



# THIRD PARTY SERVICE PROVIDERS AND PERFORMANCE MANAGEMENT

*Are You Unintentionally Putting  
Your Clients at Risk with the  
Service Providers You Select?*

**ALTA® Title Topics • November 12, 2015**

# ABOUT THE PRESENTERS

## Third-party Service Providers and Performance Management – Are You Unintentionally Putting Your Clients at Risk with the Service Providers You Select?

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# AGENDA

## **Third-party Service Providers and Performance Management – Are You Unintentionally Putting Your Clients at Risk with the Service Providers You Select?**

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1. Summary of Federal Laws and Regulations
2. Common Law Duties of Principal and Agent
3. Finding and Working with Fourth Party Providers
4. Sound Vendor Management Practices
5. Vendor Management Tools
6. Performance Management - Scorecards





# SUMMARY OF FEDERAL LAWS AND REGULATIONS IMPOSING LIABILITY ON LENDERS FOR ACTS OF THIRD PARTY SERVICE PROVIDERS

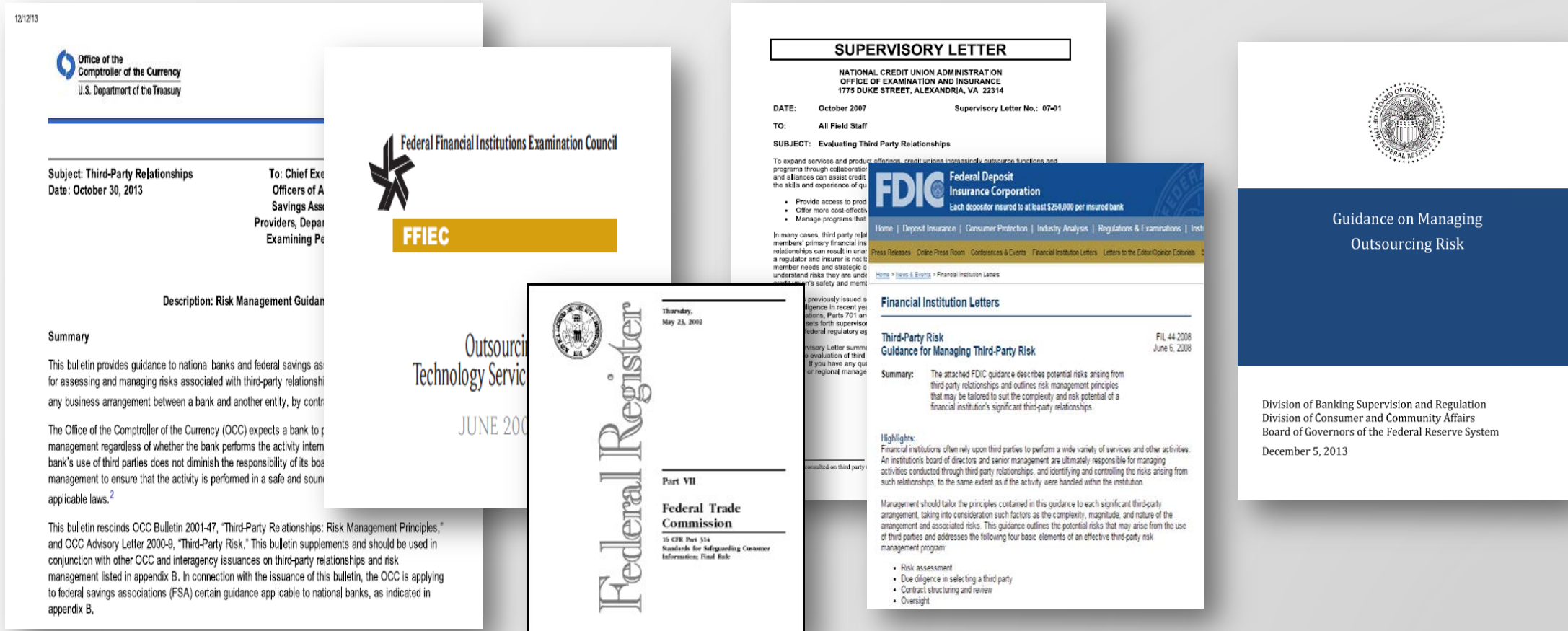
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- 2010 Wall Street Reform and Consumer Protection Act
- OCC, FDIC, NCUA, Federal Reserve, FFIEC, FTC - Gramm Leach Bliley Act
- Consumer Financial Protection Bureau (CFPB)
- CFPB's eight rules and their effective dates
- CFPB 2012-03 Bulletin regarding due diligence
- Lender due diligence expectations
- ALTA "best practices", self-assessment guides and certification



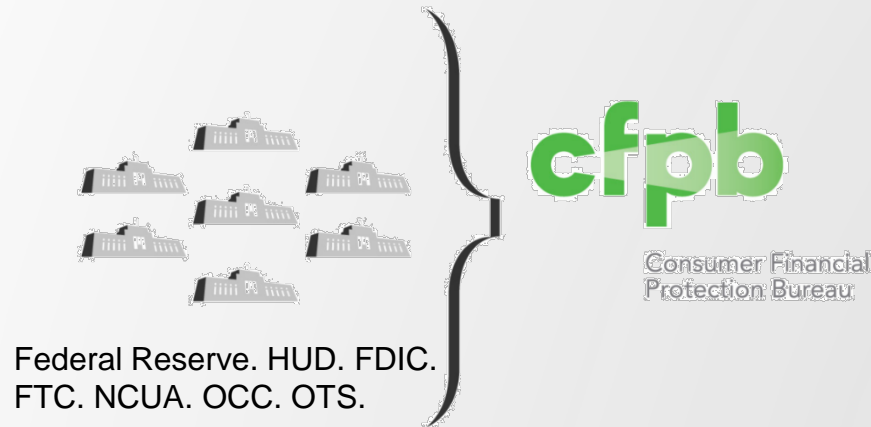
# THE REGULATIONS AND GUIDANCE ARE NOT NEW

## OCC, FFIEC, FTC (GLBA), NCUA, FDIC, FEDERAL RESERVE



# DODD-FRANK AND THE CFPB

## Dodd-Frank Wall Street Reform and Consumer Protection Act - July 21, 2010



. . . a whole new way of doing business with the goals of protecting the consumer and bringing supervision and accountability to the financial services industry . . .

**CFPB oversight includes** – Consumer Education & Engagement. Card Markets. Credit Information, Collections & Deposits Markets. Installment & Liquidity Lending Markets. Mortgage Markets. Fair Lending & Equal Opportunity. Financial Education & Empowerment. Older Americans. Servicemember Affairs. Students. Office of Minority & Women Inclusion.

# CFPB SUPERVISORY AUTHORITY

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- ▶ Large & small banks
- ▶ Credit unions & thrifts

*“Nonbanks” such as:*

- ▶ Residential mortgage companies
- ▶ Mortgage originators and brokers
- ▶ Mortgage servicers
- ▶ Providers of loan modification or foreclosure relief services
- ▶ Payday lenders
- ▶ Private education lenders
- ▶ Credit reporting and debt collection agencies

And...

Service providers to banks and nonbanks, ***including*** ***"providers of real estate settlement services."***

# CFPB FINAL RULES

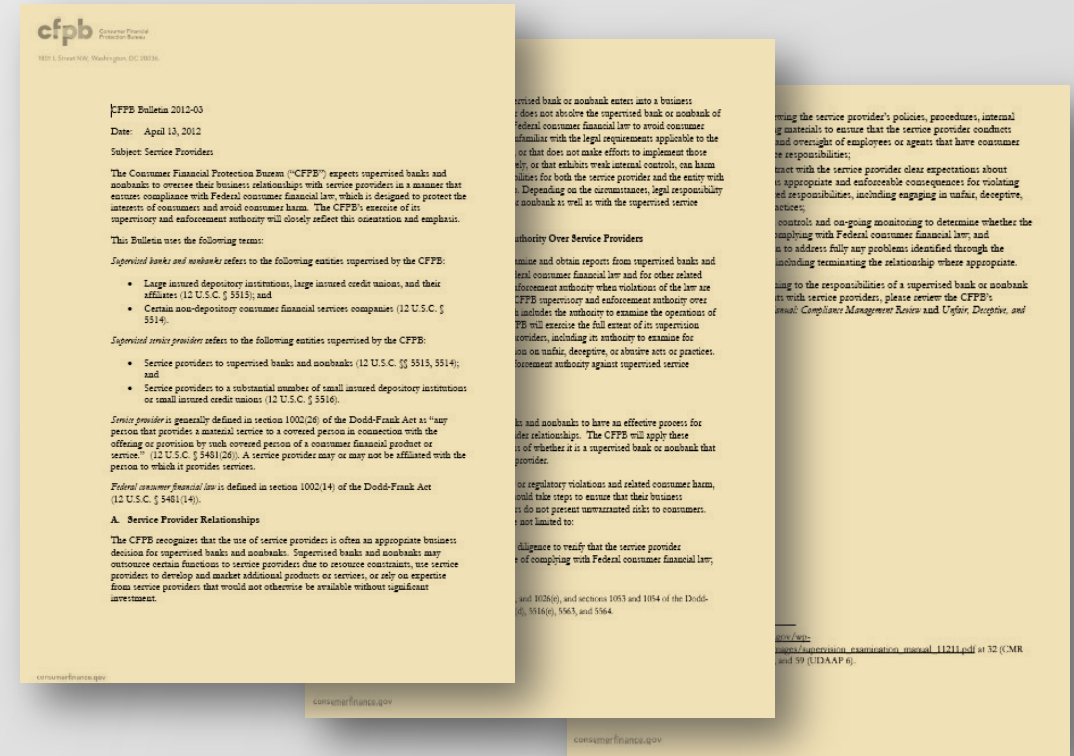
Rule	Summary	Issued Date/ Effective Date
Integrated Mortgage Disclosures	Simplifies RESPA & TILA disclosure forms by integrating GFE/Preliminary Truth in Lending = Loan Estimate – 3 pgs Final Truth in Lending/HUD-1 = Closing Disclosure – 5 pgs	November 20, 2013 August 1, 2015
Ability to Repay/Qualified Mortgage (QM)	Requires lenders to ensure borrowers have ability to repay their mortgage. Sets qualifications for QMs	January 10, 2013 January 10, 2014
2013 HOEPA Rule	High-cost mortgage and homeownership counseling amendments to TILA (Reg Z) and RESPA (Reg X). Expands types of mortgage loans subject to HOEPA	January 10, 2013 January 10, 2014
Loan Originator Compensation	Prohibits steering incentives, dual compensation and levels playing field for qualification and screening standards	January 20, 2013 June 1, 2013 (some) January 10, 2014
ECOA Valuations	Disclosure and delivery requirements for copies of appraisals and other written valuations under the Equal Credit Opportunity Act (Reg B)	January 18, 2013 January 18, 2014
TILA Higher Price Mortgage Loan Appraisals	Increases requirements and disclosures of appraisal purpose; requires copy of appraisal to consumer	January 18, 2013 January 18, 2014
Escrows under TILA (Reg Z)	Requires certain lenders to collect monthly escrows (impounds) for five years for some “higher-priced” mortgage loans	January 10, 2013 June 1, 2013
TILA and RESPA Servicing (Two rules)	Protects consumers from detrimental actions by mortgage servicers and provides consumers with better tools, information and protections for consumers facing foreclosure	January 17, 2013 January 10, 2014



# CFPB BULLETIN 2012-03 - APRIL 13, 2012

Provides that lenders ***may be held legally responsible for the actions or inactions of their service providers*** where consumers are harmed as a ***result of the service provider failing to comply with consumer financial law.***

To “limit the potential” for such responsibility, lenders ***“should take steps” to ensure no unwarranted risks are posed to consumers*** by their ***service providers.***



CFPB issues Bulletin 2012-03 April 13, 2012

# THE FIVE STEPS

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1. “Conducting thorough due diligence to verify that the **service provider** understands and is capable of complying with **federal consumer financial law**;
2. Requesting and reviewing the **service provider’s policies, procedures, internal controls, and training manuals** to ensure that the **service provider conducts appropriate training and oversight of employees or agents** that have consumer contact or compliance responsibilities;
3. Including in the **contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences** for violating compliance-related responsibilities, **including engaging in unfair, deceptive, or abusive acts or practices**;
4. Establishing **internal controls and ongoing monitoring** to determine whether the service provider is complying with federal consumer financial law;
5. Taking **prompt action to address** fully any **problems identified through the monitoring process**, including terminating the relationship where appropriate.”

# LENDER DUE DILIGENCE OF VENDORS

- Regardless the size of the entity, regulators are requiring compliance.
- There is not a “one size fits all” component to what documentation settlement service providers are being required to produce.
- ***“Tell me, show me, prove to me ...  
What’s in your CMS?”***
  - Written policies and procedures
  - Training curriculum, attendance records and test scores
  - Audit - process review and file monitoring - corrective action
  - Consumer complaint tracking and resolution

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# MORE LENDER DUE DILIGENCE OF VENDORS

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- Lender Audits – On-site Visits ***“Trust, but verify”***
  - Facilities, Data Security, Employee Interviews
- Internal and External
  - Process Reviews & Audits
- Information Technology
  - Administrative, Technical & Physical Safeguards

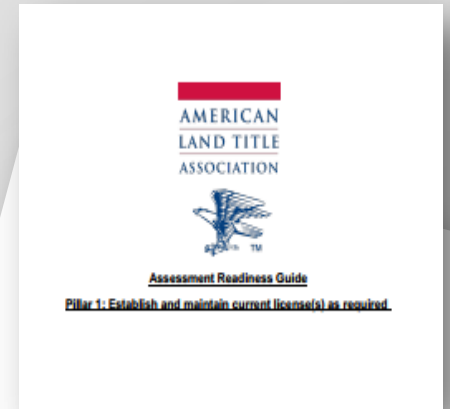


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|---|--|
| ✓ Corporate Policies and Procedures       | ✓ Technology Service Providers Audits        |
| ✓ ALTA Best Practices                     | ✓ Service Organization Control (SOC) Reports |
| ✓ State and Federal Rules and Regulations | ✓ Master Service Agreements                  |
| ✓ Consumer Financial Law                  | ✓ General Closing Instructions               |
| ✓ Information Security Audits             | ✓ Performance and Metrics Evaluations        |



# ALTA<sup>®</sup> SEVEN PILLARS OF BEST PRACTICES SELF-ASSESSMENT GUIDES AND CERTIFICATION

1. Maintain current license(s)
2. Written procedures and controls for escrow trust accounts
3. Written privacy and information security program to protect non-public personal information
4. Written real estate settlement procedures and policies
5. Written procedures related to title policy production, delivery, reporting and premium remittance
6. Liability insurance and fidelity coverage
7. Procedures for resolving consumer complaints

This image shows a sample page from the ALTA Assessment Readiness Guide, specifically the 'Section 1: Demographic Information' form. The form is titled 'Part 1: Business and Demographic Information' and contains various fields for a company to fill out, including 'Company Name', 'Company Address', 'Company Phone', 'Company Fax', 'Company Website', 'Company Email', 'Company Filing Office', 'Company State', 'Company City', 'Company Zip', 'Company Country', 'Company Postal Code', 'Company Type of Business', 'Company Agency', 'Company License', 'Company State', 'Company City', 'Company Zip', 'Company Country', 'Company Postal Code'. The form is designed to be completed by a company to provide demographic information for the assessment process. The form is titled 'Part 1: Business and Demographic Information' and contains various fields for a company to fill out, including 'Company Name', 'Company Address', 'Company Phone', 'Company Fax', 'Company Website', 'Company Email', 'Company Filing Office', 'Company State', 'Company City', 'Company Zip', 'Company Country', 'Company Postal Code', 'Company Type of Business', 'Company Agency', 'Company License', 'Company State', 'Company City', 'Company Zip', 'Company Country', 'Company Postal Code'. The form is designed to be completed by a company to provide demographic information for the assessment process.

# FINDING AND WORKING SUCCESSFULLY WITH FOURTH PARTY VENDORS

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*“... How far can the review, evaluation and qualification of vendors reach?”*

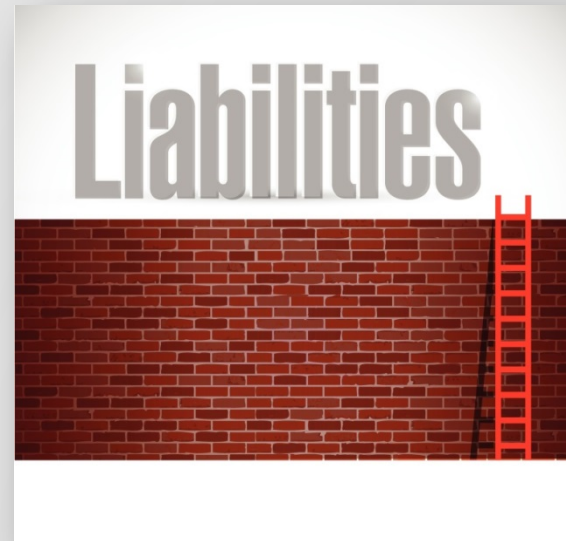
*... as far as necessary for lenders to ensure everyone in the service chain adheres to consumer finance laws and rules protecting consumers.”*



# COMMON LAW DUTIES OF PRINCIPAL AND AGENT

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- Liability for acts of third – and fourth parties
- Indemnification
- Insurance



# FOURTH PARTY SERVICE PROVIDERS

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- Who should be considered a fourth party service provider?
- How far downstream is your due diligence expected to go – fifth parties? sixth parties? beyond?





# EVALUATING FOURTH PARTY SERVICE PROVIDERS

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- Concentrate first on vendor qualifications  
**BEFORE** any negotiations on business terms

- Consider the “vital few” ...



# SOUND VENDOR MANAGEMENT PRACTICES

## Sourcing, Evaluating, Qualifying and Selection

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- Use of non-disclosure agreements (NDAs)
- Due diligence considerations
- Defining roles and responsibilities
- Process mapping
- Reference checks – existing customers and trade references
- Other sources for vendor information – e.g. Google, Yelp, BBB



# MORE SOUND VENDOR MANAGEMENT PRACTICES

## Contracting, Training and Tracking

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- Service level agreements (SLAs)
- Training vendors – transfer of knowledge
- Scorecards
- Communication matrix
- Escalation



# MORE SOUND VENDOR MANAGEMENT PRACTICES

## Using Multiple Service Providers

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- Champion/challenger model
- Multiple vendors – load balancing





# VENDOR MANAGEMENT TOOLS, TEMPLATES AND FORMS

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- Non-disclosure Agreement (NDA)
- Vendor evaluation
- Metric management – creating a score card to track the “vital few”
- Vendor manager – position description and essential duties
- Due diligence questionnaire and checklist



# WELLS FARGO SCORECARD STRATEGY

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## STRATEGY

- Set and communicate clear and reasonable performance expectations
- Develop metrics and reporting to reflect actual performance results
- Deliver information to management contacts with the ability to effect change
- Phone contacts to largest opportunity providers
- Email contacts to others

# WELLS FARGO SCORECARD STRATEGY

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## INITIAL RESULTS

- Appreciation for providing specific performance feedback
- High degree of willingness to take corrective action
- High levels of improved performance over short period of time
- Proactive interest in metrics to be added in the future

# WELLS FARGO SCORECARD STRATEGY

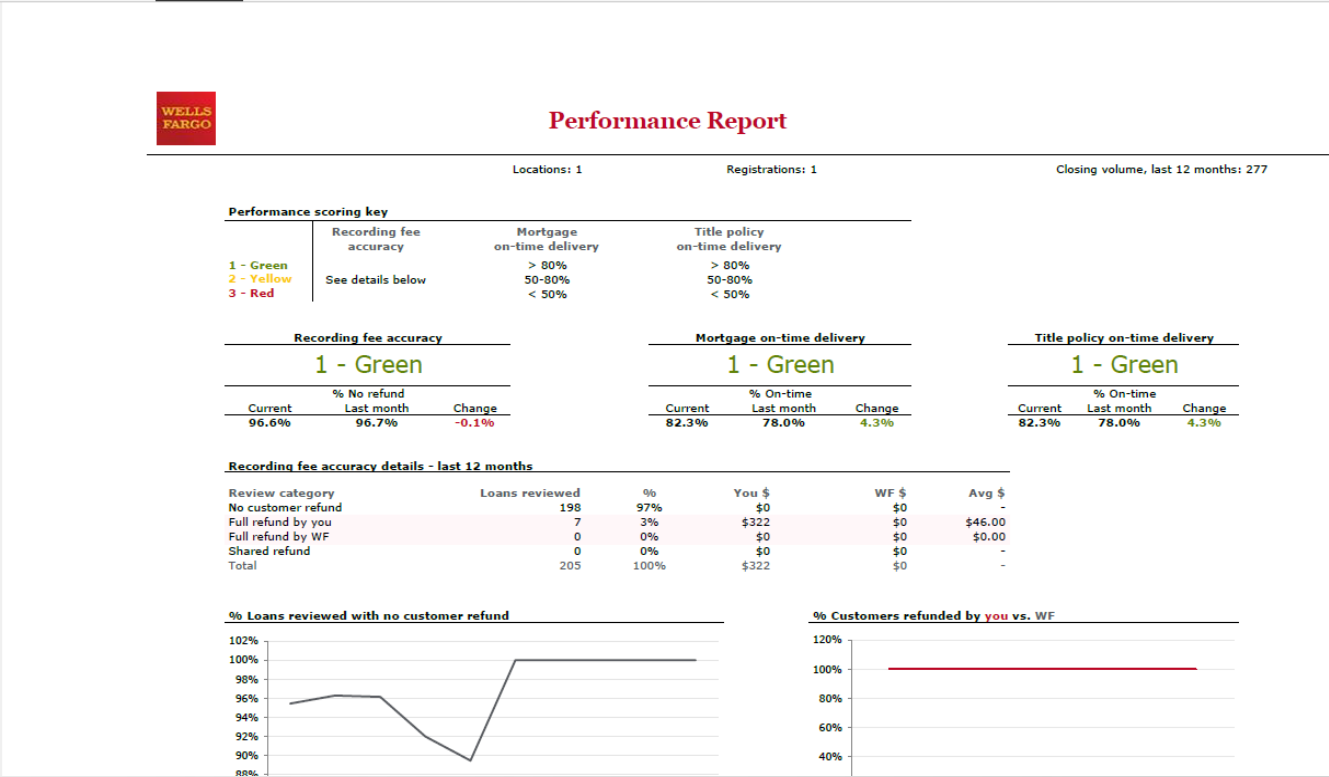
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## NEXT STEPS

- Continue to expand metrics to include other key performance factors
- Continue to make verbal contacts to grow performance relationships
- Determine what actions will occur for the few whose performance does not improve

# WELLS FARGO SCORECARD STRATEGY

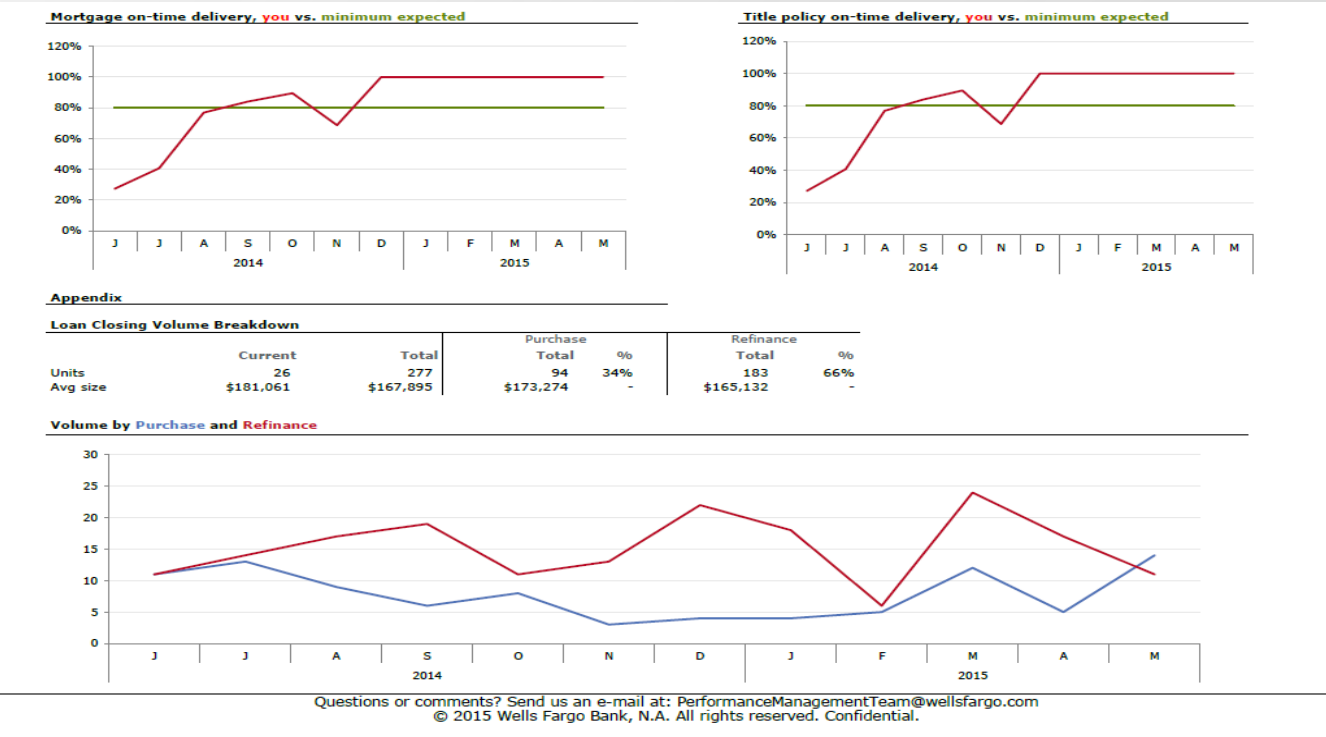
## Sample Scorecard





# WELLS FARGO SCORECARD STRATEGY

## Sample Scorecard



# QUESTIONS AND COMMENTS

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For more information or to follow-up with questions or comments contact

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# Webinar Archives

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**[www.alta.org/titletopics](http://www.alta.org/titletopics)**

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