NMLS 2280

MORTGAGE
CORPORATION

October 12, 2012

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Alfred M. Pollard, General Counsel
Attention: Comments/RIN 2590-AA58
Federal Housing Finance Agency, Eighth Floor
400 Seventh Street, SW
Washington, DC 20024

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington DC 20219

Re: Appraisals for Higher Risk Mortgage Loans
Truth in Lending Act (TILA) & Regulation Z

Board: Docket No. R-1443

Bureau: Docket No. CFPB-2012-0031

FDIC: Truth in Lending Act (Regulation Z)

FHFA: RIN 2590-AA58

NCUA: RIN 3133-AE04

OCC: Appraisals for Higher-Risk Mortgage Loans

Dear Ladies and Gentlemen:

21st Mortgage Corporation ("21st Mortgage") welcomes and appreciates the opportunity offered by the Consumer Financial Protection Bureau ("Bureau") and other agencies[1] (collectively the "Agencies") to provide comment on the above referenced docket number and the proposed amendments to the Truth in Lending Act (Regulation Z) covering appraisals for higher-risk mortgage loans. Please consider this 21st Mortgage's comment on the proposed rule.

21st Mortgage is a mortgage company primarily focused on non-agency loans to purchasers of manufactured housing. 21st Mortgage operates in 45 states, providing financing for consumers who wish to purchase a new or used manufactured home either by itself or with real property.

21st Mortgage respectfully offers the following comment for the Bureau's consideration.

Introduction:

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "Act"), as well as the rules that will implement the Act, will have a disproportionate impact on low income borrowers who wish to purchase a new or existing manufactured home. We respectfully ask that the Agencies consider the unique challenges faced by consumers who wish to finance a manufactured home and the impact upon retailers and lenders who serve those consumers. Because of its affordability and portability, manufactured housing is a vital component of our nation's affordable housing alternative to less desirable rental housing. According to the 2010 American Housing Survey ("AHS"), 72% of all new homes sold under $125,000 were manufactured housing, with manufactured housing also making up 47% of all new homes sold under $150,000 and 27% of all new homes sold under $200,000. These numbers continue to increase as more consumers see manufactured housing as an affordable and reliable housing alternative. There are approximately nine (9) million manufactured homes in this country and the AHS indicates that over half these homes have a value of $30,000 or less.

Comment 1:
The Agencies should retain the exception from the requirement of §129H for loans secured solely by a residential structure. (Question 11)

As the Agencies have noted in the section by section analysis of the proposed rule, they have been granted exemption authority under the Truth in Lending Act ("TILA") §129H(b)(4)(B) to exclude certain classes of consumer credit transactions from the definition of higher-risk mortgage loan "if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors." In addition, the Bureau has authority under §104 of TILA to exclude from the coverage of that title any transactions for which they determine, by rule, coverage "is not necessary to carry out the purposes of [TILA]" and the authority under §105(f) of TILA to:

[1] The agencies being the Board of Governors of the Federal Reserve System (Board); the Federal Deposit Insurance Corporation (FDIC); the Federal Housing Finance Agency (FHFA); the National Credit Union Administration (NCUA); and the Office of the Comptroller of the Currency, Treasury (OCC).

> exempt, by regulation, from all or part of [TILA] all or any class of transactions, other than transactions involving any mortgage described in section 103(aa), for which, in the determination of the Bureau, coverage under all or part of this title does not provide a meaningful benefit to consumers in the form of useful information or protection.

The first two factors listed under Paragraph (2) of §105(f) which the Bureau is to consider in exercising its exemption authority are:

> (A) The amount of the loan and whether the disclosures, right of rescission, and other provisions provide a benefit to the consumers who are parties to such transactions, as determined by the Bureau; and
>
> (B) The extent to which the requirements of this title complicate, hinder, or make more expensive the credit process for the class of transactions.

That said, the Agencies have proposed to exclude from the definition of "higher-risk mortgage loan" (and thus from any of the appraisal requirements that accompany a higher-risk mortgage loan) any loan secured solely by a residential structure. The term "residential structure" is not defined in the proposed rule; proposed changes to the staff commentary would make it clear that "a loan secured solely by a manufactured home cannot be a 'higher-risk mortgage loan'."

The Agencies have rightly reasoned that the exclusion for loans secured solely by manufactured homes is necessary for several reasons including:

- that appraisals in this section must comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), which governs appraisals of real estate transactions;
- that "certified or licensed appraisers" required to be used under §129H typically refer to appraisers certified or licensed to appraise real estate and therefore there is a lack of any such appraisers for residential structures;
- that it is not typical industry practice for manufactured home creditors to utilize appraisals, but instead to utilize the invoice for new manufactured homes or national price guides for used manufactured homes in establishing their loan amounts;
- that the purchase price of a manufactured home is typically lower than the purchase price of a manufactured home and real property, making appraisals on manufactured homes expensive (if they are even ascertainable at all) relative to the cost of the home.

We support the Agencies proposal to exclude loans secured only by residential structures (home-only loans) from the appraisal requirements of §129H both for the reasons listed above and for the simple fact that this exception is in the public interest and still promotes the safety and soundness of creditors who lend on manufacturing housing. Further, forcing creditors to comply with §129H when making home-only loans would "complicate, hinder, or make more expensive the credit process" for this class of transactions. To require an appraisal, especially one that included an appraisal of the interior of a manufactured home, would not only be costly, unduly burdensome and make the credit process more expensive, it would provide little if any benefit to consumers. As the bureau notes, creditors already utilize invoices and other pricing guides to set a maximum loan amount. An appraisal requirement would not only add to the cost of a manufactured home loan, but it would in most if not all cases be less reliable than a manufacturer's invoice or national pricing guide because, as the Agencies noted, there currently exist no framework, a real lack of any comparable transactions and far less certified or licensed appraisers who perform manufactured home-only appraisals. The purpose of §129H is no doubt to provide the consumer with an accurate assessment of value. Without true comparables and capable appraisers, all the consumer will be receiving is added expense on their loan. To require creditors who originate these home-only loans to comply with the appraisal requirements of §129H would severely impact manufactured home lending and those consumers who rely on manufactured homes as an affordable housing alternative.

Comment 2:
The Agencies should expand the proposed exemption from the higher-risk mortgage appraisal requirements to include an exemption for any loan wholly or partially secured by a manufactured home, including those also secured by real property. (Questions 12 & 14)

Likewise, consumers wishing to utilize their land as a down payment for a manufactured home or even those wishing to purchase a manufactured home with land will be negatively impacted by the appraisal requirements of §129H, should the Agencies choose not to exclude manufacturing housing from the appraisal requirements altogether Manufactured home lending is unique and it is a mistake to consider it simply a subset of or substantially comparable to traditional site-built mortgage lending. New manufactured homes are rarely sold as an attachment to or located on the real property that will also serve as security for a manufactured home loan; instead they are constructed at a manufacturer's location in a controlled environment and sold in most cases from a retail sales location. Consumers wishing to purchase a new manufactured home typically do so by visiting a retail sales center to select or even special order their manufactured home independent of any land purchase. In many cases they may already own the land on which they plan to site the manufactured home, they may be acquiring it as a gift or through a nominal purchase from a relative, or they may be purchasing it from an independent third party. In any case, the manufactured home loan involving land is still much more like a home-only loan than it is a typical real estate mortgage loan, with the ultimate cost of the home determined by the features selected by the customer and set out on an itemized manufacturer's invoice. Just as with a home-only loan, this invoice and/or a national pricing guide is reviewed by manufactured home lenders and utilized to determine a maximum loan amount.

Though the real property and the manufactured home both serve as security for the loan, a high percentage of land home loans, including most of those originated by 21st

Mortgage, involve the home being titled as personal property and not ultimately made a part of the real property on which it is located. Most manufactured homes are located in rural areas on real property that has limited value relative to the purchase price of the home. In the event of consumer default leading to a foreclosure, it is frequently necessary to relocate the home to a retailer site where it has better market exposure and can be resold. This is true even though a lien is retained on the real estate as additional collateral. The fact that many of the homes are relocated after default is further evidence that a real estate appraisal does not provide a good estimate of the manufactured home's value. Frequently a private property site will have a resale value of less than $5,000 on a $50,000 manufactured home loan.

The Agencies have posed a question in their supplementary information regarding construction loans and whether or not they should be excluded from the definition of higher-risk mortgage loan. They base this inquiry on the fact that "in construction loan transactions, an interior visit of the property securing the loan is generally not feasible because construction loans provide financing for homes that are proposed to be built or are in the process of being built." In positing this question, the Agencies clearly recognize the difficulties and impracticalities and are in effect questioning the usefulness of requiring an appraisal under §129H on a home that is not currently located on the real estate (because it is yet to be built). Requiring creditors and ultimately consumers to pay for an appraisal on a home that is not yet on the property would be impractical and require much more speculation and guess work on the part of the appraiser than a typical site-built appraisal. As such, it would be much less reliable or beneficial to either the creditor or to the consumer and ultimately only add unnecessary cost to the loan with no true benefit.

For similar reasons, the Agencies should exclude any loan secured in whole or in part by a manufactured home from the appraisal requirements of §129H. Requiring appraisals on these loans would not "provide a benefit to the consumers" and would "complicate, hinder, or make more expensive the credit process." As such, excluding these types of transactions is clearly within the Bureau's authority under TILA

We submit that the Agencies have reached an incorrect conclusion regarding the prevalence and/or feasibility of appraisals involving manufactured homes. As noted, 21st Mortgage does not currently order home appraisals on manufactured home loans involving real estate because they remain impractical and unreliable for the very reasons they are so on a home-only loan or a construction loan. Just like a construction loan, an interior visit of the home by an appraiser is either impossible (because the home is special ordered and yet to be built at the factory) or extremely costly (because the home is not yet located on site with the real property and could be as many as 50 miles or more away at a retail location or manufacturing facility). Additionally, there is a lack of both certified or licensed appraisers willing or able to appraise a manufactured home loan and of comparable manufactured home properties to perform an accurate, useful appraisal that would provide any real value to the consumer or the creditor.

620 Market Street, Suite 100 ◆ Knoxville, Tennessee 37902
800.955.0021 ◆ 865.523.6805 (facsimile)

Manufactured homes are an important source of affordable housing for lower to moderate income families, especially those in rural areas As the Agencies have pointed out in their Supplemental Information, the lack of available comparable sales and/or qualified appraisers is already an issue for traditional mortgage loans, and is even more of an issue for manufactured home loans Forcing rural consumers wishing to purchase a manufactured home to get a §129H appraisal will add additional, unnecessary cost and unreasonable delay to the loan (if an interior appraisal can be performed at all) and will have a negative cost benefit impact for the consumer.

We submit that in regard to lending on manufacturing housing, 21st Mortgage's model is both more cost effective and more indicative of value of both the manufactured home and the land than an appraisal as contemplated in §129H This is borne out in the fact that, during the recent real estate market crash, where home values were found to be over-inflated in appraisals that were wildly inconsistent and inaccurate, 21st Mortgage loan portfolio performance was much more consistent This was due in large part to the fact that 21st Mortgage utilizes manufacturer's invoice, not an appraisal, to determine its loan amount on the manufactured home, even in those instances when both the manufactured home and the land on which it will be located are pledged as collateral for the loan. As noted, the manufacturer's invoice and therefore the retailer's sales price (usually capped at a percentage of that invoice) are market-driven figures and therefore a more accurate indicator of a manufactured home's value at the time of purchase than a subjective determination by a appraiser who likely has little experience in appraising manufactured homes and who has little if any comparable sale data on which to base his or her determination of value In most cases, 21st Mortgage would require an appraisal of the vacant real property on which the home will be located if that real property is to be pledged as collateral with the loan That real property appraisal will be used in conjunction with the manufacturer's invoice and other factors to determine a maximum loan amount. In some cases, however, it makes no sense to the consumer or the creditor to require an appraisal on the real property as part of the loan For example, if the consumer is pledging a rural site in lieu of a down payment, and only limited infrastructure cost (utility improvements, driveway, etc) are being financed with the loan, then it is reasonable to assume that the real estate has limited value, even though it meets the lenders requirement of at least a five percent investment Requiring a section §129H property appraisal in this example is burdensome for the consumer by increasing the consumer's loan cost.

To require manufactured home creditors to conform their lending practices to the requirements of §129H will not only lead to less accurate results and increased cost to consumers, but will also result in many low balance land/home loans not being made. Consider for example that since the beginning of 2011, 21st Mortgage's average loan amount for a land home loan is approximately $65,000. Also consider that a typical appraisal can cost upwards of $500 and does not typically vary based on loan size. As such, the cost of an appraisal represents over .75% of 21st Mortgage's average land/home loan amount. Compare this to a land/home mortgage with a balance of $200,000 or more, where the cost of an appraisal represents .25% of the loan amount, or half a percentage point difference. At a time when the Bureau is also proposing making the appraisal costs part of the finance charge, forcing a creditor to add an unnecessary 75 basis points to the cost of their loan will cause them to reconsider whether that loan should be made.

We respectfully ask the Agencies to reconsider their position with regard to manufactured home loans secured by real property and their conclusions reached in the Supplemental Information. The Agencies must consider the uniqueness of manufactured housing and should conduct additional outreach with creditors like 21st Mortgage and other manufactured home lenders who make the majority of manufactured home loans. We submit that you will find that the lending models which utilize the manufacturer's invoice are much more cost effective, much more accurate and still provide consumers and creditors with ample protections from inflated home prices.

Comment 3:
<u>Regardless of whether the Agencies grant any further exceptions for manufactured housing, creditor owned properties should be excluded from the second appraisal requirements of §129H(b)(2). (Question 18)</u>

From the commentary and questions posed in the Supplemental Information, its clear the Agencies have recognized that there are some instances in which the second appraisal requirements of §129H(b)(2) should not apply. Among these possible exceptions under consideration by the Agency are those currently exempted from the restrictions on FHA insurance applicable to property resales in FHA's Anti-Flipping Rule, including sales by State- and Federally-chartered financial institutions. The Agencies should make this and other exceptions to the requirements of §129H(b)(2) and should make it clear that homes "acquired" by a creditor through foreclosure, deed-in-lieu or other legal means and then resold by that creditor or its affiliate, assignee, successor in interest or the like for a profit within 180 days of the "acquisition" should be excluded from the requirements of §129H(b)(2).

Comment 4:
<u>The Agencies Should Not Expanded Definition of Finance Charge. (Questions 6, 7 and 8)</u>

The Agencies have requested comment regarding its proposal to move to an "all-in" finance charge definition as first proposed by the Federal Reserve Board (the "Board") in its 2009 Closed-End Proposal and the impact that will have on making additional loans subject to the higher-risk loan appraisal requirements. We have previously submitted comments to the Bureau regarding its proposed change to the finance charge definition as requested under the Proposed Rules for Integrated Mortgage Disclosures (Docket No. CFPB-2012-0028) and renew our position that the proposed change is wholly unnecessary, not timely considering the other changes brought about by Dodd-Frank that must be implemented, will lead to little if any benefit for consumers and will increase compliance costs and burdens for lenders. We ask the Agencies and the Bureau to table this proposed change.

Conclusion:

In closing, we urge the Agencies to consider the above comments and the impact of the Agencies' proposed regulation on the manufactured housing industry and on consumers wishing to purchase affordable housing The benefits offered by a §129H appraisal on manufactured housing are minimal if not non-existent and are far outweighed by both the impracticality and unnecessary costs associated with such a requirement. The Agencies, or more particularly the Bureau, should exercise the explicit exemption authority granted it by Congress to remove manufactured home loans from the requirements of §129H.

We thank the Agencies for allowing comments on this proposed change. Should you require any additional information or have additional questions, please do not hesitate to contact us.

Sincerely,

Tim Williams
President, 21st Mortgage Corporation