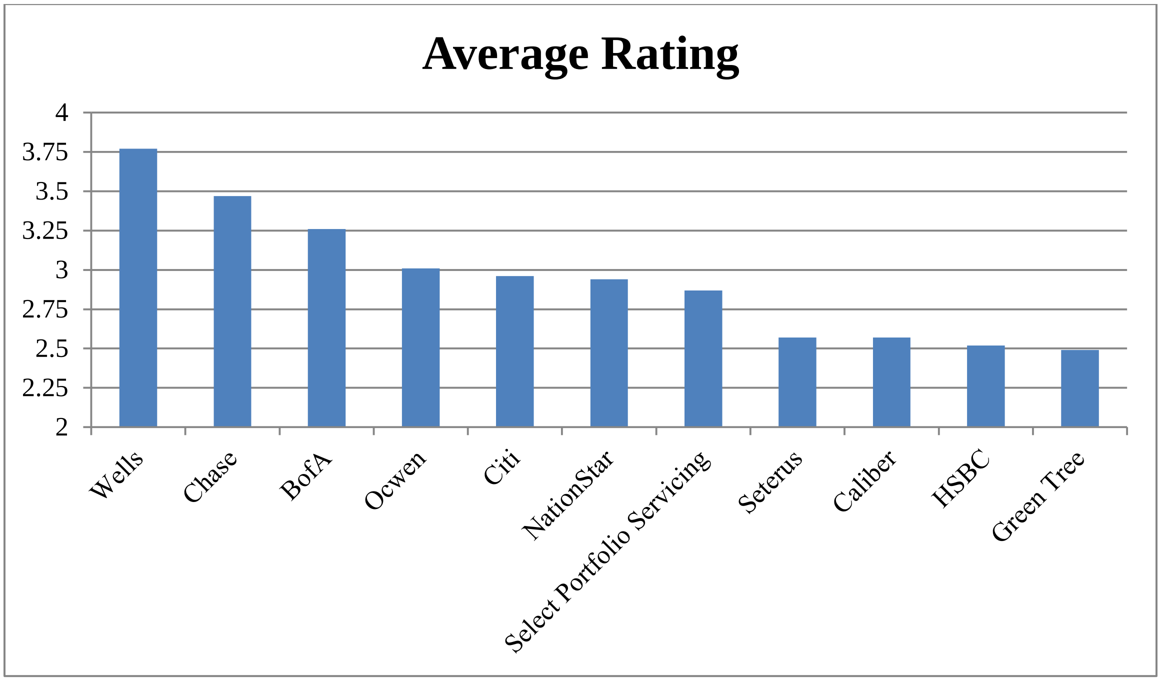
As this report has stressed throughout, there is serious need across-the-board for improved compliance with the CFPB servicing rules. We respectfully ask CFPB to consider implementing the following recommendations to ensure that all homeowners receive the full protection of the mortgage servicing rules.

1. **Close the lost document and complete application loopholes.** Under the current servicing rules, there is no protection for homeowners against servicers losing documents and, according to the survey results, this is among the most common problems homeowners face in the loss mitigation process. Coupled with the fact that many of the homeowner protections are only triggered when the servicer has received a complete application, many homeowners are not receiving the intended benefits of the servicing rules. There are simple steps CFPB should take to address this, such as making homeowner protections triggered by the homeowner's submission on an initial application (e.g. a request for modification assistance (RMA) or similar application, income documentation, and IRS Form 4506-T, authorizing the release of the homeowner's tax returns.
2. **Address servicing transfer issues.** The survey results demonstrate that there are considerable issues for homeowners whose servicing rights are transferred while the homeowner is in the loss mitigation process. In addition to the servicers being rated poorly on this question across-the-board, counselor comments suggested that it is very common for a servicing transfer to be tantamount to starting the loss mitigation process over. Significantly, this is an issue arises because of both the transferor and transferee servicer. CFPB should regularly audit transferred portfolios to determine whether both the transferor and transferee servicer have complied with the servicing rules and take appropriate action when they have not.
3. **Take enforcement action against servicers who regularly fail to comply with the servicing rules.** While there is room for improvement for all servicers, the survey, as well as anecdotal evidence, clearly show that Caliber, Green Tree, HSBC, and Seterus are routinely failing to comply with the servicing rules. CFPB should investigate and take enforcement action against these servicers where there is evidence of non-compliance. Especially strong enforcement

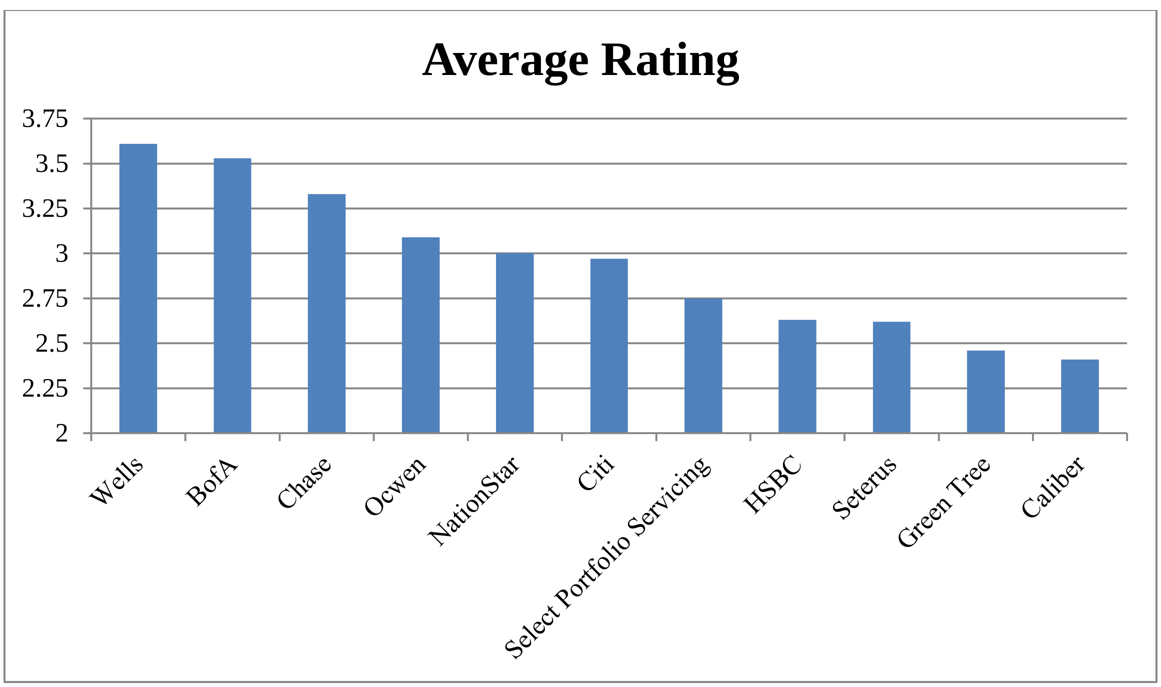
penalties should apply in the cases where a borrower is placed into foreclosure improperly, where a property is sold in foreclosure improperly, or where a modification is rejected improperly.

4. **Address language access issues with a separate rulemaking.** As Director Cordray has commented, if lenders were able to sell mortgages to homeowners in non-English languages, the servicers who are now responsible for servicing those mortgages must also be able to service in those non-English languages. CFPB should protect homeowners whose preferred language is not English by requiring servicers to know the homeowner's preferred language, to communicate with homeowners orally and in writing in their preferred language, and to accept non-English documents. Where a servicer does not have capacity to service in a particular language, the servicer should be required to solicit translation services, preferably from HUD-approved housing counseling agencies, which have language capacity, knowledge of the loss mitigation process, and experience advocating on behalf of homeowners.
5. **Protect homeowners from the worst abuses of the servicing rules by establishing a mechanism for CFPB to directly intervene in cases where the homeowner is facing an imminent and serious injury (such as foreclosure) as a result of a violation of the servicing rules.** There is currently little or no mechanism for CFPB to intervene on behalf of individual homeowners, even where the homeowner is facing an imminent and serious injury, such as the loss of the home, as a result of a violation of the servicing rules. Recognizing that CFPB has finite enforcement capability, CFPB should work with advocates to develop a mechanism that will allow homeowners and advocates to report cases where the homeowner faces an imminent and serious injury as a result of a violation of the servicing rules and where CFPB can directly intervene on behalf of the homeowner.
6. **Require servicers to provide escalation contacts and procedures.** Many of the issues that counselors report in the loss mitigation process can be resolved once the appropriate servicing staff are involved. The difficulty, often times, is for homeowners and counselors to find who the appropriate escalation staff are. CFPB should require all servicers to include on their website an easy-to-find escalation page that provides escalation contacts and procedures and provide separate escalation contacts specifically for counselors and attorneys.
7. **Address the ongoing need for servicers to communicate and work with successors in interest.** In December, 2014 CFPB proposed an additional servicing rule that would in part help to address the ongoing and widespread failure of servicers to communicate and work with successors in interest. The CFPB should adopt the protections for successors that are included in the proposed rulemaking but should go further to ensure that successors' rights are protected. Specifically, under the proposed rule, a successor is only considered a borrower, and therefore afforded the protections of the servicing rules, once the servicer has "confirmed" the person as a successor in interest. However, the most common issue successors face is getting the servicer to confirm their interest, so the proposed rule does not go far enough. The final rule should be amended to extend the privately-enforceable protections under the servicing rules to any successor that has established his or her identity and ownership interest by providing to the servicer reasonable proof of successorship interest.

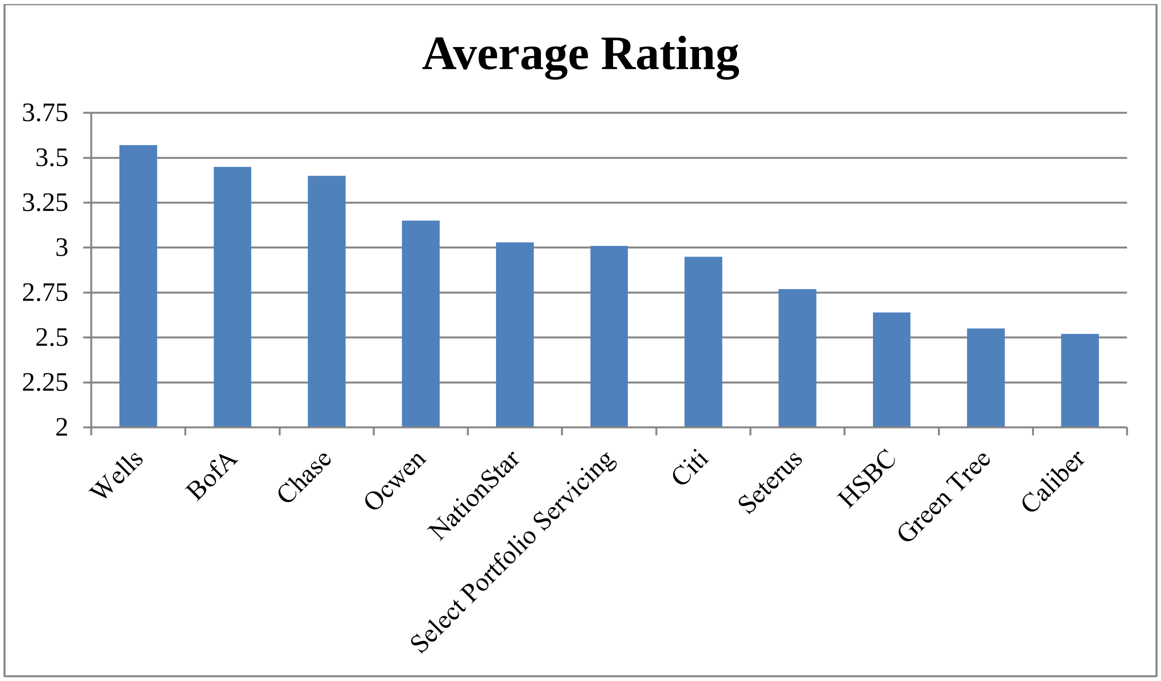
How well does each of these Servicers comply with the following requirement: The Servicer assigns one or more personnel to the Borrower who is/are available by telephone immediately or in a timely manner?



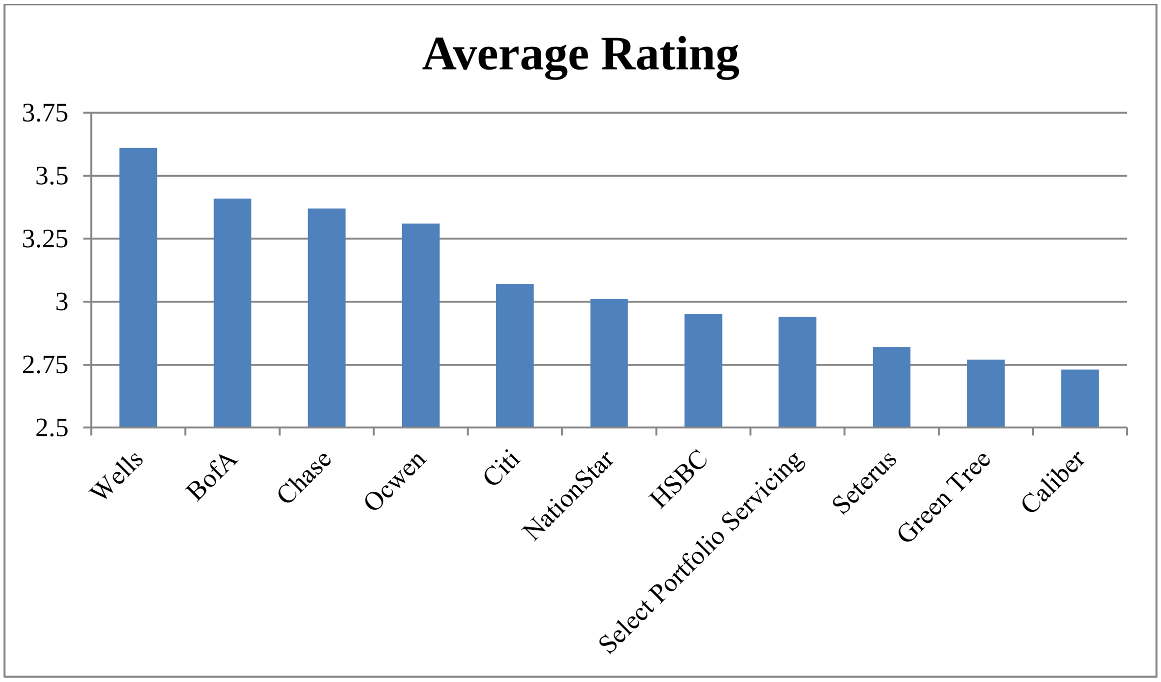
How well does each of these Servicers comply with the following requirement: The Servicer sends the Borrower a written acknowledgment that the Servicer has received a loss mitigation application within 5 business days, if a loss mitigation application was submitted 45 days or more before a scheduled foreclosure sale?



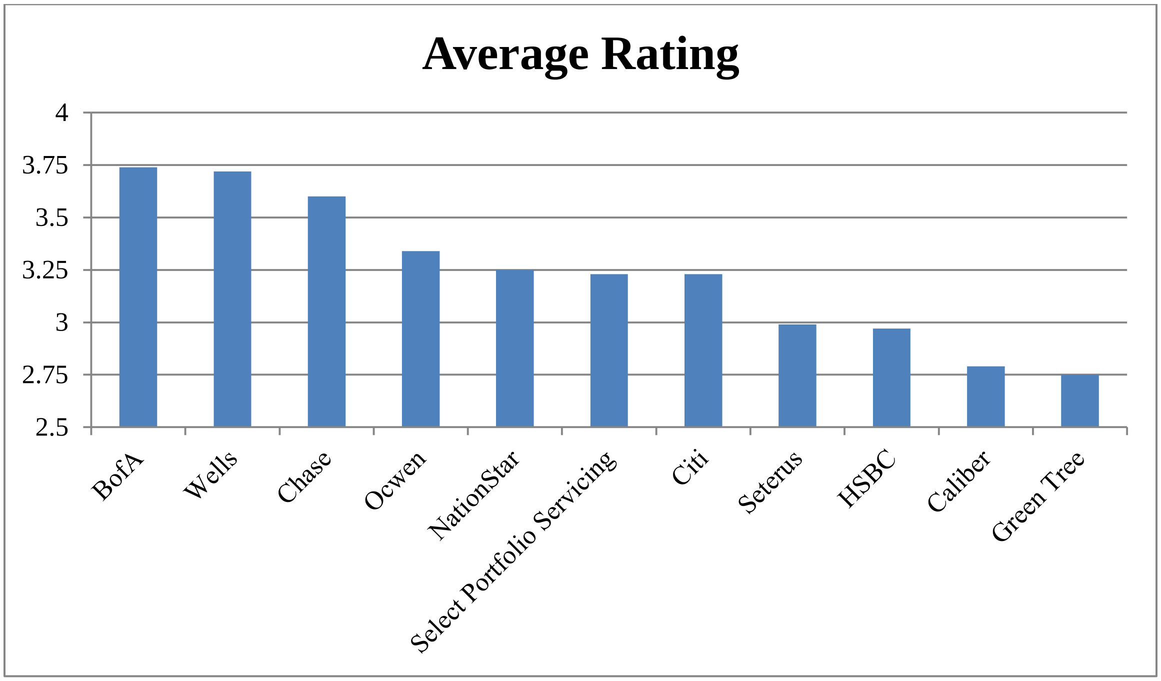
How well does each of these Servicers comply with the following requirement: If the initial loss mitigation application was incomplete, the written notice acknowledging that the Servicer has received a loss mitigation application specifies what additional documents or information must be submitted to complete the application?



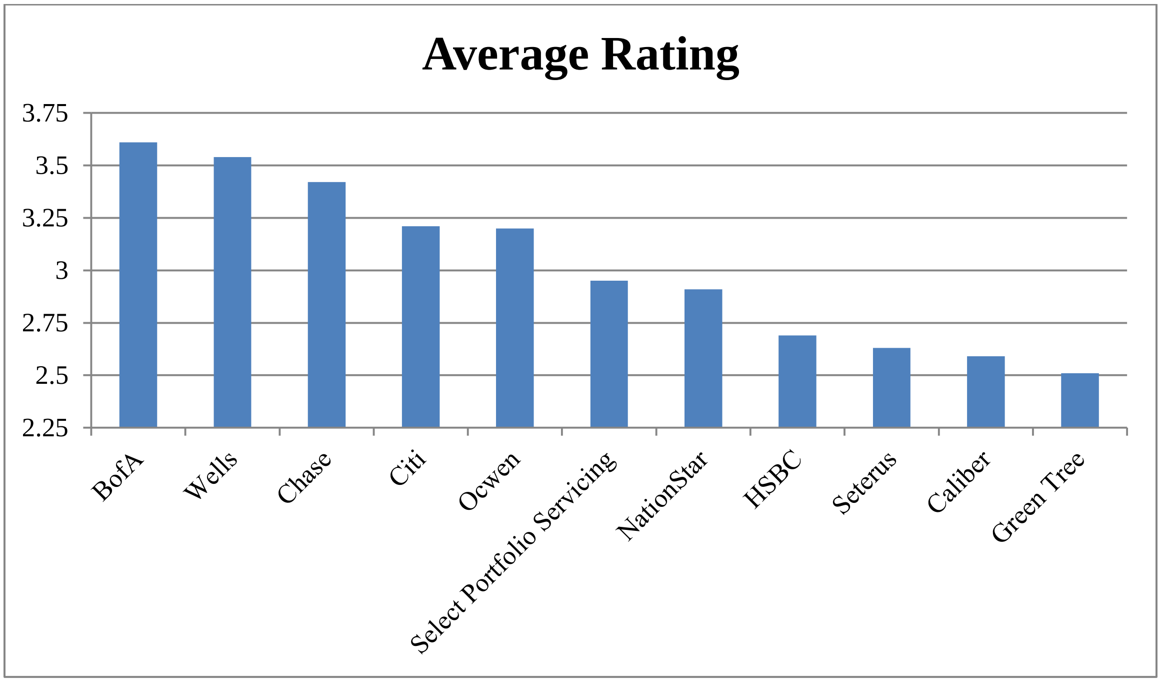
How well does of each of these Servicers comply with the following requirement: If a complete loss mitigation application was submitted more than 37 days before a scheduled foreclosure sale, the Servicer evaluates the Borrower's application within 30 days of receiving the complete application?



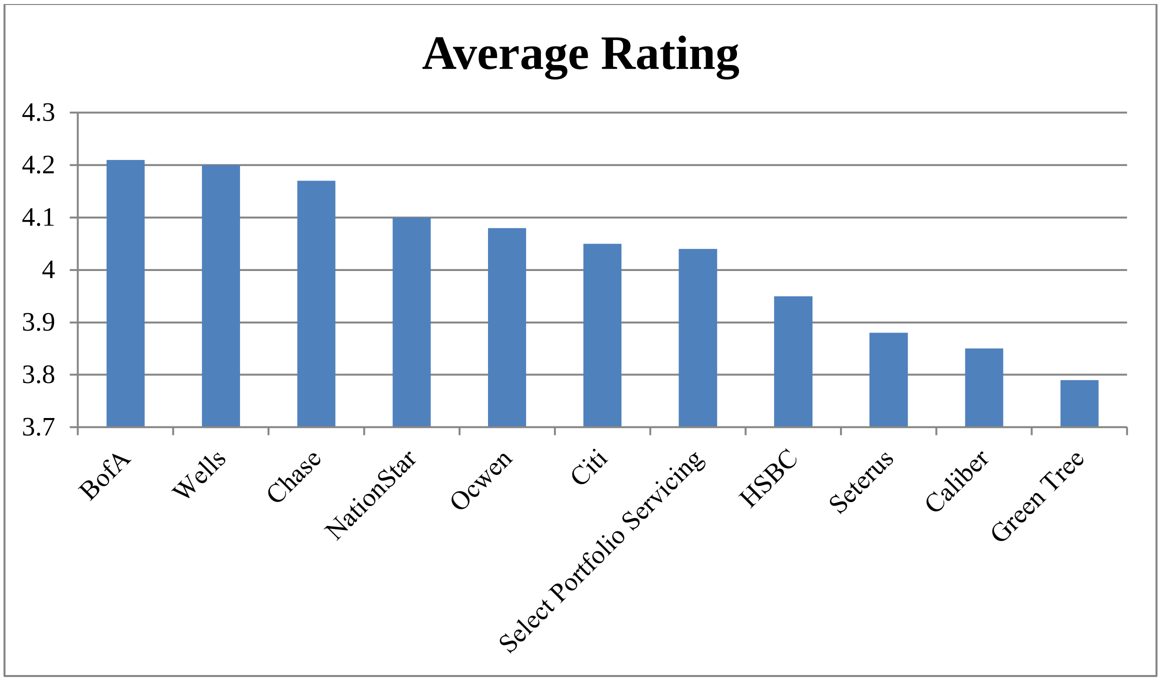
How well does each of these Servicers comply with the following requirement: If the Borrower was denied a loan modification, the Servicer sends the Borrower a written notice giving specific reasons for the denial?



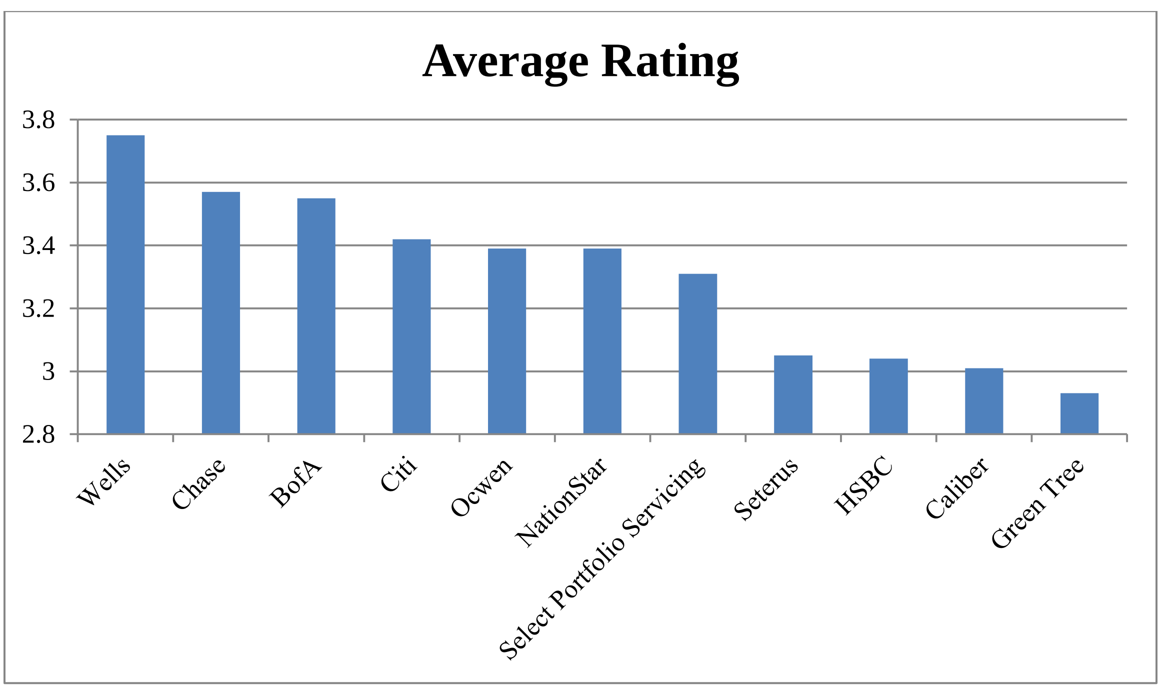
How well does each of these Servicers comply with the following requirement: If the Borrower was denied a loan modification because of a NPV calculation, the denial notice includes the inputs used in the NPV calculation?



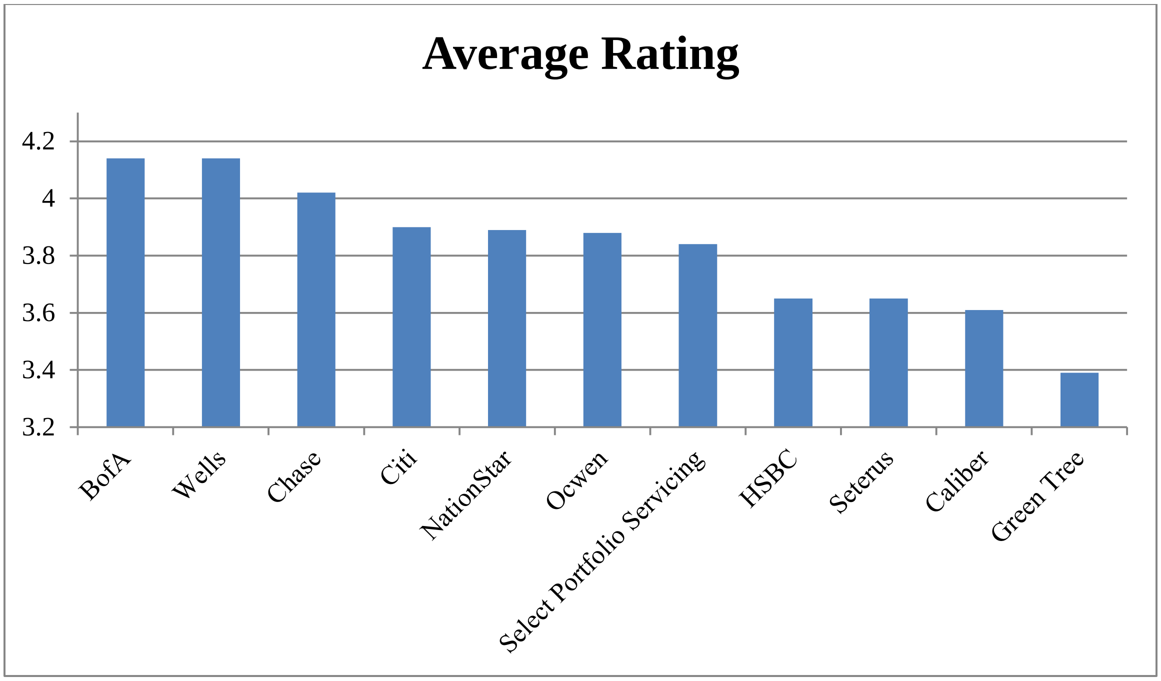
How well does each of these Servicers comply with the following requirement: The Servicer does not file for foreclosure until the borrower is at least 120 days delinquent?



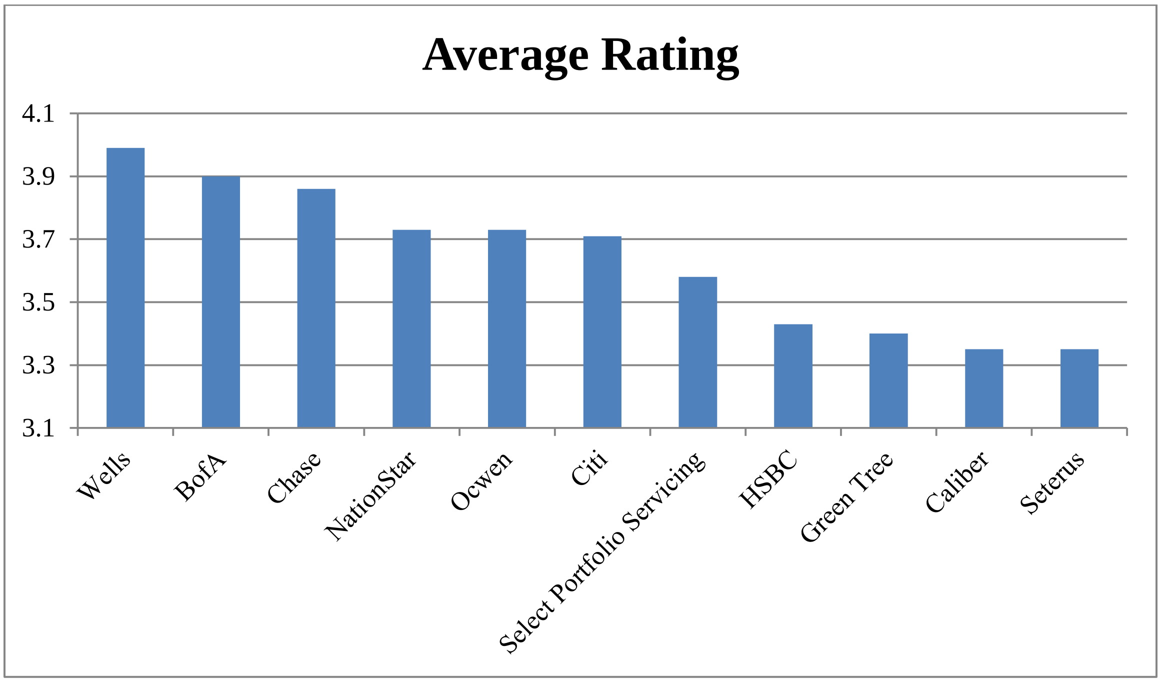
How well does each of the Servicers comply with the following requirement: If the Borrower submits a complete loss mitigation application before the Servicer has filed for foreclosure, the Servicer does not file for foreclosure until the Servicer has made a determination of the Borrower's eligibility for all loss mitigation programs that are available to the Borrower and the Borrower has exhausted any appeals?



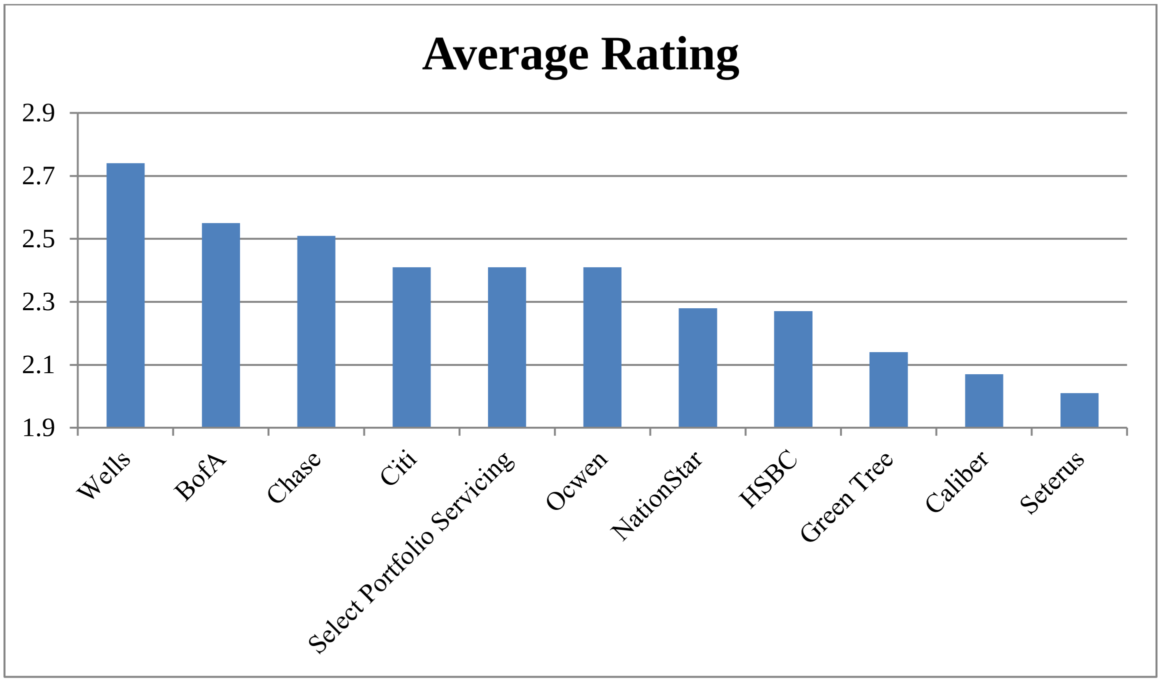
How well does each of the Servicers comply with the following requirement: The Servicer does not file for foreclosure, if the Borrower is performing pursuant to the terms of a loss mitigation agreement?



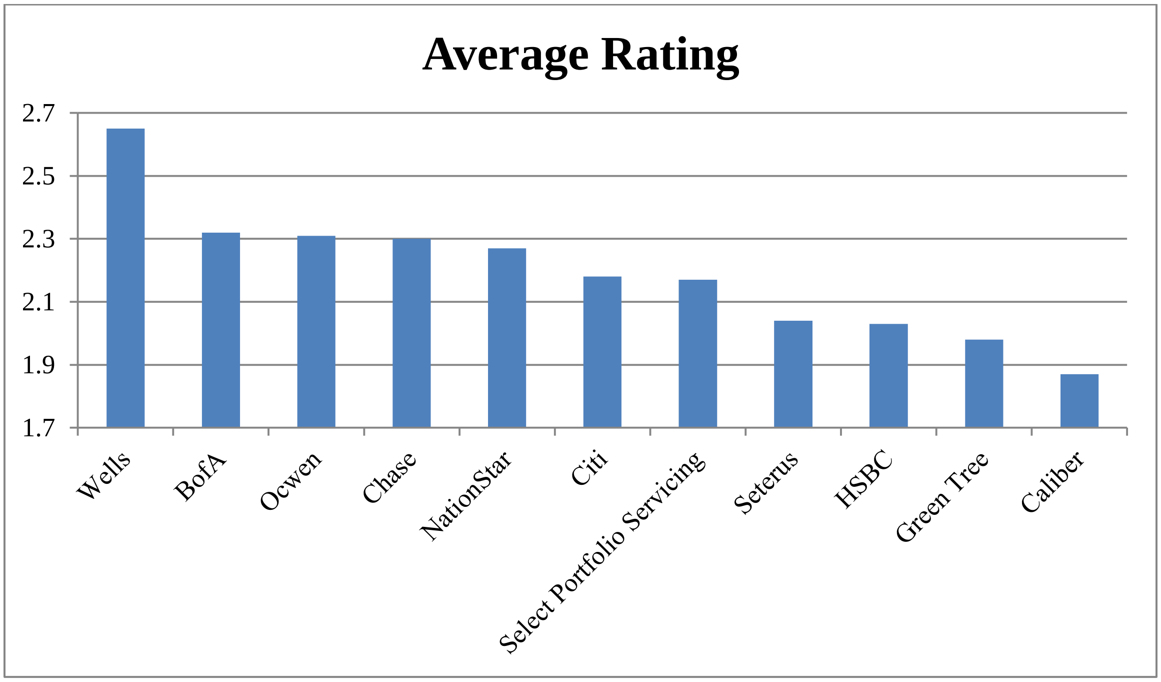
How well does each of the Servicers comply with the following requirement: If the Servicer has already filed for foreclosure and the Borrower submits a complete loss mitigation application more than 37 days prior to a scheduled foreclosure sale, the Servicer does not move for a foreclosure judgment/order of sale or conduct a foreclosure sale until the loss mitigation process is exhausted (Servicer has denied the Borrower's loss mitigation application and the Borrower has exhausted any rights to appeal, or the Borrower has rejected all loss mitigation options that the Servicer offered to the Borrower, or the Borrower has failed to perform as required under a loss mitigation agreement)?



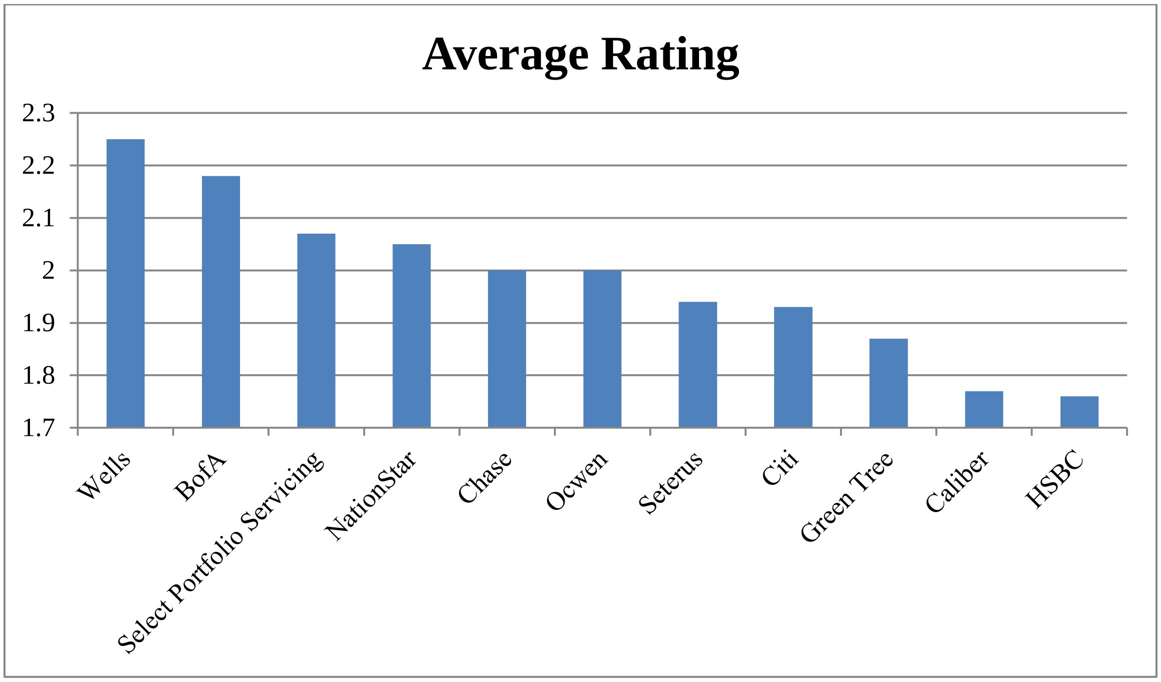
How well does each of the Servicers comply with the following requirement: If a loan is transferred to a new Servicer, the Servicer complies with all the loss mitigation procedures and foreclosure prohibitions required under the CFPB regulations, including treating a complete loss mitigation application as complete as of the date it was received by the original servicer?



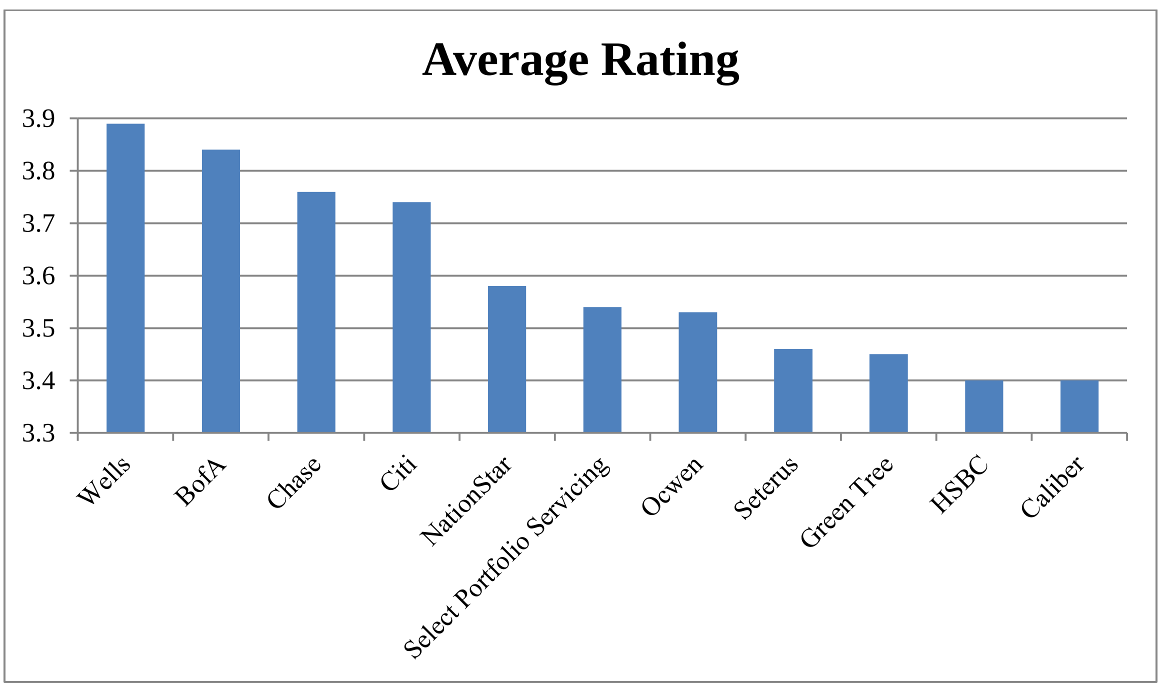
How well does each of the Servicers comply with the following: The Servicer does not require Borrowers to re-submit documents or information that have already been submitted?



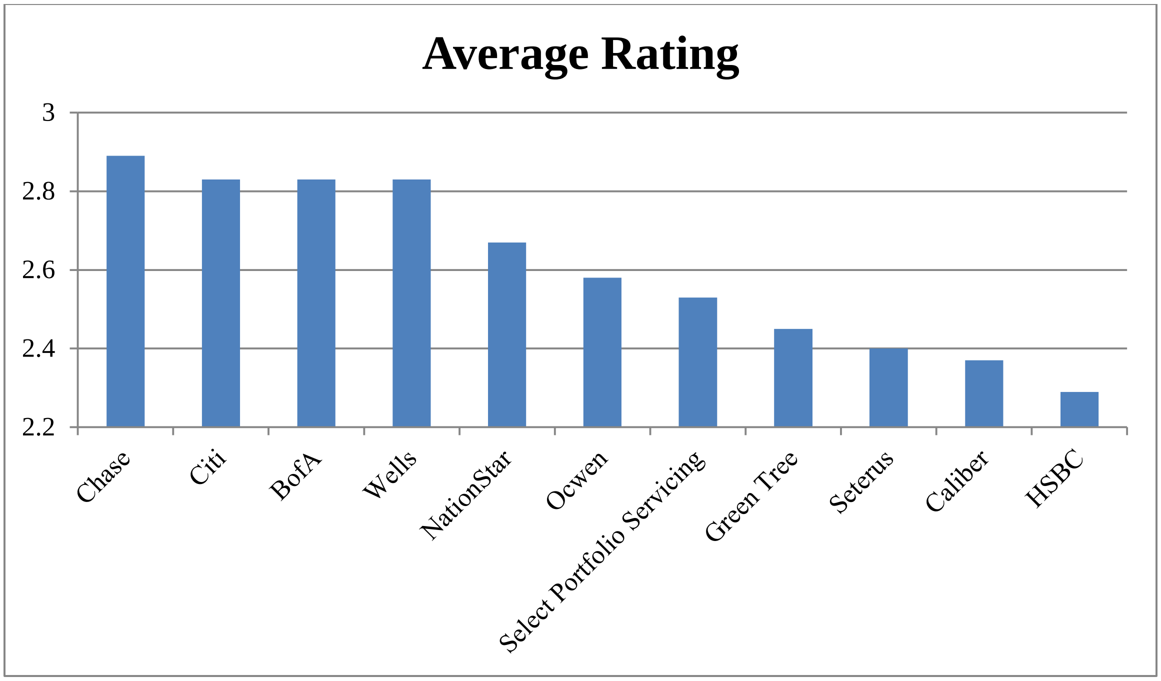
How well does each of the Servicers comply with the following requirement: Upon notification of the death of a Borrower, the Servicer promptly identifies and facilitates communication with a successor in interest (spouse, child, or heir of the deceased Borrower or someone else with an interest in the property) of the deceased Borrower?



How well does each of the Servicers comply with the following: The Servicer's communications are in the Borrower's preferred language?



How well does each of the Servicers comply with the following: The Servicer accepts non-English documentation?



How well does each of the Servicers comply with the following: Borrowers are able to speak with the Servicer in their preferred language?