



# COVID-19 Mortgage Servicing Trends Report Year End Review

Updated as of 12/16/2020

**DISCLAIMER:** Bradley is proud to share the following information collected from the live polls presented at its weekly COVID-19 Compliance Roundtables. This report is intended to show industry trends, not facts, and does not necessarily reflect the opinions of Bradley attorneys. Bradley is not responsible for any inaccuracies and this report should not be considered legal advice.

The polling results included in this report are the anonymous responses of Roundtable attendees. The results may be skewed based on the number of responses in relation to the group as a whole or if more than one person from a company responded to the question. The number of respondents varies by poll. Percentages are rounded to the nearest 0.5.

The date of the polls are important to understanding and interpreting them, as the approach to COVID-19 issues changes rapidly, and the industry has been nimble in responding to such changes over the last several months.

For questions related to this report or to seek formal legal advice on any of the topics herein, please contact your Bradley attorney or email [COVID-FS@bradley.com](mailto:COVID-FS@bradley.com).

The polling results found in this trends report are sorted by topic, then by date of the poll.

Credit Reporting ..... 3

Deferral ..... 4

Forbearance ..... 10

Foreclosure ..... 17

Litigation ..... 19

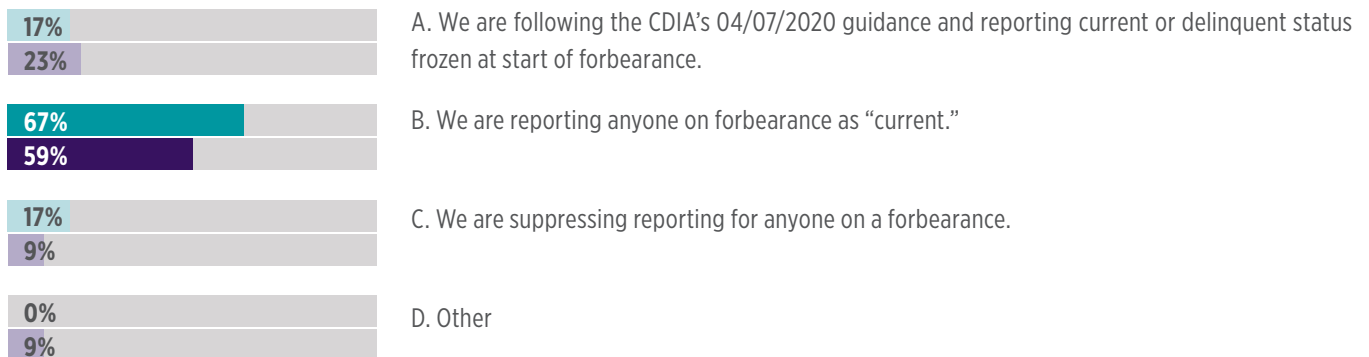
Normal Servicing..... 20

Notary ..... 23

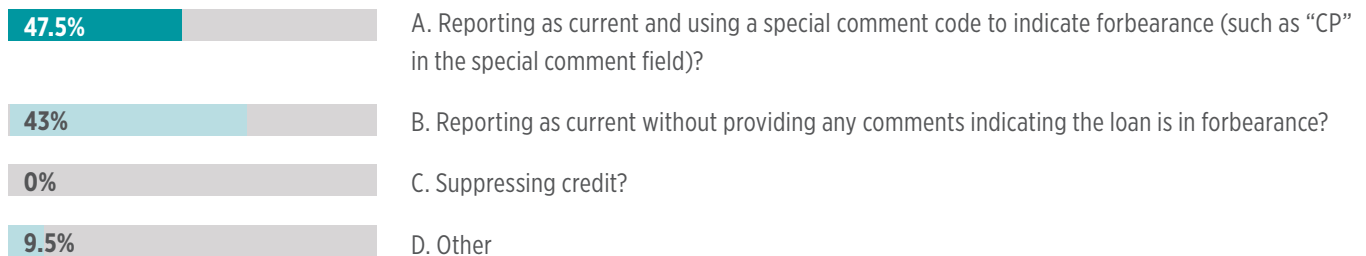
State Specifics ..... 24

As we close 2020, credit reporting continues to be an area fraught with confusion. It is also likely to be a hot spot for regulatory and litigation issues in 2021. As evidenced by the polling, over half of responders are not expressly following the CARES Act and CDIA guidelines on forbearance reporting (i.e., holding reporting as it was going into forbearance). Rather, many are reporting all forbearances as “current”, suppressing reporting, or finding some other approach. We also see a nearly even split on whether servicers are using comment codes when they report forbearances. Many of these issues may be system related, as reprogramming credit reporting is difficult. Finally, the CFPB’s June 16, 2020 FAQ 10 on credit reporting after the accommodation ends has yet to be cleared up, leaving servicers with uncertainty on how to address post-forbearance defaults which are not cured.

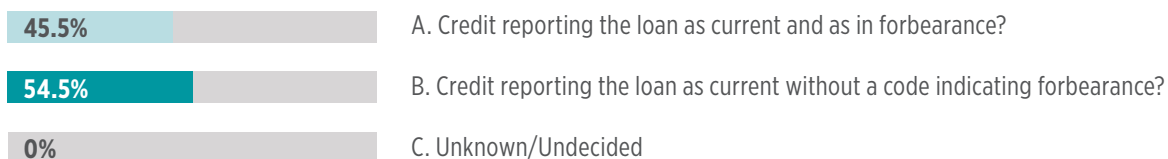
## How is your company handling credit reporting forbearances? (Polled on 04/22/2020 & 09/16/2020)



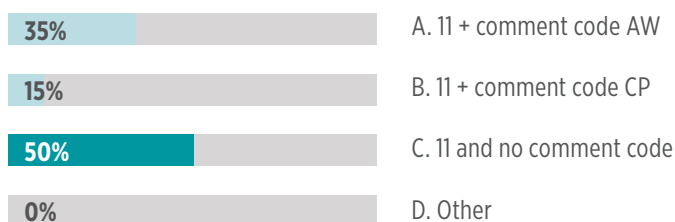
## When credit reporting a loan in COVID-19 forbearance that was current when forbearance began, are you: (06/02/2020)



## For a borrower who receives a CARES Act forbearance and continues to make the regularly scheduled monthly payments, are you: (06/02/2020)



## How are you using comment codes for credit reporting during forbearance? (08/19/2020)



If a borrower obtained a 180-day CARES forbearance but then did not bring their account current (or request another forbearance), are you (11/4/2020):

50%

A. Resuming standard credit reporting if 30 days have passed from the end of the accommodation.

0%

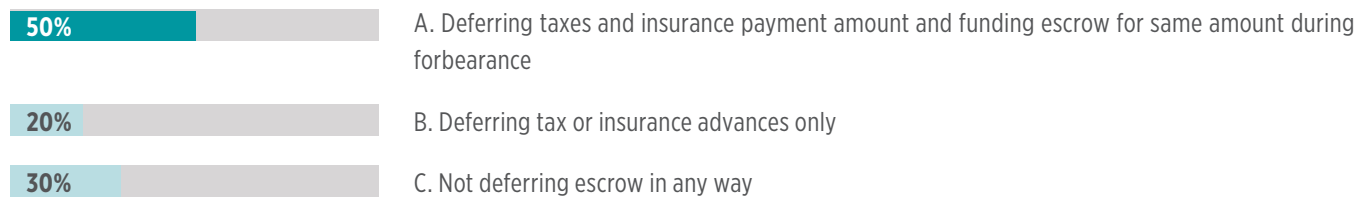
B. Not advancing the delinquency based on the time period covered by the accommodation after the accommodation ends, per FAQ10.

50%

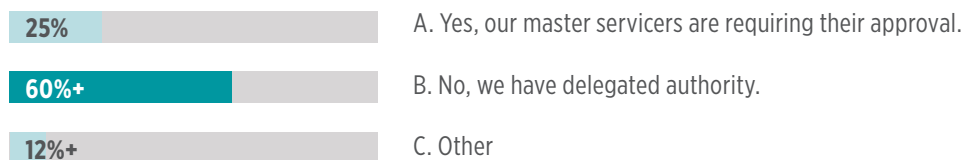
C. Continuing our accommodation credit reporting for the time being and hoping for guidance from the CFPB or for the borrower to bring the account current.

The landscape surrounding COVID-19 deferrals is a bit chaotic, as the GSE guidance and CFPB Interim Final Rule present a lot of ambiguity and challenges. As a result, the industry appears to be taking varying approaches to deferrals, with poll results showing differing approaches in terms of whether deferrals should be effectuated by formal, executed agreements; whether deferral agreements should be recorded in the county land records; how deferred balances should be reflected on periodic billing statements; and what fees/charges must be waived in order for servicers to take advantage of the CFPB's Interim Final Rule. As the industry (hopefully) begins to move away from forbearances in 2021, there will be an increased focus on deferrals and other loss mitigation solutions designed to cure the delinquencies caused by forbearances. It will be important for servicers to ensure they have a robust and compliant process in this regard.

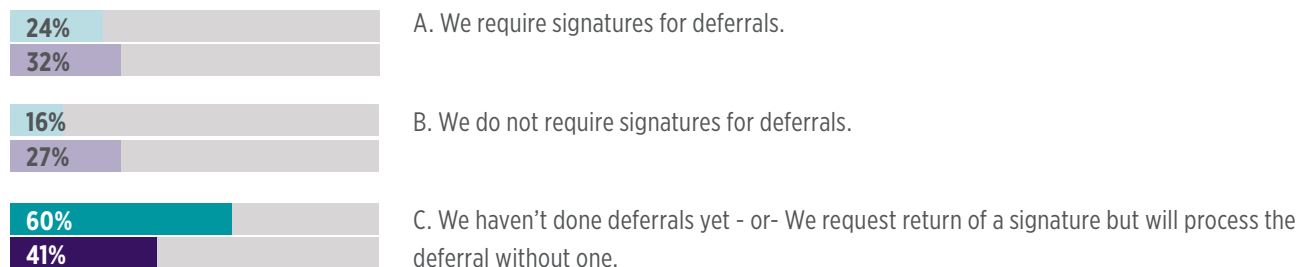
## How are you handling escrow issues and deferral? (04/29/2020)



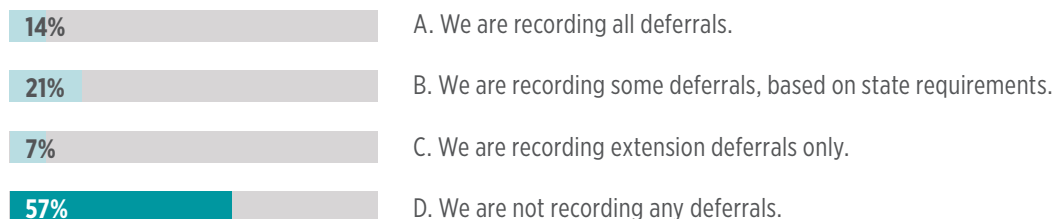
## Are your master servicers, or other interested parties, requiring approval of modifications, deferrals, or other servicer programs? (04/29/2020)



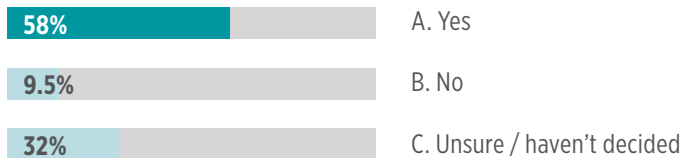
## Signatures on deferrals: (Polled on 05/06/2020 & 09/08/2020)



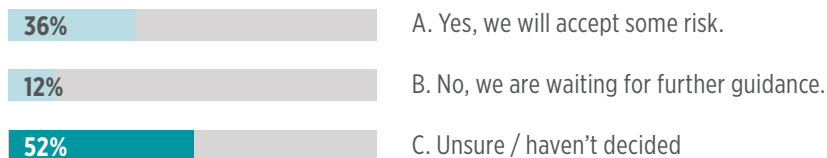
## Recording deferrals: (05/13/2020)



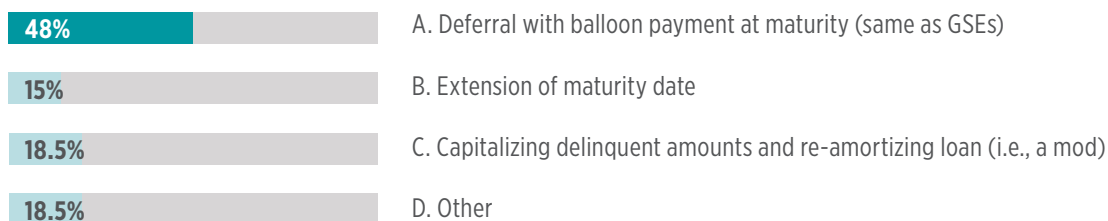
## Are you planning on implementing a similar GSE-like deferral program for non-GSE loans? (05/20/2020)



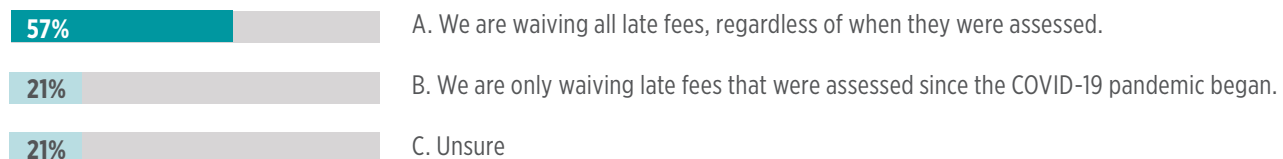
## Are you planning on implementing the GSE deferral program by July 1? (05/20/2020)



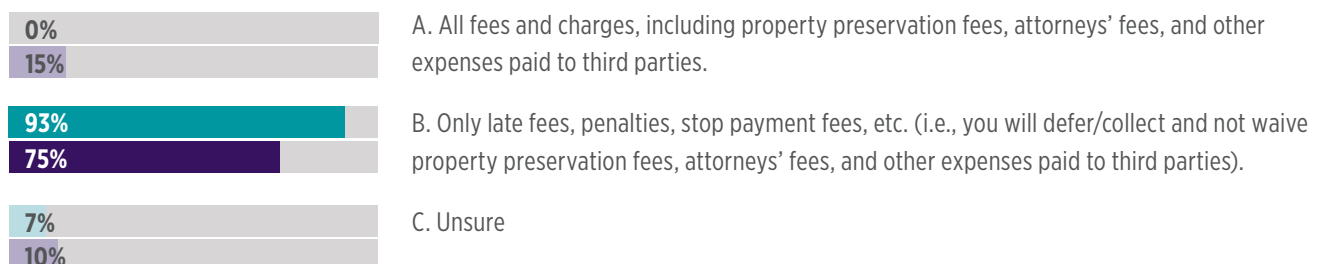
## For portfolio loans, what post-forbearance deferral/extension/modification are you envisioning? (06/17/2020)



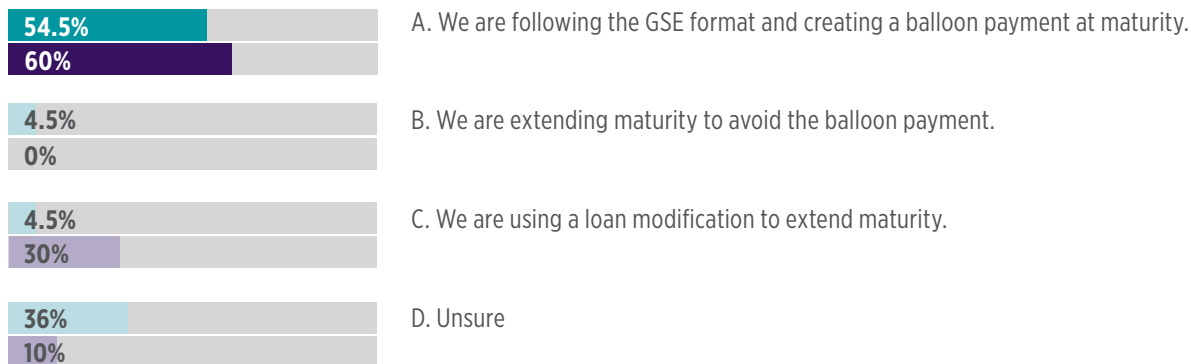
## In connection with a payment deferral program issued under the CFPB's Interim Final Rule, how are you handling fees that were outstanding prior to (and are arguably unrelated to) COVID-19? (07/08/2020)



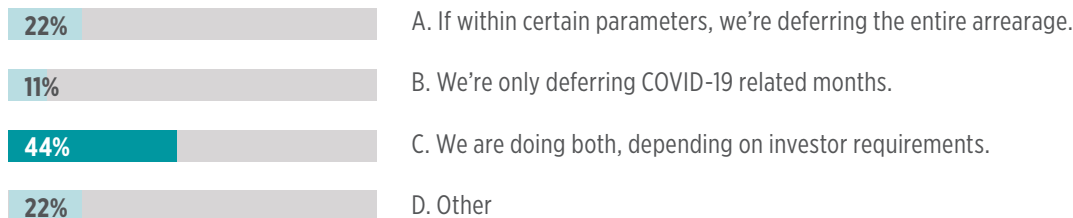
## As a part of a deferral offer made pursuant to the CFPB's new Interim Final Rule, are you waiving? (Polled on 07/08/2020 & 09/16/2020)



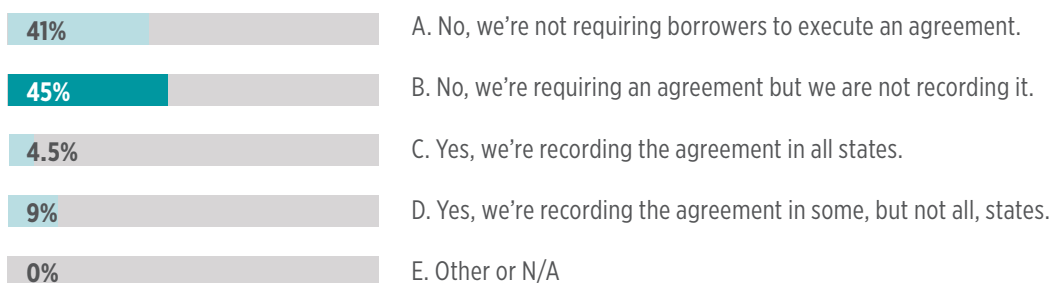
## How are you handling deferrals on Texas 50(a)(6) loans (non-GSE)? (Polled on 07/22/2020 & 09/08/2020)



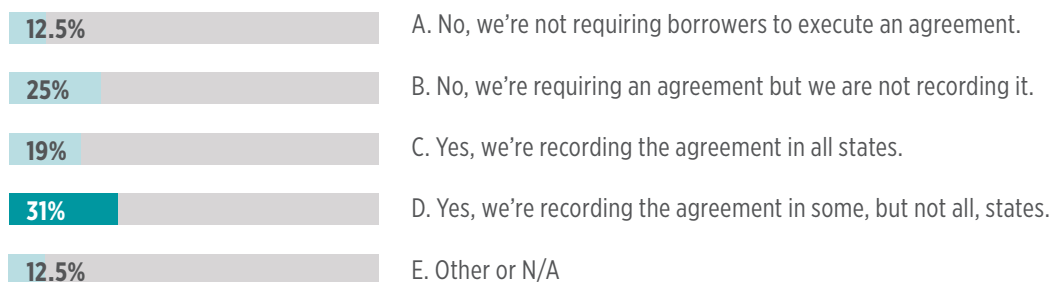
## For a borrower who was delinquent before COVID-19, are you curing the entire arrearage with a deferral or only the COVID-19 related arrearage (non-gov loans)? (08/19/2020)



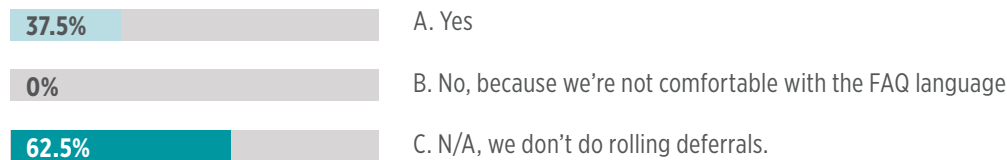
## Are you RECORDING deferral agreements whereby the borrower pays the deferred amount by way of a lump sum balloon payment at maturity/sale/refinance? (09/08/2020)



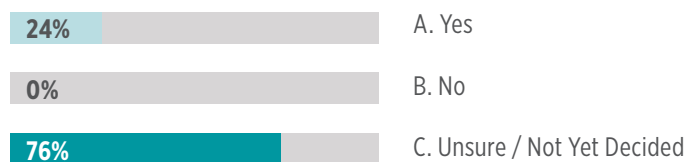
## Are you RECORDING deferral agreements whereby the borrower pays the deferred amount by way of an extension of the maturity date? (09/08/2020)



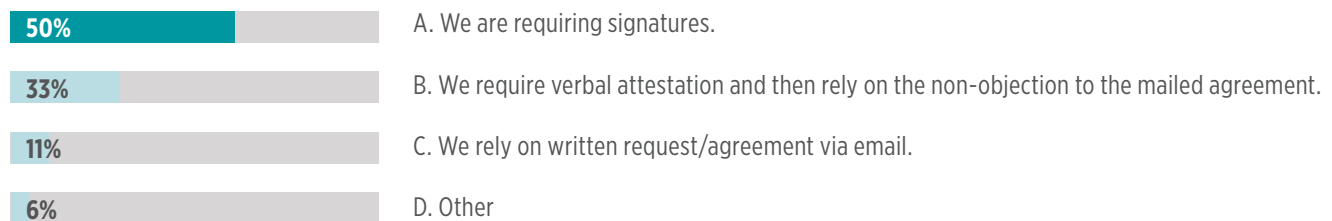
## Are you offering rolling deferrals in New York? (09/08/2020)



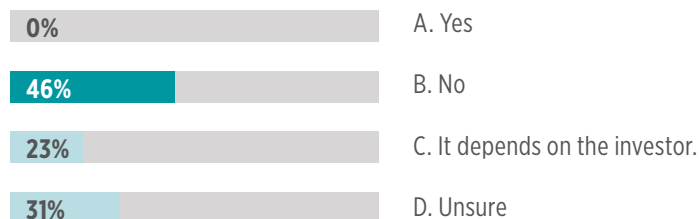
## On your Veterans Affairs loans, do you plan to offer to borrowers the new VA deferment program? (09/23/2020)



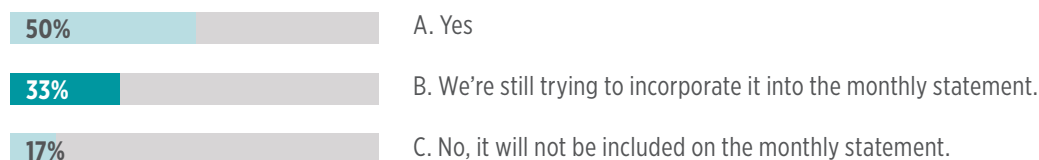
## How are you handling deferral acceptance? (09/30/2020)



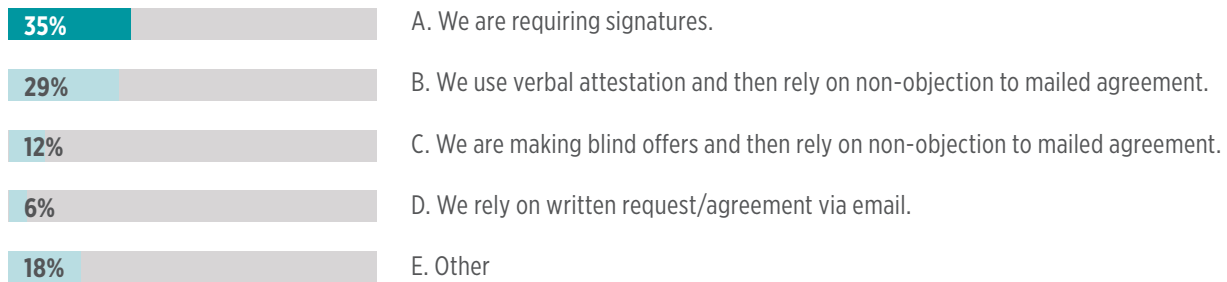
## For a non-GSE loan, does existence of a prior deferral disqualify a borrower for a COVID-related deferral? (10/7/2020)



## Have you found a way to represent the COVID deferral balance on the monthly statement? (10/7/2020)

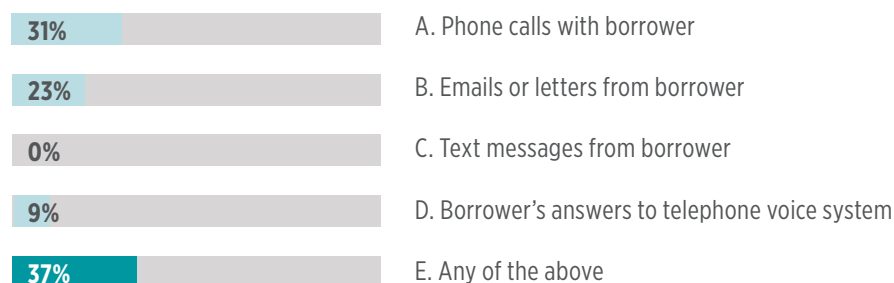


## For acceptance of non-GSE deferrals: (11/18/2020)

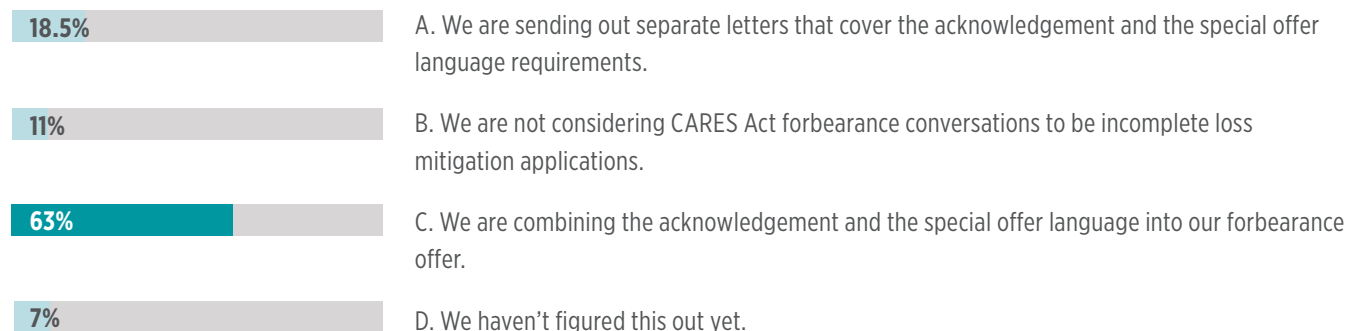


The saying “the devil is in the details” certainly applies to forbearances. In general, servicers were collectively liberal in granting forbearances with no documentation for CARES Act-eligible loans and little-to-no documentation for other loans. Servicers were also collectively very proactive about reaching out to customers to advise them of their rights in a variety of ways. However, companies have differed on key operational details such as effective-dating forbearance start dates, auto-extending forbearances when borrowers do not respond, “stopping the clock” on a forbearance period if a borrower makes a payment during the forbearance, and calculating interest on payoff statements for forbearance loans. These differences are generally driven by lack of clarity from the GSEs, leaving individual servicers to their own determinations of what constitutes best practices. Companies are also forced to develop their own position as to when the CARES Act “covered period” for single family forbearance end, due to lack of clarity in the law itself. Therefore, at this time, our clients differ on how long they plan to offer CARES Act forbearances but all are concerned about resolving forbearances after they end.

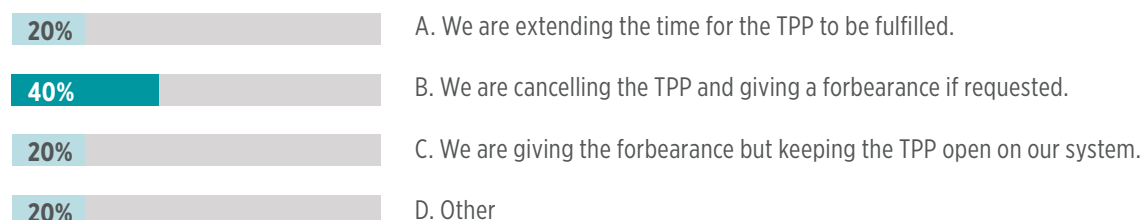
## What are you using to document borrower’s “attestation” of financial distress? (04/22/2020)



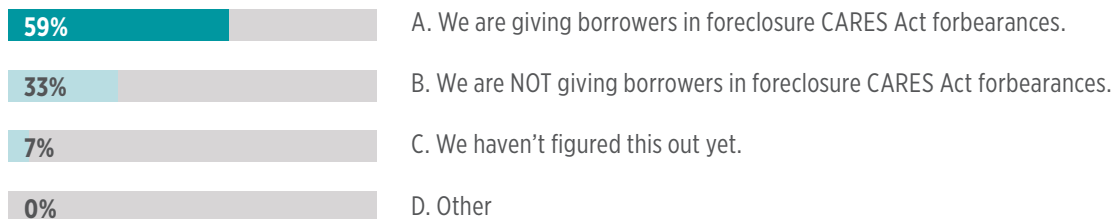
## Incomplete package notices: (04/22/2020)



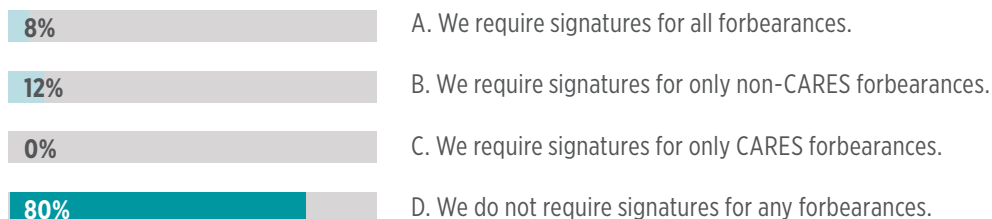
## How are you handling TPP in place before CARES? (04/22/2020)



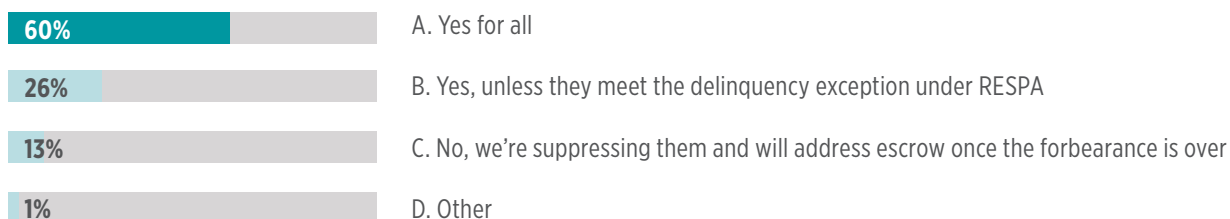
## Forbearances and foreclosures (CARES Act): (04/22/2020)



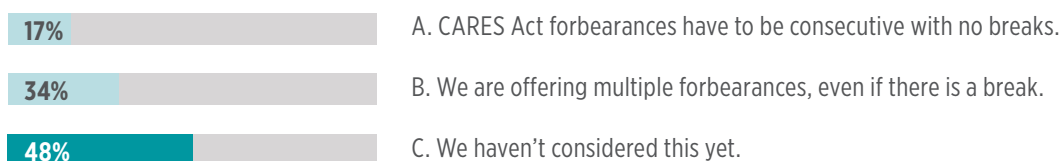
## Signatures on forbearances: (05/06/2020)



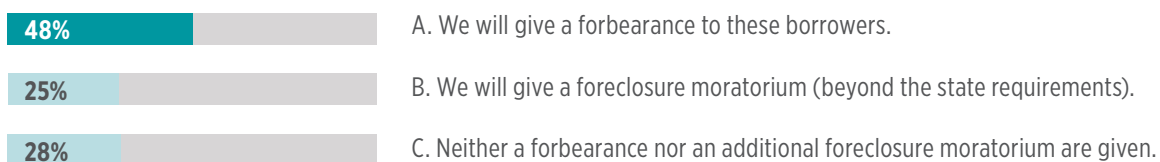
## Are you sending escrow statements out while borrowers are in forbearance? (05/06/2020)



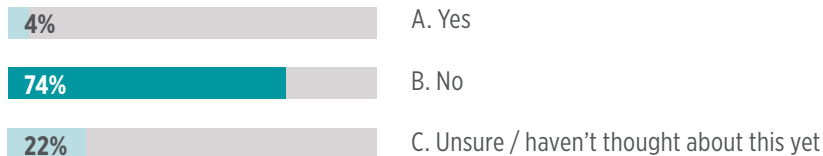
## Consecutive forbearances: (05/13/2020)



## Loans in foreclosure (non-CARES): (05/13/2020)



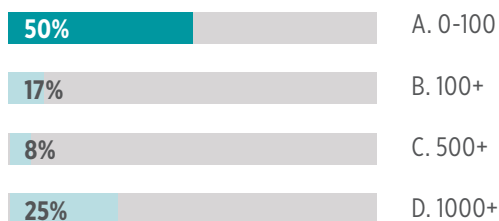
If a borrower makes a payment during a forbearance period, are you extending the term of the plan by a month? (05/20/2020)



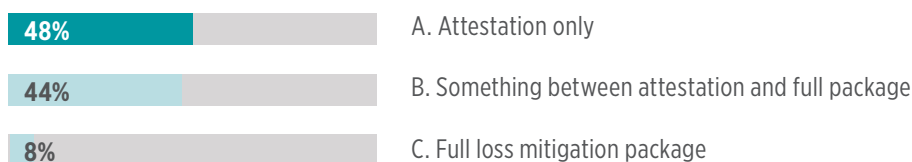
As a part of your disclosures/FAQs/disclaimers to consumers regarding COVID-19 forbearance plans, are you disclosing that obtaining the forbearance plan might impact their ability to obtain a new mortgage loan or refinance? (06/02/2020)



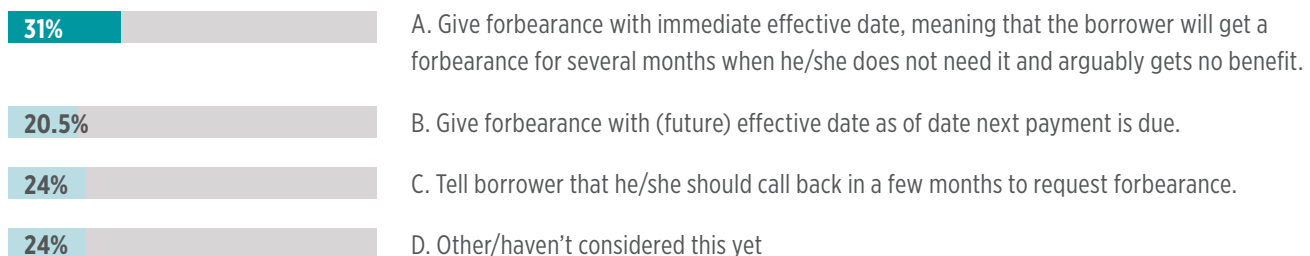
How many loans in foreclosure have you given CARES forbearances? (06/10/2020)



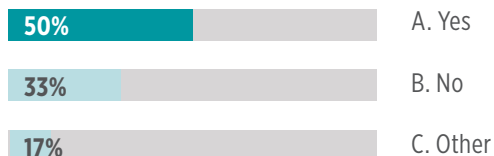
When a non-government loan borrower requests another forbearance, what documentation are you requiring? (Not NY/MA/D.C.) (06/17/2020)



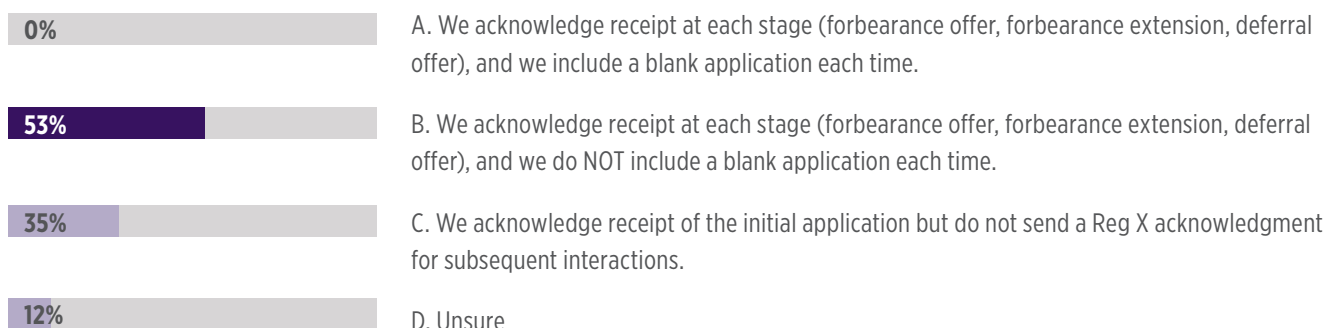
When a borrower requests a CARES Act COVID-19 forbearance but his/her loan is paid ahead by several months (i.e., borrower request is made in mid-July but account is due for the October payment), do you or would you: (07/15/2020)



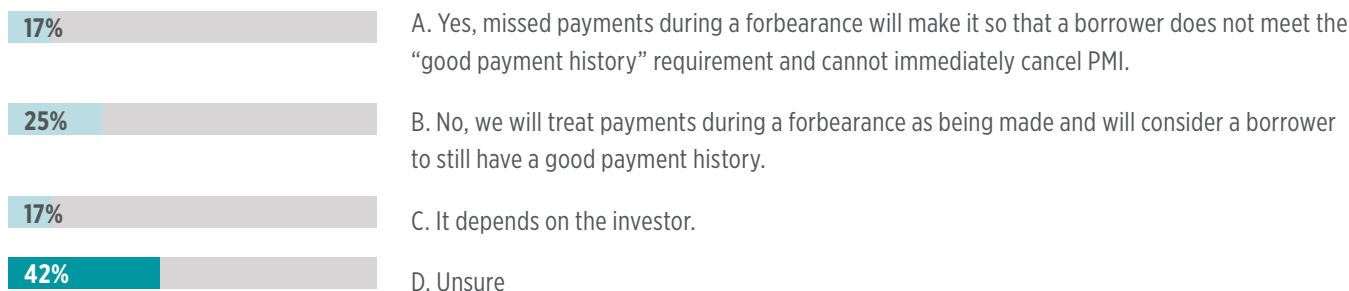
Are you always auto extending the borrower on a 90-day forbearance to a 180-day forbearance if you have lost contact with them? (07/22/2020)



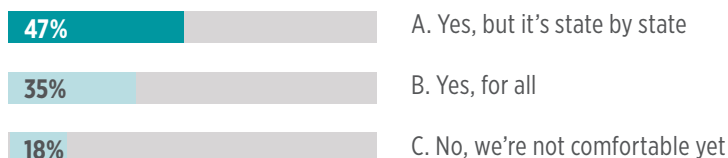
Related to the above question: Throughout the process of offering forbearance, potentially extending a forbearance period, and then offering a deferral, when are you sending a Reg X acknowledgment letter? (09/30/2020)



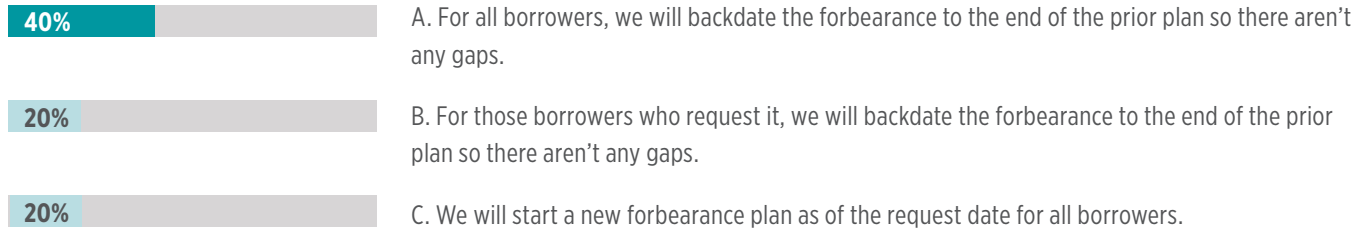
For borrowers with private mortgage insurance (PMI), will being on a forbearance and not making payments impact whether you will cancel PMI upon request? (07/22/2020)



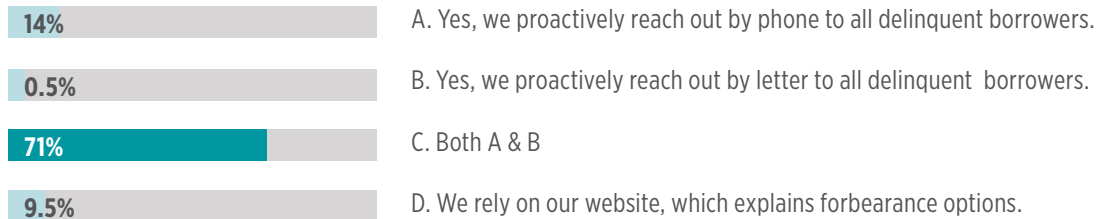
Are you turning late fees and convenience fees back on for loans not in forbearance? (08/19/2020)



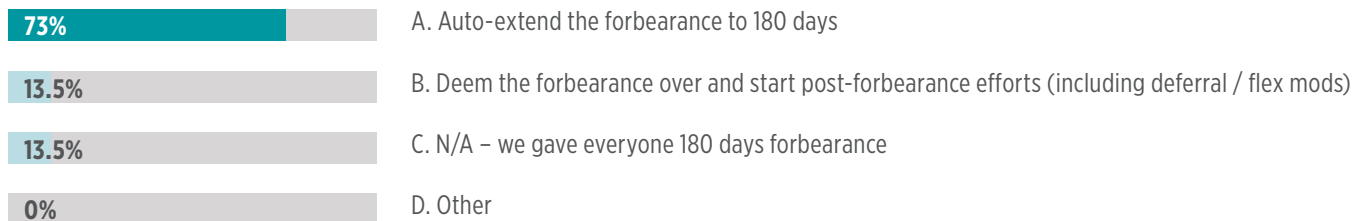
For a loan covered by the CARES Act, if a borrower requests forbearance after the initial six-month forbearance plan has already concluded (e.g., six weeks later), will you (1) backdate the new forbearance plan to the end of the prior plan so there isn't a gap or (2) start a new plan as of the request date? (08/26/2020)



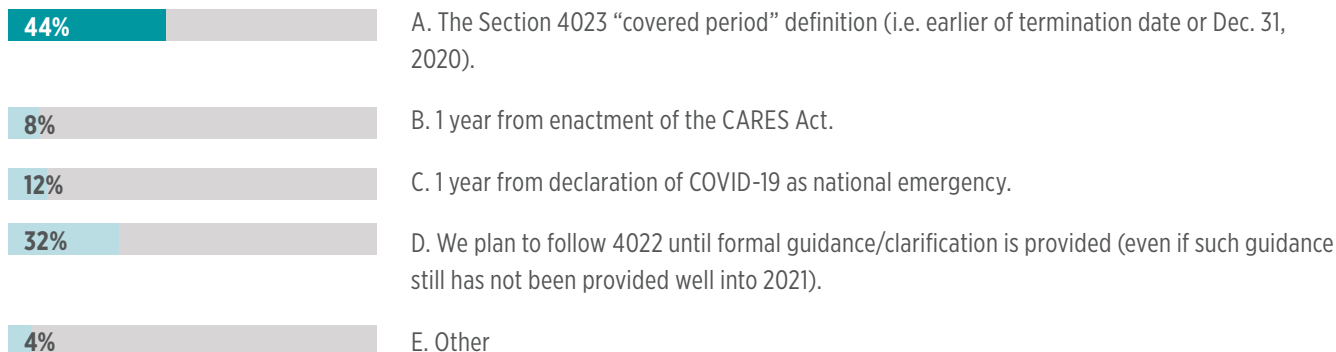
Are you currently making efforts to reach delinquent borrowers about forbearance options? (09/23/2020)



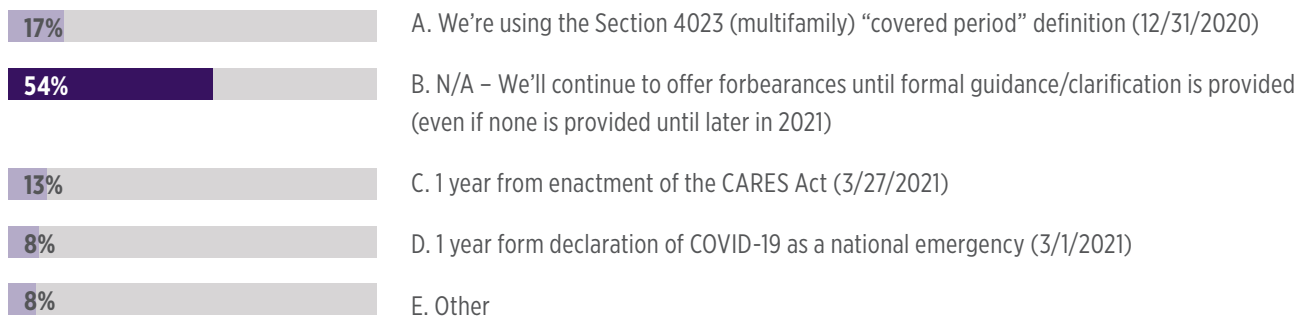
For CARES Loans, if a borrower was given a 90-day forbearance to start, and you lose contact with them, will you: (09/30/2020)



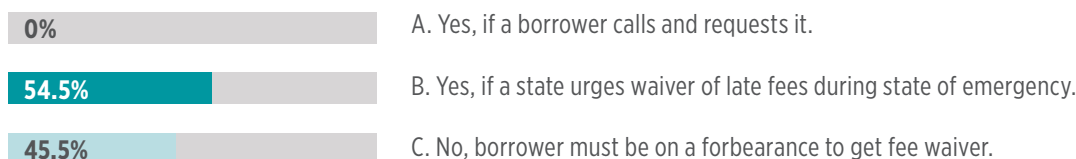
## As an institution, are you defining the CARES Act “covered period” under Section 4022 as: (09/30/2020)



## Related to the above question: As an institution, how are you defining the end of the CARES Act “covered period” under Section 4022 (12/02/2020)?



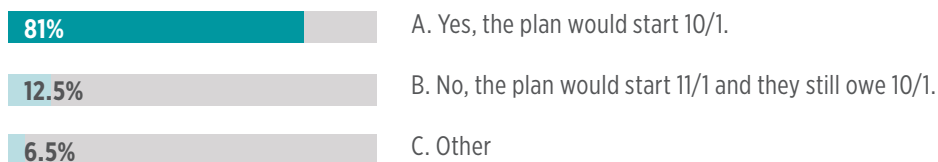
## Are you waiving late fees for borrowers who are not in a forbearance? (10/7/2020)



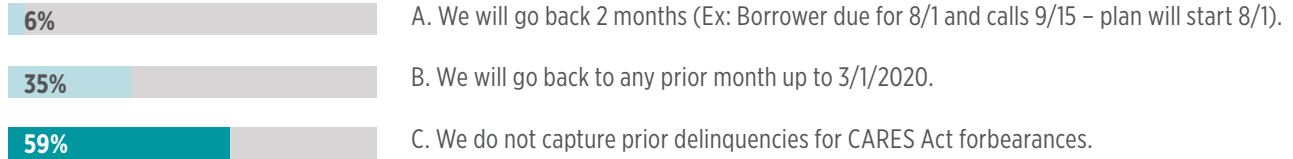
## When a borrower is on a COVID forbearance, and as it pertains to the forbearance time period afforded the borrower under the forbearance plan, will you “stop the clock” during any months in which the borrower makes his/her monthly payment? (10/21/2020)



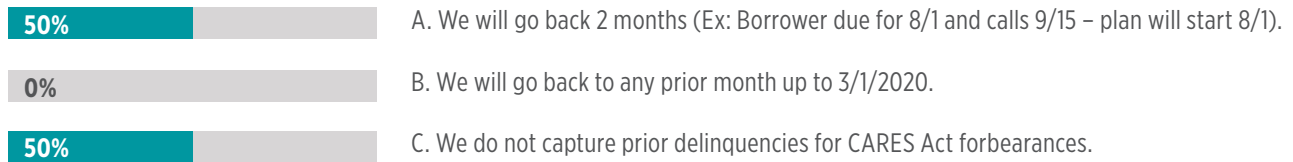
## If a borrower calls during month they are due for and requests a CARES forbearance due to COVID-based hardship, do you start their forbearance as of the 1st of that month (Ex: Borrower is due for 10/1 and calls 10/20)? (10/28/2020)



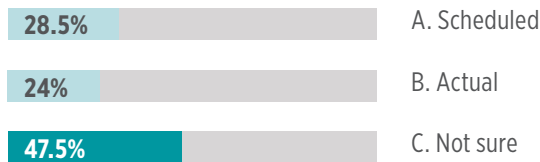
**If a borrower is already delinquent more than 30 days when they call to request a CARES forbearance, and they blame their delinquency on a COVID-based hardship, how far back will you start the forbearance? (10/28/2020)**



**If a borrower obtained a 180-day CARES forbearance but then did not bring their account current (or request another forbearance), are you: (11/4/2020)**

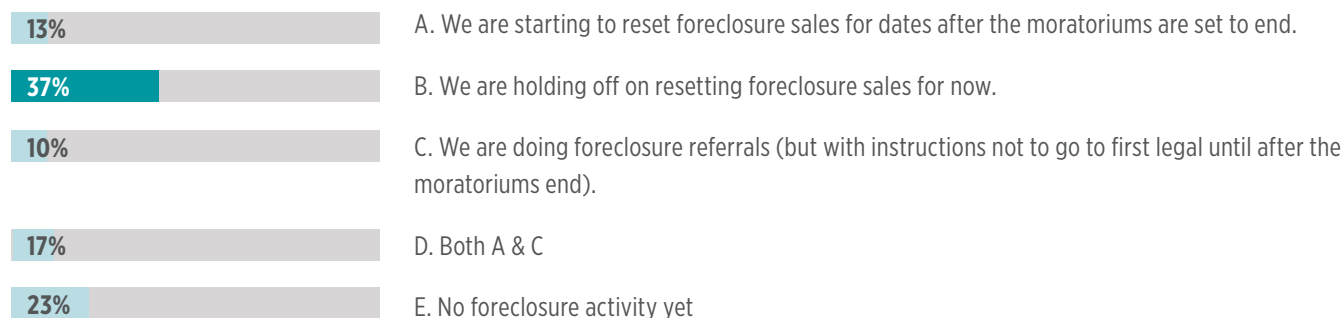


**For a borrower who has received a CARES Act forbearance but subsequently requests a payoff statement, will you calculate the interest component of the payoff quote based on the scheduled UPB or based on the actual UPB? (11/18/2020)**

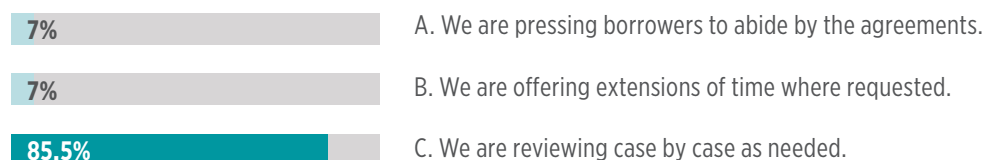


If we're asking the Magic 8 Ball about foreclosures and COVID-19, the response would be "Reply hazy, try again" or "Outlook not so good" if you're feeling pessimistic. Foreclosures on federally-backed mortgage loans have been on moratoriums since March 2020 and are not currently scheduled to end until January 31, 2021. In the meantime, servicers have been cautious about initiating foreclosure on privately held loans, even where permitted by state law. Until the moratoriums are lifted, servicers are sending breach letters on new defaults and some are sending a "re-breach" or other delinquency reminder to those loans rolling off forbearances who were not brought current. The industry is universally concerned about a rise in foreclosures in 2021 when forbearance help runs out.

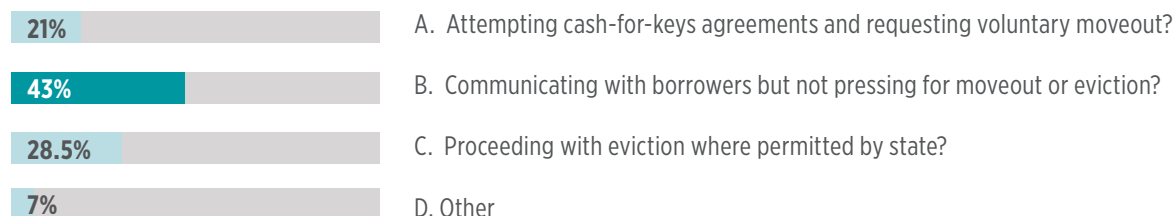
## Foreclosures: (05/13/2020)



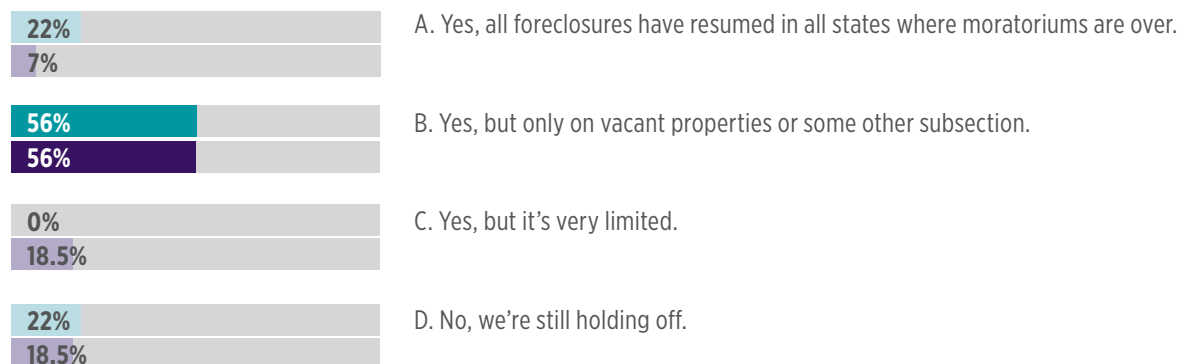
## How are you handling previously agreed CFK or consent-to-foreclosure agreements? (06/02/2020)



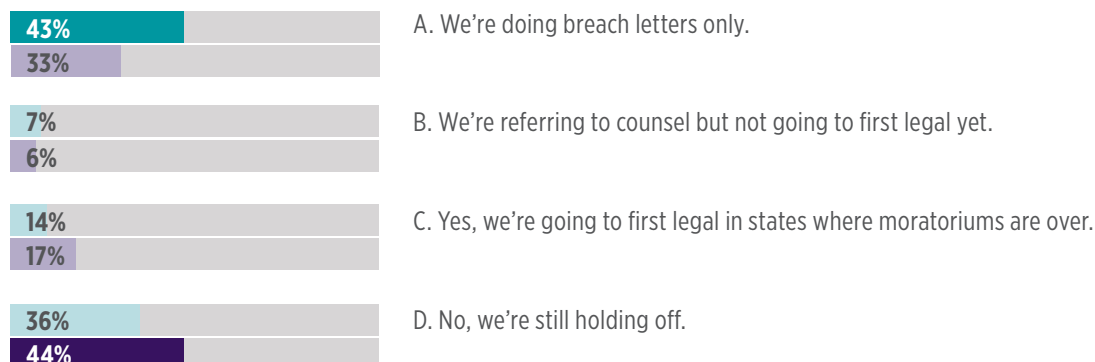
## If foreclosure was already completed and the borrower is still in the home, are you: (08/12/2020)



## Are you resuming pre-COVID-19 foreclosures for loans not on forbearance? (Polled on 08/26/2020 & 09/23/2020)



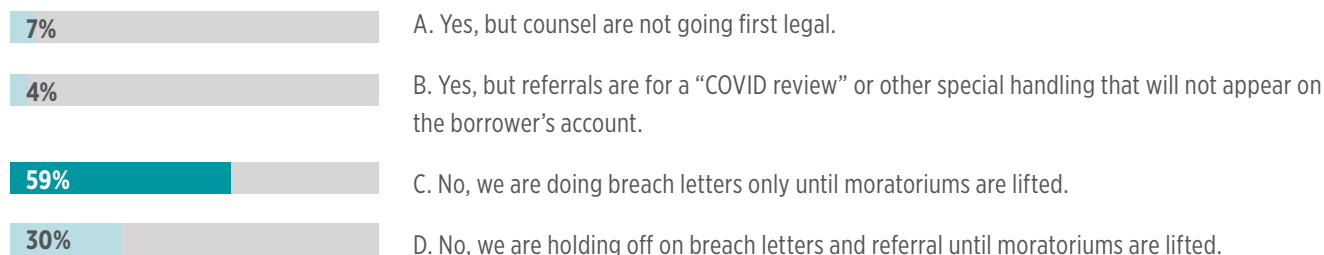
## Are you starting NEW foreclosures for loans not in forbearance (non-CARES)? (Polled on 08/26/2020 & 09/23/2020)



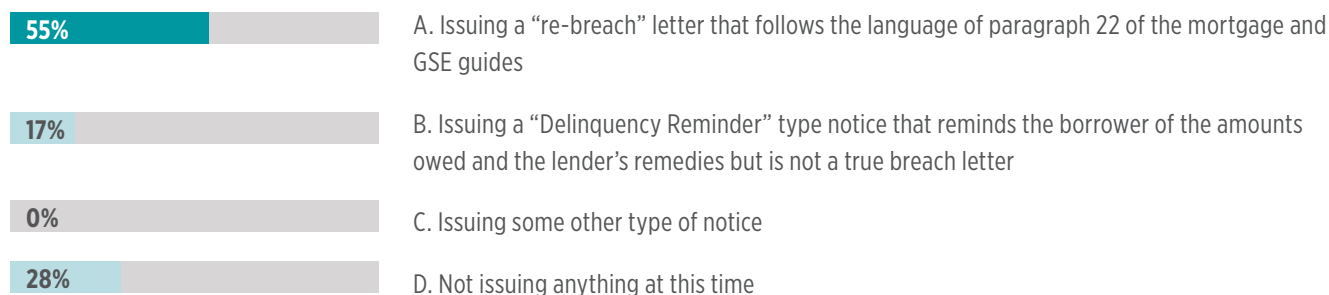
## Will you re-breach a borrower who received a breach letter before COVID and was then placed on a forbearance (assuming loss mitigation efforts fail)? (10/21/2020)



## Are you referring any files to foreclosure counsel while moratoriums are in place? (11/18/2020)

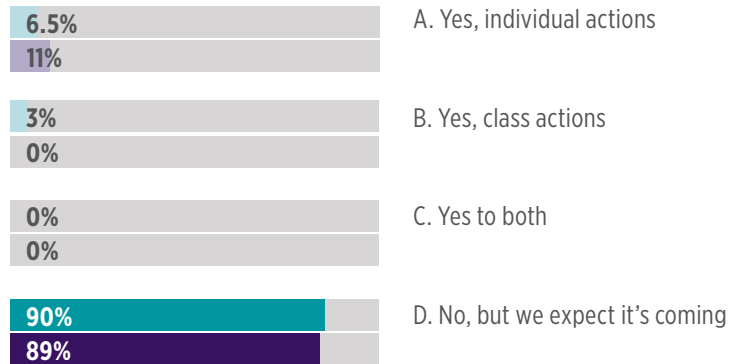


## For loans that were delinquent before the foreclosure moratoriums, are you (12/02/2020)



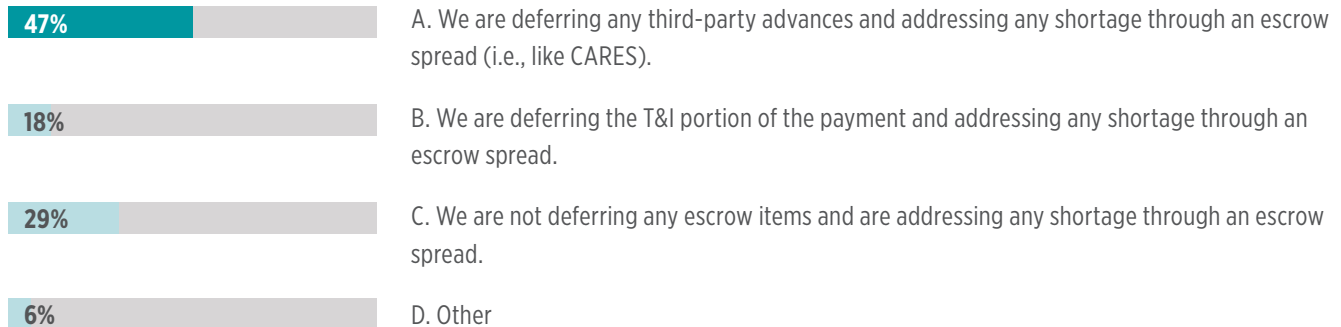
CARES Act litigation is starting to trickle in, with 90% of responders saying “we expect its coming.” The few files that have come in range from allegations about eligibility for forbearance and length of forbearance to complaints that fees were improperly charged.

## Have you started to receive CARES or forbearance-related litigation? (Polled on 05/20/2020 & 09/16/2020)

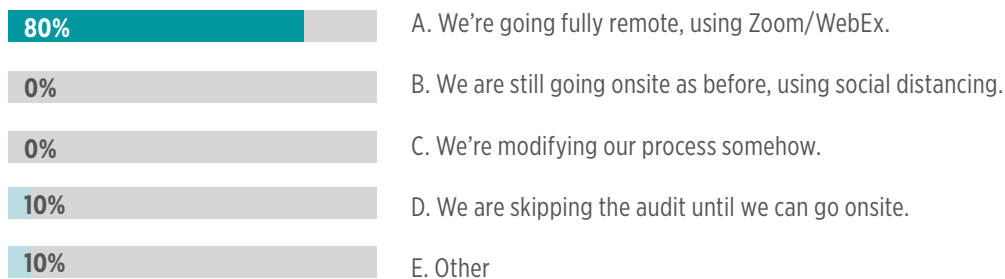


The “show must go on” and normal servicing activities are still needed during COVID-19. Servicer responses show differences in opinion on how to handle escrow items for post-forbearance loans and servicers are responding differently to the CFPB’s recent guidance on collection of escrow shortages as well. Companies also continue to consider the LIBOR transition coming at the end of 2021, which will become a more prevalent issue in 2021. Servicers also struggle with nuanced issues such as how to address PMI cancellation when a borrower takes a deferral, state-mandated servicing notices, and calculating 1098 interest for HUD Partial Claims.

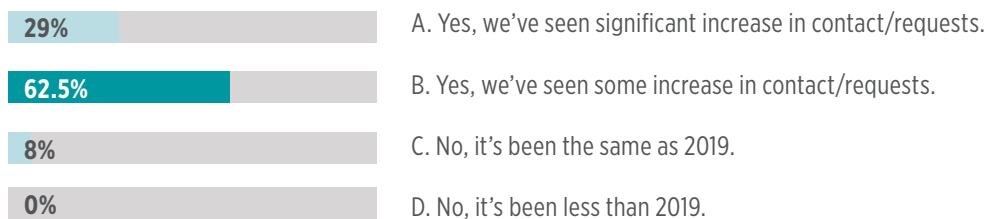
## For non-CARES loans, how are you handling escrow after forbearance? (07/29/2020)



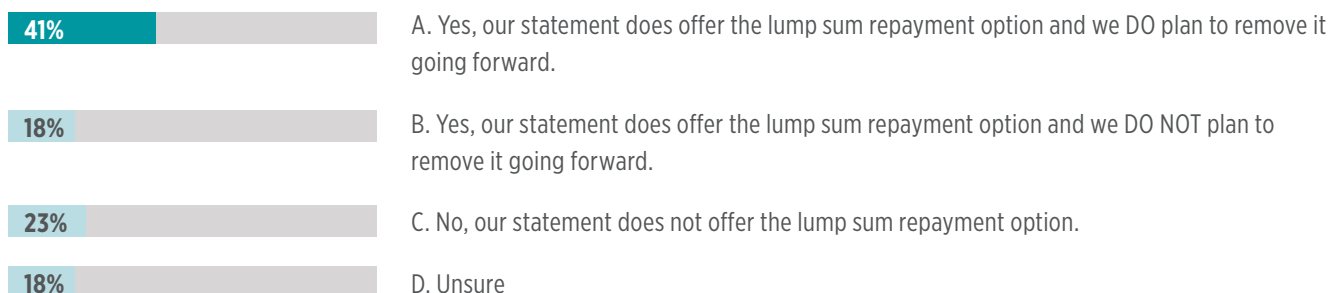
## What is your plan for modifying on-site review of vendors in 2020? (08/12/2020)



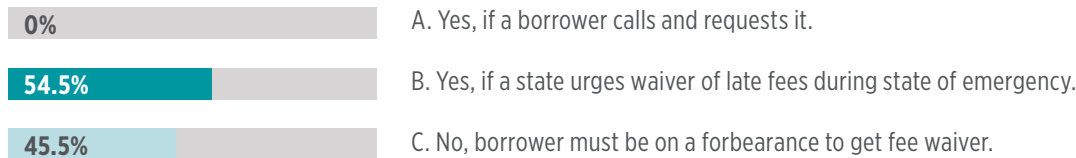
## Has regulator outreach to your company increased (document requests, exams, etc.)? (09/16/2020)



## Does your annual escrow statement offer a borrower with a shortage of more than 1 month’s escrow payment the option of repaying in a lump sum and, if so, do you plan to remove that option? (09/23/2020)



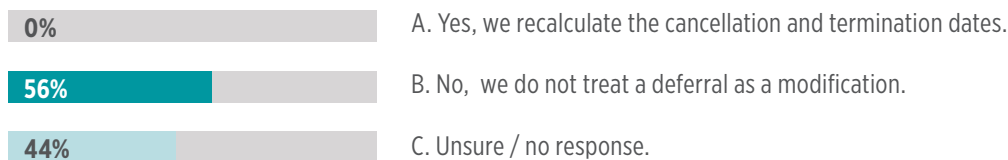
## Are you waiving late fees for borrowers who are not in a forbearance? (10/7/2020)



## Have you identified your cut-over date to SOFR? (10/28/2020)



## In connection with PMI cancellation and termination under the Homeowners Protection Act, are you considering a deferral to be a “modification of the terms or conditions of [the] loan” that triggers a recalculation of cancellation and termination dates? (10/28/2020)



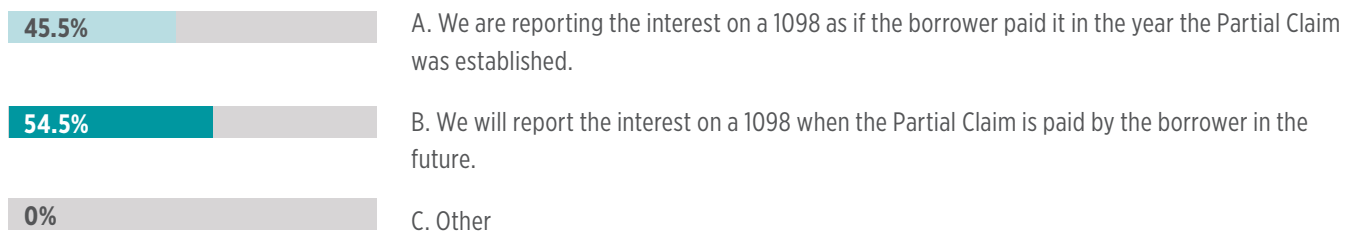
## Are you transitioning away from LIBOR before the end of 2021? (10/28/2020)



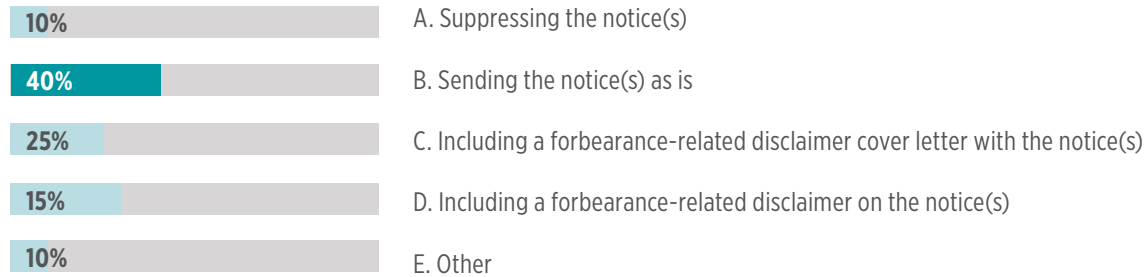
## Are you waiting on the GSEs to announce legacy-servicing specific guidance? (10/28/2020)



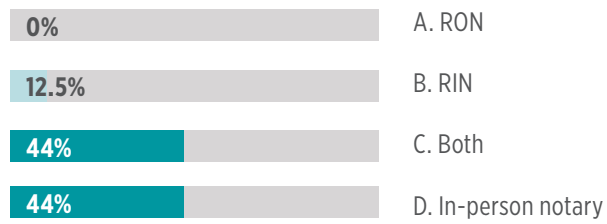
## How are you reporting the interest on a borrower’s 1098 Mortgage Interest Statement when they receive a HUD Partial Claim? (11/4/2020)



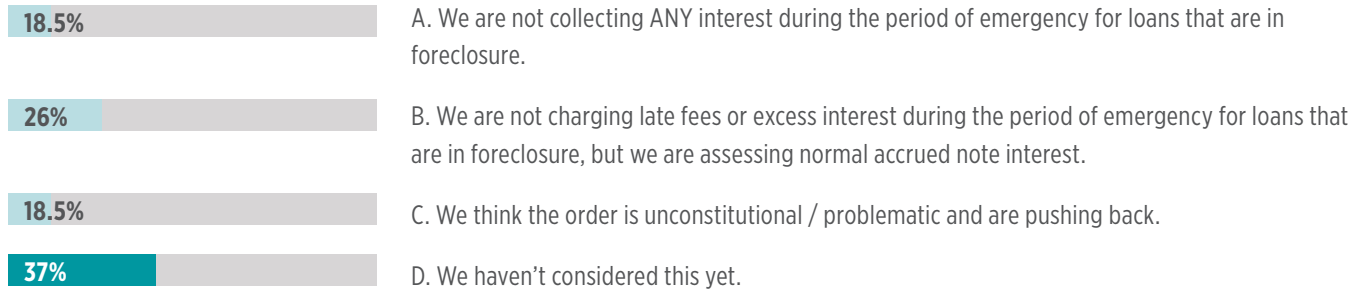
For state and federally-mandated servicing notices that (arguably) must be sent even when a borrower is on a forbearance but that might create some risk/confusion (i.e. CFPB early intervention letter), are you generally (12/09/2020)



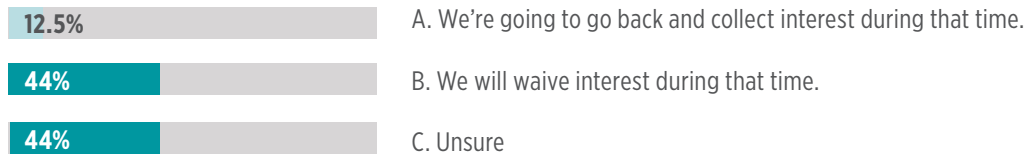
## How are you handling notary issues? (04/22/2020)



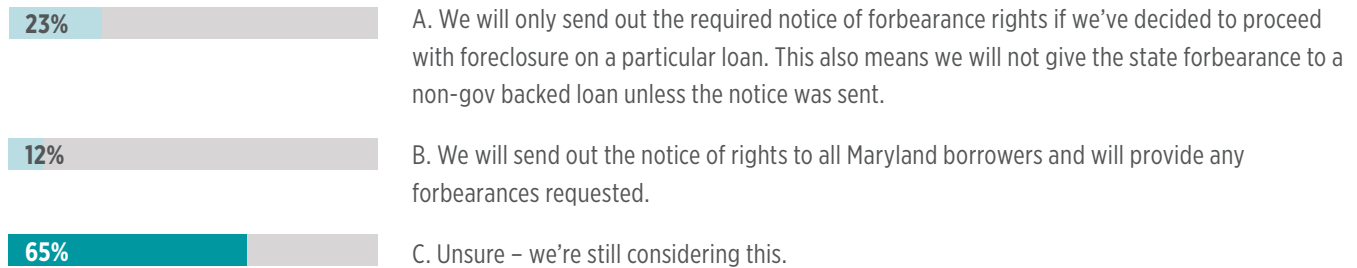
## How are you handling Delaware's order? (06/02/2020)



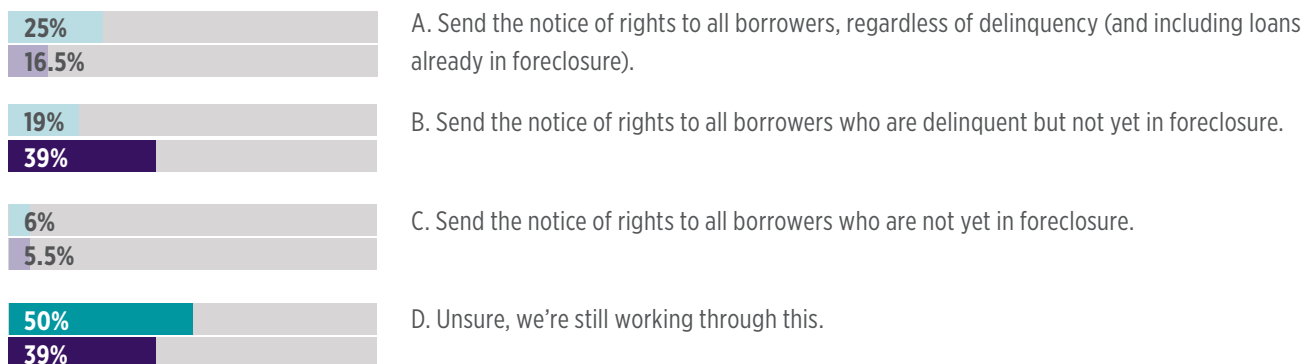
## How do you interpret Delaware's 23rd modification regarding collection of interest from March 24, 2020 through June 30, 2020? (07/08/2020)



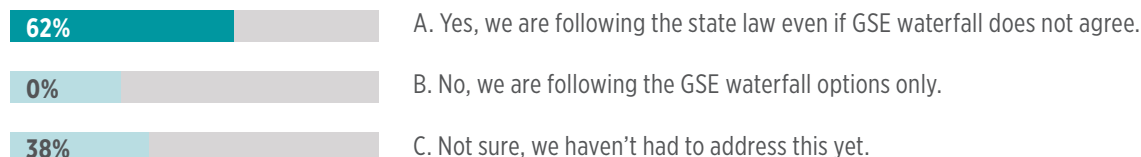
## Maryland's new Executive Order requires offering forbearances of up to a year to non-federally backed loans as a condition precedent to filing a new NOI. How are you implementing this order? (10/21/2020)



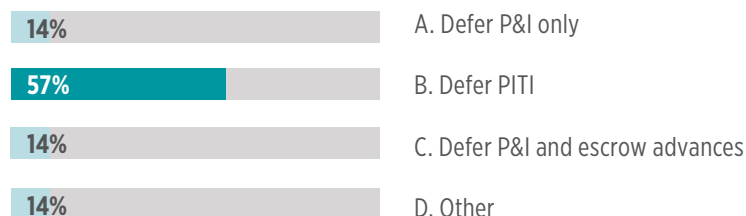
## To comply with the new Maryland Executive Order regarding non-federally backed mortgage loans, will you: (Polled on 11/04/2020 & 12/09/2020)



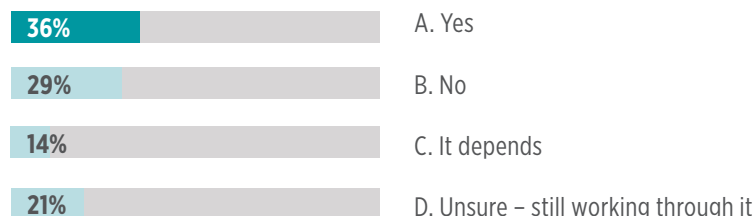
## Are you offering deferrals or extensions for GSE Loans under the MA & OR state laws if borrower insists? (09/08/2020)



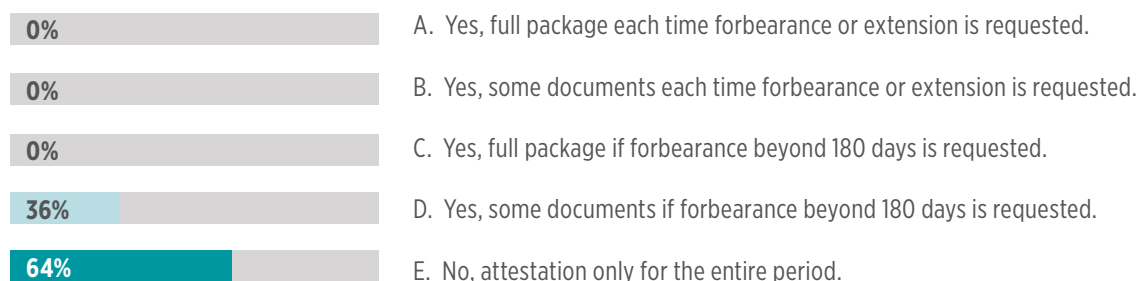
## Massachusetts & Oregon: Where a GSE borrower does not receive a flex modification, how are you handling the state requirement to defer the forborne amounts? (10/21/2020)



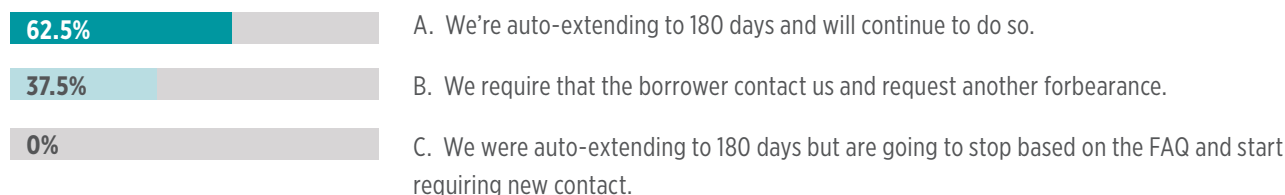
## Massachusetts Act 65 prohibited initiation of the foreclosure process from 4/20/2020 to 10/17/2020. Are you re-breaching in Massachusetts? (11/4/2020)



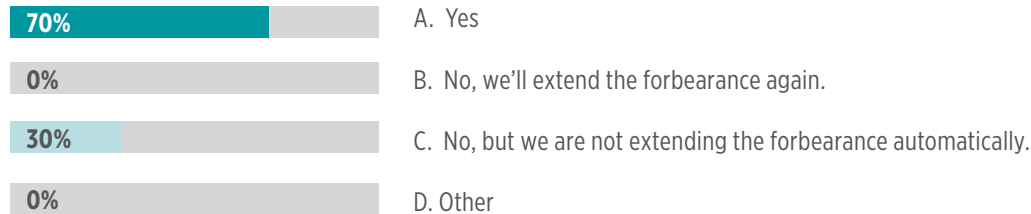
## Are you asking for a package to “demonstrate financial hardship” in New York? (08/12/2020)



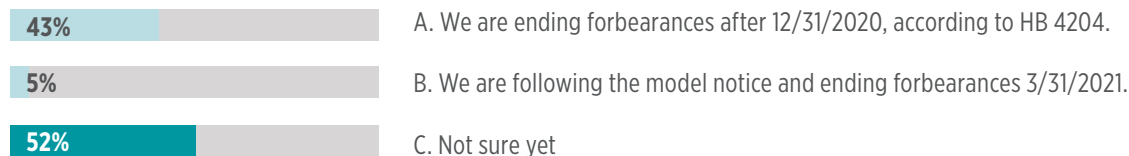
## How are you handling the expiration of a borrower's 90-day forbearance under the New York Executive Order if you are unable to make contact with the borrower? (08/12/2020)



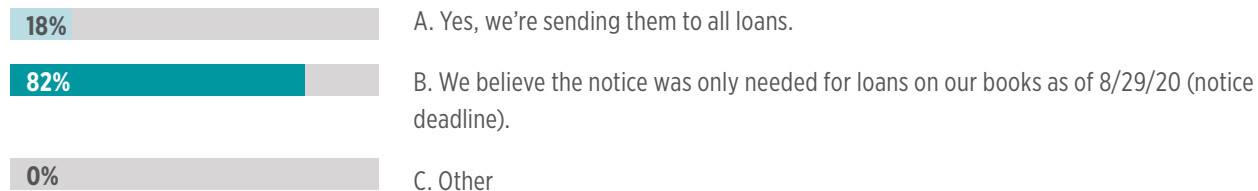
If borrower has received 180 days forbearance in New York and won't make contact, will you defer to maturity at that point? (08/12/2020)



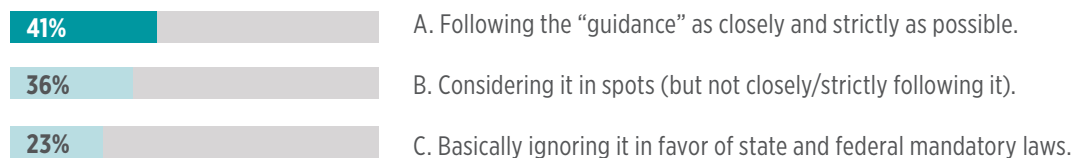
In Oregon, are you allowing accommodations under HB 4204 according to the definition of Emergency Period (ending 12/31/2020) or the Emergency Period + 90 days (3/31/2021) as stated in Oregon's model notice of rights (12/09/2020)?



Have you continued to send Oregon Notice of Rights to newly originated loans (12/09/2020)?



With respect to state regulatory "guidance" (such as the Texas OCC's "Regulated Lender Advisory Bulletin: Coronavirus Emergency Measures"), are you: (09/30/2020)



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