AN EXAMINATION OF THE FEDERAL RESERVE'S FINAL RULE ON THE CARD ACT'S "ABILITY TO REPAY" REQUIREMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

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AN EXAMINATION OF THE FEDERAL RESERVE'S FINAL RULE ON THE CARD ACT'S "ABILITY TO REPAY" REQUIREMENT

Wednesday, June 6, 2012

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:20 p.m., in room 2128, Rayburn House Office Building, Hon. Shelley Moore Capito [chairwoman of the subcommittee] presiding.

Members present: Representatives Capito, Renacci, Pearce, Luetkemeyer; Maloney, McCarthy of New York, and Scott.

Ex officio present: Representative Bachus.

Chairwoman CAPITO. This hearing will come to order. We expect this afternoon's hearing to be interrupted as it already has been, possibly by another series of votes. So I would ask our witnesses to try to be patient with us as we try to get through the hearing.

Just some of the history of why we are here today, in March of 2011, the Federal Reserve finalized an ability to pay rule after Congress delegated rulemaking changes regarding the Truth in Lending Act as part of the Credit CARD Act of 2009. The Federal Reserve determined that when considering a consumer's ability to pay, card issuers must consider a consumer's independent ability to pay. I, along with my colleagues on the Financial Institutions and Consumer Credit Subcommittee, have significant concerns that the Federal Reserve Board's interpretation of the CARD Act could result—and I think it already has; I think that is pretty evident—in stay-at-home spouses being denied access to credit or having their access to credit severely diminished.

In fact, the Reserve acknowledged that even if a consumer had access to the income or assets of a spouse, they could still be denied access to credit and this is, in fact, happening. I don't believe this was the intention of the CARD Act. It is clear that the intent of Congress was to provide extra protections for borrowers under the age of 21, to try to get at the issue of solicitations that credit card companies are doing of our young people, causing them to run up debt that they are unable to pay.

Unfortunately, the Federal Reserve chose to go well beyond the intent of Congress and apply the requirement of an independent income to all consumers. We have heard significant concerns from many fronts. Some parties have warned that the result would be forcing issuers to consider a consumer's independent income, and consumers are seeing the real effects of this.

This rule could be especially punitive for women who are in a failing marriage or an abusive relationship. As I think about what some of the fundamental steps somebody who is maybe in an unhappy marriage or an abusive relationship would take, one of the fundamental, I am sure, pieces of advice is to try to establish credit, try to establish a financial footprint. I think that is good common sense anyway, but particularly for those who are trying to get out of an uncomfortable situation.

Financial independence is absolutely necessary to building a new life. Similarly, stay-at-home spouses whose husband or wife dies unexpectedly or divorces them could face similar challenges if they have not maintained a credit history.

Later this afternoon, I will ask for unanimous consent to insert into the record a statement from USAA, which is quite extensive and very instructive, in which they raise concerns about the adverse effect this rule could have on military families. According to their statement, nearly 50 percent of military wives do not work, and many of these families are already strained with the rigors of military service. The ability to pay rule threatens to further complicate the situation by potentially limiting their access to credit. Although the Federal Reserve drafted this rule, the responsibility for enforcement resides with the Consumer Financial Protection Bureau (CFPB).

Mr. Cordray, the Director, has indicated a willingness to provide greater clarity on this issue within the next 30 days. And I strongly urge him to do that. If legislation is necessary, we are prepared to act. I look forward to hearing from our two panels today. I hope Ms. Hillebrand will be able to provide an update on the CFPB's intention to rectify this rule.

And our second panel will be able to provide the members of the subcommittee with a better sense of how this rule is potentially limiting credit to consumers. On a personal note, I spent 15 years as a stay-at-home mom, and I realize the work that is done at home, whether it is a mom or dad staying home to raise a family, while uncompensated, is exceedingly important to the livelihood of the entire family. And we, as a household, worked together. I did a lot of the financial planning, all of the health planing, wrote all the checks and all those things when I was in that position.

I did give that position up when I was elected to Congress, I will say that. And so I understand really, this kind of hits me close to home, and I think it is really important for our stay-at-home spouses to be able to access credit. You never know when an emergency is going to come up, you never know when you are going to need it, and I think establishing credit is always a good thing. A lot of times, folks who are being denied credit have great credit scores, so it is not based on a credit score. It is simply based on whether or not you have income, which makes sense, and there are counter arguments to this as well.

With that, I would like to recognize Ranking Member Maloney for the purpose of making an opening statement.

Mrs. MALONEY. First of all, I would like to welcome the witnesses, and thank the chairwoman for holding this hearing. I believe it is a tremendously important issue, one that I have been working on for years, and I believe that this hearing is going to be helpful to focus the attention on it that it deserves.

We have just passed the 3-year anniversary of the Credit Cardholders' Bill of Rights, which I am proud to have authored during my time as Chair of this subcommittee. Because of the CARD Act, consumers have benefited from curbs on some traps and really tricks that card issuers use, such as raising rates any time for any reason retroactively on their balance, even if they paid on time and did not go over their limit. There are a whole host of improvements that really leveled the playing field between the consumer and the issuer. The Pew Charitable Trust did an independent report that stated that the CARD Act saved $10 billion in its first year, saved that for consumers, and complaints about credit cards have declined dramatically.

So the CARD Act, in many ways, is working for American families, but unfortunately, a Federal Reserve rule implementing a provision of the CARD Act, I believe was wrong, and misinterpreted the congressional intent in the area of the consumer's ability to repay their credit obligation.

The CARD Act contained two standards for assessing a consumers ability to pay: one for consumers under 21 years of age; and one for everyone else. The rationale was that students should not be able to rely on their parents' income to take out a credit card. Students, therefore, were required to show an independent means of income. All others were required to merely show an ability to pay.

In implementing the CARD Act, the Federal Reserve really did not keep the two standards and required everyone to show an independent ability to pay. I have met with them, along with Congresswoman Slaughter and others, numerous times on this, and because of their rule, that is why we are in the situation we are in today with the concern that stay-at-home spouses who do not have an independent form of income, but who have access to income, often control the family spending, as the chairwoman mentioned, often have assets, but they will not be able to take out a credit card without the consent of their spouse.

I certainly didn't come to Congress to roll back women's access to credit in any way, shape or form. And I feel this is an important issue. It harkens back to the dark days that I can remember when a woman had to obtain her husband's permission to open a checking account. This missing interpretation, this rule threatens the ability of those spouses who are stay-at-home moms to build their own credit histories and establish financial independence; this is very important. And as soon as the Fed put out its rule for comment, Congresswoman Slaughter and I met with the Fed, we wrote the Fed urging it to adopt the two different standards that were contained in the CARD Act. And we wrote again when the Fed adopted its final role urging it to study the issue and make changes to the rule if a negative impact was found.

We also wrote when the CFPB opened its doors in January and took jurisdiction over the CARD Act to ensure that it would study this and make changes if necessary. And I would ask unanimous consent to put those letters to the CFPB and to the Fed into the record.

Chairwoman CAPITO. Without objection, it is so ordered.

Mrs. MALONEY. The CFPB has the authority to change this rule without legislation. They have recognized that, and they have assured us that they are looking at this and will address it. I look forward to their comments. I believe you said in 30 days, they will be coming back, and I think that is important.

One thing we do not want is to find out that there has been a negative impact on the ability of stay-at-home spouses to secure a line of credit in their own names. This is the wrong direction for women or anyone who supports their families by working in the home. I understand that an argument has been put forward by some groups, and they have said that spouses can find themselves in a whole host of circumstances where they can no longer rely on family income to repay their debt. They cite divorce, for example. The same is true if a spouse loses their job, gets sick or has some other change in their financial circumstances.

However, the mere possibility of future adverse events is not and should not be how stay-at-home spouses are assessed for credit. So, I look forward to the witnesses today. And again, I think the chairwoman for calling this hearing. It is really important, and I hope we can get the changes that we need. I yield back.

Chairwoman CAPITO. Thank you.

I now recognize Chairman Bachus, the chairman of the full Financial Services Committee, for 3 minutes.

Chairman BACHUS. Thank you, Madam Chairwoman, for calling this important hearing. The way consumers pay for products and services is dramatically changing. Electronic payments through credit cards and debit cards now account for more than half of all transactions. Given the critical role that credit cards have come to play for individuals and the economy, Congress must protect consumers from unfair and deceptive credit card practices and ensure they receive useful and complete disclosures about the terms and conditions governing their cards. The policymakers must also keep in mind that protecting some individuals often results in imposing costs on others.

During the debate over the CARD Act, many of us warned that it would penalize some of the most responsible users of credit. Unfortunately, as we hear today, this has proven to be true. When Congress passed the CARD Act 3 years ago, no one imagined that the regulators would draft rules that discriminate against stay-at-home spouses. No one imagined that moms and dads who stay home to take care of their children while their husbands and wives go off to paid jobs, and as Chairwoman Capito said, sometimes to fight wars, would be denied access to credit because of their choices.

We must change the rules. I commend Chairwoman Capito and Ranking Member Maloney for working on a bill that I support, that ensures that regulators do not interpret the CARD Act in ways that discriminate against stay-at-home moms and other spouses who earn less than their husbands or wives. I look forward to the testimony of Ms. Hillebrand, and I yield back the balance of my time.

Chairwoman CAPITO. The gentleman yields back. The gentleman from Georgia for 3 minutes, Mr. Scott.

Mr. SCOTT. Thank you very much, Madam Chairwoman. I, too, think this is a very good hearing on the Federal Reserve's final rule on the CARD Act's ability to repay. But here is my main concern, and a couple of my colleagues have also expressed it: My main concern with the Fed's final rule is that it does not take into account the combined creditworthiness of married couples. For example, if spouse A is gainfully employed, but spouse B is unemployed, but yet looking for work, spouse B is not able to open a credit card account under the terms of this rule. And this is the main problem.

This also holds true for spouses who choose not to work outside the home. While they have no independent source of income, they are supported by their spouse, who does receive an income. Nevertheless, the Fed's rule would restrict access to credit to just those individuals who receive an income and this would unjustly exclude such spouses as stay-at-home moms and dads. I think that we certainly want to correct that within the rule. I think that is a major flaw in the rule. And hopefully, we will move to correct that. Thank you, Madam Chairwoman.

Chairwoman CAPITO. Thank you. I believe that concludes our opening statements. We will begin with our first panel. First of all, I would like to thank Mr. Cordray, who is the Director of the CFPB. We have had several conversations in which both the ranking member and I emphasized the importance of having a witness from the CFPB. I know he has a conflict today, he explained that, but I really appreciate Ms. Gail Hillebrand coming today to help us out here. She is the Associate Director of Consumer Education and Engagement at the CFPB. Welcome.

STATEMENT OF GAIL HILLEBRAND, ASSOCIATE DIRECTOR, CONSUMER EDUCATION AND ENGAGEMENT, CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Ms. HILLEBRAND. Thank you. Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee, thank you for the opportunity to testify before this subcommittee, and for the leadership you have already shown on this issue.

My name is Gail Hillebrand, and I am the Associate Director for Consumer Education and Engagement at the Consumer Financial Protection Bureau. I am honored to represent the Bureau here this afternoon.

Today's hearing is focused on a rule issued by the Board of Governors of the Federal Reserve System last April, and inherited by the CFPB on July 21st of last year. The rule implements the general ability to pay provision of the Credit CARD Act. The CARD Act, as you know, addresses a series of problems that existed in the credit card marketplace when the Act was passed in 2009. Overall, the CARD Act illustrates how sensible regulation can make life better, both for consumers and for responsible providers of consumer financial products and services. To give just one example, now consumers know when their payment is due because the date doesn't change every month.

When a major new set of regulations is put into place, there may be areas that warrant re-examination based on the actual experience with the regulatory changes. And the CARD Act regulations are no exception. Concerns have been raised that one element of the CARD Act, the ability to pay regulation, may have unintended and negative effects on stay-at-home spouses. The CARD Act says that a credit card issuer cannot open an account for a consumer unless the issuer considers the ability of the consumer to make the required payments. The Federal Reserve Board issued regulations to implement this provision, and then it amended those regulations to specify that when a consumer applied individually for credit card accounts, the credit card issuer must consider the consumer's independent ability to make the payments.

The Federal Reserve says, in essence, that only the income or assets of a person who is liable for the debt could be counted in considering the ability to pay.

Concerns have been raised about the impact that this rule could have on the availability of credit for those who are not employed outside the home or who work part-time outside the home. In some families, all of the adults are employed outside the home, and in others, someone stays home or works part-time. This is often, although not always, a woman.

Concerns have been voiced that the ability to pay rule could have the effect of limiting access to credit for a spouse who is not employed outside the home or who is employed part-time and who wants to open an individual credit card account rather than opening a joint account.

Here is what we have done at the Bureau about this issue so far. The regulation went into effect on October 1, 2011. On December 5, 2011, the Bureau issued a request for information seeking public input to identify areas for improvement in a broad variety of rules that the Bureau had inherited from other agencies. In that public notice, the Bureau specifically identified the CARD Act's ability to pay regulation as one potential area for change.

We acknowledged at that time that this rule may have the unintended consequence of precluding some individuals from obtaining credit that they are capable of repaying. We sought public comment on whether the specific regulation should be amended, and if so, how. We also encouraged the commenters to submit or identify data that the Bureau could use to analyze, and if possible, to quantify the potential costs and benefits of any changes they proposed, including a change in this ability to pay regulation.

In addition, while the comment period was open, we reached out to the credit card industry to request information from credit card issuers about the impact of this provision. The formal request for information set up a comment period until May 5, 2012, plus another 30 days for a reply to those comments. We extended the reply period to a total of 60 days in response to requests that people needed more time. This reply period just closed on Monday, June 4th, 2 days ago. We are now in the process of reviewing those responses as well as input we received from the individuals who have petitioned the Bureau to express their concerns.

In examining the ability to pay issue, the Bureau starts from three basic principles. First, we understand the importance of availability of credit to consumers and we are committed to promoting access to credit on a fair, equitable, and non-discriminatory basis. Second, we are equally committed to ensuring that lenders make loans that they reasonably believe consumers can afford to repay. No one benefits and everyone loses when loans are made to consumers who cannot pay them back.

And third, where we are called upon to make decisions addressing the balance between the goal of access and the ability to repay, those decisions should be grounded in the best available evidence of the actual impact of the proposed rule, or the particular rule. The Bureau had anticipated that those credit card issuers who recommended a change in the rule would have provided evidence about the actual impact of the ability to pay regulation, along with their comments suggesting a change in that regulation. Our preliminary review of the comments received suggests that they did not. We have asked a number of card issuers to share with us specific data that will bear further on this issue.

In light of the public concern and our ongoing responsibility for this regulation, we are looking closely at the regulation and the related commentary. We are looking to see if we can provide further clarity to mitigate the risk that stay-at-home spouses might be denied credit that they can, in fact, afford to repay. This examination will also have to consider the potential for other unintended consequences from specific changes to the rule of the commentary.

The Bureau is carefully considering options for providing guidance to bring greater clarity to the marketplace, and to mitigate potential negative consequences from the Board's rule. We expect to make a determination soon about how best to proceed. We intend to move forward as appropriate during the course of this summer.

In conclusion, the Bureau is committed to ensuring both access to credit and that consumers who obtain credit have the ability to repay. The Bureau is actively evaluating the regulation that we inherited from the Federal Reserve Board to ensure that both of these goals are served. Thank you for the opportunity to testify today. I look forward to answering your questions.

[The prepared statement of Associate Director Hillebrand can be found on page 32 of the appendix.]

Chairwoman CAPITO. Thank you.

I appreciate that, and I will begin the questions. As you know, a group of us, Members of Congress, sent a letter to the CFPB, I believe it was a bipartisan letter, in December about the rule, and you have pretty much outlined, I guess immediately after that, you opened it up for comment again; is that correct?

Ms. HILLEBRAND. I believe we received that letter dated December 6th, and we actually filed our request for comment on December 5th, but those two events were fairly contemporaneous, yes.

Chairwoman CAPITO. And then in the process of standing up to CFPB from July to, say, December, was this rule that was discussed or—I am certain there was a flurry of activity there, but how did the conversion from the Fed to the CFPB move forward from that time, from July to December? Was there a lot of discussion about this or did we already know it was know it was an issue that was causing problems? Did you already know it was an issue.

Ms. HILLEBRAND. Thank you for that question. Certainly, the fact that you wrote the Fed about this in May and copied us, told us there was an issue here. As we looked at which examples we should pull out to identify specifically to seek public comment upon, we included this in that list. We did that just 2 months after the regulation went into effect.

Chairwoman CAPITO. Then, the other question I have is—I have other questions, but one of the questions I have as we look at this, obviously this was part of a legislative effort under the CARD Act, then it was an interpretation by the Federal Reserve. And I don't know if you can help me out with this because I know you are in the process of looking at this, but do you anticipate that this is a legislative fix or is it a regulatory fix? You mentioned in your statement guidance, how do you see something like this rolling out in terms of either regulatory guidance or legislation?

Ms. HILLEBRAND. Of course, as you know, our job is to look at the regulatory side of that question. We are actively examining the regulation, as well as the official staff commentary, to determine if we can make appropriate progress on the regulatory side.

Chairwoman CAPITO. You mentioned in your statement that you didn't get data from the issuers. Do you mean, for example, how many people have been turned down, and in what circumstances. Is that the kind of data you are talking about?

Ms. HILLEBRAND. Yes, we did not receive enough data to determine how many people are being turned down, etc. We are still actively seeking that.

Chairwoman CAPITO. Have you had an progress in that? Are the issuers coming forward with that data for you?

Ms. HILLEBRAND. We are cautiously optimistic based on conversations that are currently occurring.

Chairwoman CAPITO. I notice that CFPB has a call-in line or a complaint line on your Web site. Have you received any notions about this issue through your phone line or your email line where you solicit complaints or concerns?

Ms. HILLEBRAND. Thank you for mentioning our consumer response line. For Members who want to provide that to their constituents, it is 1–855–411–CFPB, and also can be found at consumerfinance.gov.

We have published two reports about the nature of the complaints we are receiving on credit cards. We published one report covering about the first 3 months of the complaint line, and another one that covered July 21st through the end of the calendar year. The second one was in our Semi-Annual Report to Congress. We found that the top three types of complaints we received about credit cards fell into the same three categories for both of those time periods. Those three categories are: billing disputes; reports of identity theft, fraud, and embezzlement; and complaints about the APR or interest rates. These categories of major complaints have remained steady.

Chairwoman CAPITO. So complaints on being denied credit are obviously not in the top three as far as you can tell?

Ms. HILLEBRAND. That is correct.

Chairwoman CAPITO. What about the students under 21 years of age? Have you received any data on how that has changed from the CARD Act? I know that is separate from the issue we are talking about today, but it is wrapped up in the ability to pay rule. What have you found in terms of collecting data? Because I know the CFPB has talked a lot about being a data-driven agency.

Ms. HILLEBRAND. We are deeply interested in the problem of students and debt, and the situation that young people find themselves in today, particularly with the high amount of student loan debt. We have a special office for students that is studying these issues.

Chairwoman CAPITO. I am talking about credit cards.

Ms. HILLEBRAND. We are looking at student debt issues generally. I did not look at our complaint data specifically for the question of students and credit cards. We will be happy to get back to you and tell you what we have on that.

Chairwoman CAPITO. I guess the reason I am asking is that we already know that some people are being denied credit, who don't have independent incomes or are stay-at-home spouses. I am wondering if the students who don't have income, or who have minimal income, are being denied credit as well? That is obviously one of the points of the CARD Act, so that would be a good thing.

I now yield time 5 minutes to the ranking member for questions.

Mrs. MALONEY. When you put it out for comment, how many comments did you get back on this?

Ms. HILLEBRAND. They go through regulations.gov, so it is hard to know right after the comment period closes, which was only 2 days ago. We estimated there are 400 to 500 comments that we have received, on the streamlining notice as a whole, which included this and other topics. So we have to go through these to see how many are out there.

Mrs. MALONEY. Okay. And as I said in my statement, many of us believe that the Federal Reserve misinterpreted the CARD Act's provision, which set one ability to pay standard for consumers under age 21, probably students, and a different ability to pay standard for consumers age 21 and older. In your opinion, does the Federal Reserve adoption of the same standard for all consumers, regardless of age, conflict with congressional intent? I don't feel we could have been any clearer.

Ms. HILLEBRAND. Thank you for that question, Congresswoman Maloney. We will be looking carefully at all of the information, at the statute, at the regulation, at the data, and at the public comments. We will be doing that.

Mrs. MALONEY. And as you said, you haven't drawn any conclusions yet, but can you elaborate a little bit on what your process is, what you are going through on this issue? You had the comment period, and then you are going to review that, what exactly is your process on this?

Ms. HILLEBRAND. Thank you for that question. We have completed the comment period. It takes awhile to get comments from regulations.gov, so they are coming in now. We have some work to do since we have 400 to 500 comments to look at. We have also received other types of information from the public. I am quite certain that things will be said at this hearing that we will want to think about as well. And then, we will make some decisions.

Mrs. MALONEY. How did issuers assess a consumer's ability to pay prior to the enactment of the CARD Act? They assessed it as family income, right? How do the issuers look at it prior to the Federal Reserve's interpretation?

Ms. HILLEBRAND. One of the questions that we hope the issuers will have addressed in their comments to us is, have they changed the questions that that they ask on the application? Are they asking something different now than before? What are they asking? Have they thought about asking other questions that might help these consumers qualify?

Mrs. MALONEY. And does a married spouse or domestic partner who has no individual income have a different level of access to a claim on household income than a student or someone under the age of 21?

Ms. HILLEBRAND. I think that might be a question for a State law, which does vary in terms of who has a legal claim to income. We are looking at the statutory language of the CARD Act and at our Dodd-Frank mandate to encourage access to credit, and will be balancing those two factors with the facts.

Mrs. MALONEY. Many people feel very strongly about this. Do you think we will need legislation to correct this, or do you believe the CFPB has the authority under existing statutes to provide a solution? Do you have the flexibility to come forward with a rule, or will we have to legislate this change?

Ms. HILLEBRAND. The Bureau has full authority to amend this regulation or the commentary.

Mrs. MALONEY. So you could amend the rule and change it and it would have force of law?

Ms. HILLEBRAND. We can certainly amend the regulation consistent with the statute. We can't do anything we want, but consistent with the statute, we can amend the regulation and we are looking at that possibility.

Mrs. MALONEY. What is your sense of time for taking action?

Ms. HILLEBRAND. We intend to make a determination soon about how best to proceed. And we do intend to move forward as appropriate during the course of this summer.

Mrs. MALONEY. So could you say 30 days, 45 days? Do you have a timeframe?

Ms. HILLEBRAND. Summer goes until mid-to-late September. We have 400 to 500 comments, we are digging through them, we asked for more evidence, and we will be digging through that. Then, we will do the job in light of what the public has told us and what the evidence shows.

Mrs. MALONEY. Thank you. I hope you come forward with a forceful rule and change it back to one that allows spouses to have access to credit.

Ms. HILLEBRAND. Thank you.

Mrs. MALONEY. That was the standard long before this Federal Reserve rule came into effect.

I do want to say that some people are saying there could be a problem later on, a divorce, or this, that, or the other, but you don't legislate that; you don't look ahead for those types of negative downturns. My time has expired. Thank you.

Mr. RENACCI [presiding]. Thank you, Ms. Maloney. I now recognize myself for 5 minutes.

Thank you, Ms. Hillebrand, for being here. Many letters sent to the Federal Reserve during the ability to pay rule comment period suggested the rule was offensive, dismissive, and discriminatory towards women, especially nonworking wives, women in military families, and widows, and many of us agree. Do you believe the Fed incorporated these comments into its final ability to pay rule and does the CFPB take a different view?

Ms. HILLEBRAND. Thank you for that question. Of course, I can't speak to the internal processes at the Board of Governors at the time this was adopted by them. I can tell you that we will be looking at all perspectives and all of the available information in making a decision whether or not there should be a change to this regulation.

Mr. RENACCI. In regards to the same issue as far as household income, can you explain why total household income could not be the best measure of an individual's ability to pay credit card debt? I know I am looking into the future for you, but I am trying to get your thoughts into the future when you are analyzing all these letters that you are getting.

Ms. HILLEBRAND. Thank you. Of course, I can't tell you how it is going to come out. I can tell you that we are looking at the text of the CARD Act, the statutory text. We will be looking at the evidence, we will be looking at the public comments that have been filed, we will be reading what people said here today and determining if there is a change that can be made.

Mr. RENACCI. Okay. I am not sure you have seen this, but in Mr. Ireland's written testimony, he said that the current independent ability to pay rule is a step backward for human dignity and social equality and the cost is far greater than the costs in terms of dollars and cents. Does the CFPB share his assessment that this rule could be a setback to the Equal Credit Opportunity Act and reduce access to credit for stay-at-home spouses?

Ms. HILLEBRAND. We have heard that concern expressed by the public and will be taking it into account, very seriously.

Mr. RENACCI. I yield back the remainder of my time, and recognize the gentlewoman from New York, Ms. McCarthy, for 5 minutes.

Mrs. MCCARTHY OF NEW YORK. Thank you, and thank you for having this hearing so that we can try to clear up this issue.

Ms. Hillebrand, I understand that you are all looking at this issue. We also have been seeing what the potential negative impacts of the current ability to pay provision is doing. I was just wondering what kind of research and data you are collecting from the credit card companies to see who is worthy of getting a credit card, and also, it was mentioned a little bit here too, how are you looking out for our military families, being that we have usually one spouse at home, and one spouse possibly being deployed, how has the ability to pay provision impacted our military community? They are at an extreme disadvantage if one spouse is deployed and not able to fill out the credit form on behalf of the stay-at-home spouse.

Ms. HILLEBRAND. Thank you. You identified exactly the questions we are trying to get information about from the card issuers who serve these communities. Have they changed their underwriting? Are they denying more people? What do we know about the gender or other characteristics of those people? We don't have that information from them yet; we are still trying to get it.

I will say on the issue of military families, the Bureau is deeply committed to helping to encourage practices in the financial services marketplace that serves military families. We have a special office in my division, the Office of Servicemember Affairs, run by my friend and colleague, Holly Petraeus, specifically looking at issues that affect military families. There has been some progress in recent months on the issue of Permanent Change of Station Orders and how that affects military families and their financial situations, but that is a different issue than today's topic. We are deeply interested in making certain that those who protect and serve us are protected and served by the Bureau and by the financial system.

Mrs. MCCARTHY OF NEW YORK. Thank you. I guess what I am trying to figure out—our intent was never to go where we are going right now. The intent was really looking at our young college kids who were abusing credit cards, not realizing they actually had to pay them off some time.

And I thank you for trying to unwind this, because we certainly don't want to penalize anybody. If you are married, and you are basically working with your spouse to pay all the bills and everything, that is basically something that has been going on forever. We do certainly have an awful lot of single moms out there too, and the only way you can really move ahead is by having—I can think of going way back when I was young trying to get a credit card, obviously I just started a job, it was really low paying, but there was a department store that looked at women like me and was able to give me a credit card.

And with that, I would spend every month, but pay it off every month, until I could build it up and then go up to a better credit card. That is the only way you can build up credit which, in this world today, that is what you need. So I think the intent was excellent. I just think that we need to work this over and hopefully, with your help, we will be able to. Thank you, I yield back.

Mr. RENACCI. Thank you, Mrs. McCarthy. I now yield 5 minutes to the gentleman from Missouri, Mr. Luetkemeyer, for questions.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Ms. Hillebrand, I just left a meeting a while ago, and we were discussing with the groups who were there, the unintended consequences of bureaucratic rules that they were going to have to live with. It seems we are having a hearing here today in the same situation. We have the government trying to make rules, bureaucratic rules to try and implement things that they think are righting wrongs that they see out there. Now, we have unintended consequences that we have to deal with again. It is frustrating to see this.

I hope that you take from this as a CFPB which has the rulemaking authority to make sure that when you promulgate a rule, you don't have these unintended consequences, and you thoroughly study this, and you thoroughly go through it with all the documents and all the documentation statistics that makes sure it doesn't happen again. Because I am sure as your Bureau goes through the rulemaking process here shortly, with all the rules you will have to implement with all the Dodd-Frank stuff, you are going to be doing a lot of rulemaking, and I hope you take a lesson from this. Are we connecting?

Ms. HILLEBRAND. Yes, Congressman, we certainly are.

Mr. LUETKEMEYER. Okay. I understand that not only do you make this rule when you promulgate it, but there is also a cost to it for the compliance by that individual entity or group or whatever, and that cost needs to be factored in as well. I think it is very important.

Ms. HILLEBRAND. Yes.

Mr. LUETKEMEYER. It is interesting. First, we are trying to set standards—this particular group of people had access to credit but it wasn't good enough, so now we have to make sure they don't have access to credit, and now we have let the pendulum swing too far, so now we have to go back and make sure they have access to credit. The pendulum is going back and forth, back and forth. It is government in the middle of something that really is a private sector matter, I think. Let the private sector decide who can get credit because at the end of the day, they are the ones who have the risk, they are the ones who put their own assets on the line to provide coverage for somebody if they pay their bills with a credit card.

It is interesting that we in the government think that we can do a better job of managing their businesses than they can. I think, again, it goes back to the rules that we are promulgating, and we have to be very careful with those, because now we have a situation where we have some unintended consequences with the individuals who were single, through no fault of their own perhaps, or whatever their lifestyle or situation is, and there we are.

When you were discussing with—I know Ms. McCarthy asked the question with regards to information that you are getting from individual companies, the credit card companies themselves. Is that information proprietary or does it have to comply with some privacy laws or anything to get that from them, or do you just have full access to it and they just haven't complied yet?

Ms. HILLEBRAND. We have made a request for voluntary submission of information. We are not requesting any personal indentifiable information; we are not asking for people's Social Security numbers or any of that sort of thing.

Mr. LUETKEMEYER. So at this point, you haven't received information from—you don't know the impact that it is having on access to credit for individuals who are single that have some sort of identifiable income?

Ms. HILLEBRAND. We have received some information from one issuer, and it is not sufficient to answer this question. We are actively seeking additional information.

Mr. LUETKEMEYER. Whenever you get done with this, you have the full power, as I understand, to change regulations. It is a Federal Reserve regulation that you now are authorized to enforce and you have the full authority to amend it as you see fit; is that correct?

Ms. HILLEBRAND. We have the full authority to amend the regulation consistent with the statute itself.

Mr. LUETKEMEYER. I'm sorry?

Ms. HILLEBRAND. Consistent with the statute itself.

Mr. LUETKEMEYER. Okay. Do you have a timeframe? I know you have the question already that with regards to how you are going to be through this, but I didn't hear any timeframes. Can you give me a timeframe? Is it going to be 30 days, 6 months, 3 years, just boil it down to some general timeframes.

Ms. HILLEBRAND. I will give you the best timeframe that I can.

Mr. LUETKEMEYER. Okay.

Ms. HILLEBRAND. We expect to make a determination soon about how to best proceed, and we intend to move forward as appropriate during the course of this summer.

Mr. LUETKEMEYER. I'm sorry?

Ms. HILLEBRAND. This summer.

Mr. LUETKEMEYER. So by the first of October, roughly, we should have a rule, consumed all the information and come up with a final decision what you are going to do with this rule?

Ms. HILLEBRAND. That is our present intent, sir.

Mr. LUETKEMEYER. Interesting. With that, Mr. Chairman, I see my time is about up. I will close and yield back the balance of my time. Thank you.

Mr. RENACCI. Thank you, Mr. Luetkemeyer. I want to thank you, Ms. Hillebrand, for being here. The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to this witness and to place her responses in the record. And you are dismissed at this time. Thank you.

Ms. HILLEBRAND. Thank you, sir.

Mr. RENACCI. I want to welcome the second panel this afternoon, and recognize each of them for their statements. The first will be Mr. Kirk Semme, senior vice president, Charming Shoppes, Inc., on behalf of the National Retail Federation.

STATEMENT OF KIRK SIMME, SENIOR VICE PRESIDENT, AND TREASURER, CREDIT AND CORPORATE FINANCE, CHARMING SHOPPES, INC., ON BEHALF OF THE NATIONAL RETAIL FEDERATION

Mr. SIMME. Thank you, Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee. I am honored to appear before the subcommittee today. My name is Kirk Simme, and I am the senior vice president and treasurer, credit and corporate finance, for Charming Shoppes. We are a leading women's apparel operator for women's apparel for Lane Bryant, Fashion Bug, and Catherines Plus Stores. We operate more than 1,800 stores nationwide, along with related e-commerce Web sites.

In my capacity, I oversee the company's proprietary credit card operations. And I was previously the president of the Spirit of America National Bank, the company's wholly owned credit card bank which manages private label credit card operations.

We currently have more that 2.7 million credit card accounts, which represents approximately 4 percent of the U.S. female population. I am here today on behalf of the National Retail Federation to testify about the Federal Reserve Board's final rules of the

CARD Act of 2009 clarifying the requirements pertaining to if a cardholder has the ability to make the required minimum payments.

Just like us, many NRF members offer credit to our customers through proprietary and private label credit cards, and thus, we and our customers are interested in and affected by the final Fed rule. In an effort to address the concern that some customers under the age of 21 may be overloaded with debt, the CARD Act contained a provision requiring these consumers, when applying for a credit card, to affirmatively demonstrate they had income or assets necessary to repay any grant or extensions of credit line. Given their young age, many do not have substantial credit histories sufficient for all credit grantor's to make sufficiently precise decisions, thus the requirement to explicitly demonstrate sufficient income or assets, we believe is reasonable.

However, when issuing the rules in March of 2011, the Federal Reserve Board went too far, and affected the ability of credit card issuers to rely upon household income when issuing credit, and considering increases in credit limits even when the applicant is above the age of majority. In doing so, the Board ignored the CARD Act's distinction between an explicit income determination for minors and the more generalized ability to pay the determination for adults.

Instead, under the Federal rule, the credit grantor is required to consider a consumer's independent ability to make the required minimum payments, and under the terms of the account, based upon consumer's independent income or assets and current obligation, regardless of the customer's age. Historically, credit card issuers have been able to make informed decisions on applicants over the age of 21, and an ability to repay using their years of repayment behavior. This is an important distinction because adults, unlike minors, have managed their own financial affairs which have demonstrated through their payment records and their credit information which we as retailers have used as a way of predicting the probability of repayment, have always considered the ability to repay in making decisions that we extend to our customers.

Techniques including automated inquiries to credit reports, credit scores, and other consumer's individualized performance are the measures that we use in terms of determining a customer's ability to pay. As a former bank president, I know that both independently and the private label contacts, retailers and our bank partners have always had a vested interest in making prudent credit decisions to be sure their customers continue to pay.

With respect to the customers we serve, our own surveys indicate approximately 1 in every 6 of our customers are homemakers, and 1 in 6 are retired. By imposing these ill-considered income requirements on adults, I believe the Federal Reserve has caused the following consequence which could affect millions of people. Stay-at-home spouses are adversely impacted in a significant manner; their ability to establish their own credit histories and obtain credit lines is severely encumbered. The Board suggestion that stay-at-home spouses who are predominantly women can open joint accounts, or as an authorized user, ignores the vital role that these women play in their households. They are responsible for running the households, managements, finances, and making purchases of household items, clothing, furnishings, and much more. Often, these purchases are made during the absence of working spouses at home, outside the home, therefore making it an impractical option to open a joint account or even get an authorized user. This inconvenience is exacerbated for military families because of the increased likelihood that the employed spouse is away from the home.

We as an organization employ many individuals, and we operate in 48 different States, many of which are close to military bases. Military families are already making great sacrifices in order to serve our country, and they should not be subject to unneeded inconveniences. It is highly unlikely this was Congress' intent when the CARD Act was passed.

Furthermore, many retailers offer extra discounts or benefits for opening new accounts. Without the ability to realistically open a new account—and we have seen a decrease in credit card applications—stay-at-home spouses are effectively denied the opportunity to save money for their households. Stay-at-home spouses who have become widowed, divorced or those who are currently in abusive relationships are placed at a real disadvantage.

The Federal rule has placed stay-at-home spouses in the untenable position of either lying about their independent income, which might border on bank fraud, or if meeting even a modest credit line increase, a point of sale potentially being embarrassed in front of several other customers when they are declined. Although we do not believe that this was intended, the Board's interpretation of the law may have the potential effect to undo many things that were provided for women in the past.

I have submitted these comments previously to the Board, so I will continue on to conclusion to wrap up from the time standpoint.

In conclusion, I believe that Congress should take some further action, and the CFPB should revise the rules to reflect Congress' true intent as demonstrated by the legislative language—income and asset information should be collected from those below the age of minority who cannot demonstrate that they are financially independent of their parents. For those above the age of majority, a simple demonstration of the ability to repay is sufficient. If and to the extent income data is necessary for making such determination, conservative income estimators should be allowed to be used. I am pleased to answer any questions, and I thank you for allowing me to present my statement.

[The prepared statement of Mr. Simme can be found on page 45 of the appendix.]

Mr. RENACCI. Thank you, Mr. Simme. I now want to recognize Mr. Oliver Ireland, partner, Morrison & Foerster, LLP, for 5 minutes.

STATEMENT OF OLIVER I. IRELAND, PARTNER, MORRISON & FOERSTER LLP

Mr. IRELAND. Good afternoon, Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee. My name is Oliver Ireland, and I am a partner in the financial services practice at Morrison and Foerster's Washington, D.C. office. I have over 35 years experience in financial services issues. I worked for the Federal Reserve System for 26 years, and spent 15 years as an Associate General Counsel at the Board of Governors in Washington, D.C. One of my earliest experiences in the Federal Reserve System was working on the rules to implement the Equal Credit Opportunity Act, which prohibited discrimination in the granting of credit on the basis of sex and marital status. More recently, I worked with credit card issuers to implement the provisions of the Credit CARD Act in 2009, including, in particular, the provisions of Section 109 of the Act on ability to pay.

Credit card issuers have long considered applicants and cardholders' ability to repay credit card accounts based on sophisticated credit risk evaluation models. The statutory language could have been implemented by allowing issuers to continue existing practices. Nevertheless, the Board chose to implement this requirement by adding the further requirement that the ability to pay determination be based on the consumer's independent income or assets and current obligations.

Card issuers have found that income is not a particularly useful predictor of repayment in the case of smaller lines of credit, although it tends to become relatively more important as the size of the credit line increases. In addition, the independent income rule fails to recognize that family households are typically joint economic enterprises. For example, the largest part of household debt is typically a home mortgage that is a joint obligation of a husband and wife. If incomes are considered individually, but debt is considered jointly, this mismatch not only complicates the credit granting process, but also demonstrates the basic illogic of the independent income approach.

Second, where a married woman does not work outside the home, the married woman may have little or no income to support credit in her own name, and therefore may be ineligible to obtain a credit card even though she is responsible for managing the household, including the family finances. The ability of married women to get credit was a key concern of the Equal Credit Opportunity Act.

The independent income requirement makes it difficult for married women to open credit card accounts, particularly retail accounts because they will have to have their husband complete the application. This inconvenience, or in some cases impossibility, can translate into lost discounts on in-store purchases. More importantly, the rule is a step backward for human dignity and social equity.

A more practical and equitable rule would base ability to pay on the income that an applicant states that the applicant is relying on to pay the debt with a safe harbor for consideration of household income. While this rule would raise issues as to definition of household, the risk that applicants might list income inappropriately is limited and would pose no additional risk to credit card issuers. Credit card issuers typically use an ability to pay analysis to deny credit that otherwise would be granted rather than to grant credit that otherwise would have been denied.

Further, while extending credit to married women who do not work outside the home and who may not be able to rely on future income from their husbands in the event the marriage is dissolved could conceivably expose credit card issuers to credit risk. This is not the only life event that could lead to this result. And I do not think that these concerns outweigh the unfair treatment of married women and the unintended consequences of the current rule. Thank you, and I would be happy to respond to any questions.

[The prepared statement of Mr. Ireland can be found on page 36 of the appendix.]

Chairwoman CAPITO. Thank you. Our final witness is Ms. Ashley Boyd, campaign director of MomsRising. Welcome.

STATEMENT OF ASHLEY BOYD, CAMPAIGN DIRECTOR, MOMSRISING

Ms. BOYD. Thank you. Good afternoon, Chairwoman Capito, Ranking Member Maloney, and members of the subcommittee. I am Ashley Boyd, campaign director for MomsRising, a nonprofit, nonpartisan advocacy organization dedicated to ensuring and protecting family economic security. Since our founding in 2006, MomsRising has been fighting for legislation and public and workplace policies that will help families achieve or maintain financial stability. Our partners in that fight include over 1 million MomsRising members throughout the country and more than 100 aligned organizations.

First and foremost, I want to establish that MomsRising fully supports the protections of the Credit Accountability Responsibility and Disclosure Act. We are, however, concerned and share your concern about the unintended consequences of the law on stay-at-home parents, widowed or divorced spouses, and spouses in abusive relationships. We understand the perils of unpayable credit card debt and the burden that can put on individuals and families. We applaud all the efforts to protect consumers from the egregious and predatory practices some credit card companies engage in, practices that can trap people in a cycle of unending and unpayable debt.

Holding a credit card is a privilege that must be earned by establishing and maintaining good credit. We all know too well that too often young adults have not been educated about the importance of using credit cards wisely, and have been given excessive lines of credit far exceeding their ability to pay.

We also support the protections in the law that help give American families the tools that they need to strengthen their economic security and the protections from misleading and unfair practices involving payment due dates, late fees, and over-the-limit fees.

According to a report recently released by the nonprofit, nonpartisan research and advocacy organization, Demos, because of information which the card companies are now required to provide to consumers by the CARD Act, one-third of households are paying down their balances more quickly. The Demos report also finds that the CARD Act contributed to a dramatic decline in the number of households being charged late fees from half of all households in debt being charged late fees in 2008 to just 28 percent this year. Additionally, many fewer households are experiencing increasing interest rates or are being charged over-the-limit fees.

We applaud these changes and we know that they are increasing economic security. Credit cards are a critical financial tool for many families. As the economy continues to struggle out of the recession, some households must rely on credit cards to purchase basic necessities such as groceries, household goods, and more.

While MomsRising strongly supports the CARD Act, we are extremely concerned about this aspect, the Federal Reserve Board's interpretation of the ability to repay provision.

And that is the reason why I am here today. Requiring a credit card company to consider individual rather than household income in all cases may unfairly and unreasonably impact stay-at-home parents who have contributed to the sound management of their household's finances. It is a reality today that most adults need credit cards to establish a credit rating in order to get a mortgage or a loan or even to rent a home or apartment. More than convenience, credit cards have become a necessity for many, and that is true for stay-at-home parents as well as those in the workplace.

Last month, MomsRising and Change.org delivered more than 45,000 signatures on a petition to the Consumer Financial Protection Bureau to reconsider the ability to pay rule. We were able to get those signatures because of the moms and other stay-at-home parents who have been harmed or could be harmed by this regulation as it stands. We heard from many, many parents, and I want to share with you just a couple of stories that we heard. I think they illustrate very well this issue.

Lisa, a stay-at-home mother from Georgia, shared that soon after the new rules went into effect, she met her emotionally abusive husband and plans to get a divorce against her husband's wishes. In the meantime, she has neither the money to hire a lawyer to proceed with the divorce nor access to credit without her husband's approval. Since he is opposed to the divorce, she feels trapped.

Tricia of Virginia was married for 11 years and a stay-at-home mom most of that time. Although she came into the marriage with amazing credit, her husband was an irresponsible spender who made poor financial decisions, leaving them both with terrible credit histories. After her husband left her and her children recently, Tricia struggled to get any credit in her name due to this poor financial management and having no credit cards solely in her name. This has had devastating consequences for her as she tries to make her way forward and be a responsible mother. And I thought I would share with you directly what she said. She says, "I am not a fan of credit cards but trying to get a rental house was a huge nightmare because I was a stay-at-home mom at the time and all the agencies required my husband to co-sign on our lease due to my limited credit history. I can't get a loan for a new car even though the 13-year old one that I have has cost us more in repairs than the monthly payment a more decent one would. It has come up against me and my children and has made it extremely difficult for me to obtain any kind of security and peace of mind that I need to start over."

In conclusion, I want to share that rejecting household income as a basis for credit card qualification sends an insulting message that stay-at-home parents have no economic value and are as credit unworthy as an unemployed college student. In reality, they contribute as much to their household's credit rating as the family breadwinner because in most cases, they are responsible for managing their family's budget. We believe that stay-at-home parents should be exempt from the current interpretation of the ability to repay provision of the CARD Act if data show the interpretation is truly unfairly limiting credit for them.

We fully support and applaud the goals of the CARD Act and the ability to pay provision of the Act. However, the Federal Reserve's interpretation of this provision has created unintended consequences by unfairly punishing parents who do not work for pay outside the home. This must be addressed. Chairwoman Capito and members of the subcommittee, I thank you for the opportunity to address this issue. Thank you for taking the time to listen to me, and most importantly, to the voices of moms and dads across the country who know that a credit card is an essential financial tool in today's society. Thank you.

[The prepared statement of Ms. Boyd can be found on page 28 of the appendix.]

Chairwoman CAPITO. Thank you. I want to thank all of you. I would like to ask unanimous consent to insert the following statements into the record: USAA; the Financial Services Roundtable; the Retail Industry Leaders of America; the ICBA; and Women Impacting Public Policy. So without objection, I will insert those into the record, and I will begin my questions.

Mr. Ireland, in some of the reading about this, there was some discussion about the difference between an ability to pay and a credit history or a credit score. I alluded to it in my opening statement, that somebody who doesn't have independent income can have, in some ways, a better credit record, a better credit score than those who do have an independent income. Do you have any correlations on that or how this rule could be reformed to look more maybe at credit history or credit score as opposed to independent income?

Mr. IRELAND. Chairwoman Capito, when we looked at the language of the CARD Act as the CARD Act was passed, working with issuers, they didn't really have any problem with it because that is what issuers did. And historically, they analyze ability to repay. They don't want to grant unsecured credit to someone who can't repay. A mortgage is a different issue because you have an asset to go after. If you are granting credit card credit, all you have is their ability and willingness to repay, and so credit card issuers typically have fairly sophisticated models that they have developed over years that include credit scores, their own experience, and so on to analyze a credit risk for relatively small lines, until you get into very large credit lines, which often turn out to be small businesses. For example, income is not a very good predictor of credit risk. And so, while some issuers would ask for income, they would use that for line assignment purposes, size of the line assignment, if somebody was seeking a particularly big line, but they would rely on the credit risk matrix that they had for granting credit.

When the Fed proposed the original rule, they didn't have the independent language in there, and people had to focus on income and assets which, in some cases, would require people to ask additional questions, and to factor that in. And then when they added an independent, it threw a monkey wrench into the whole system. But the procedural way that most issuers use this is they run somebody through their risk matrix and say, do you pass my risk matrix? And if you don't pass the risk matrix, it is over; there is no further consideration. And then, they go through and they do an ability to pay analysis to comply with the Fed rule based on income and assets, and that will knock people out or reduce the line that might otherwise have been granted.

So if you look at historic underwriting standards, what this does is it throws a consideration in that historically credit card issuers haven't found terribly useful, but it occurs after the other considerations have occurred. So basically, all it does is deny people credit who probably are good credit risks.

Chairwoman CAPITO. Thank you. Mr. Simme, as a retailer, what percent—you might have said this in your statement, and I apologize if you did—of your business is conducted on credit cards?

Mr. SIMME. It is approximately 30 percent, Madam Chairwoman. The private label credit card, again, as was mentioned earlier, most customers start with basically a store card or a house card as their introduction to credit. And I follow Mr. Ireland's comments, that we have used sophisticated credit scoring models for many, many years that look at things that don't include income, things that may include the fact that you established a bank account or that you have been in your residence for an extended period of time. Since credit represents 30 percent of our sales, we are very, very concerned about the change that would impact a substantial portion of our continuing sales.

Chairwoman CAPITO. Are the remainder of your sales cash and check?

Mr. SIMME. I want to say about 15 to 20 percent are cash and the remainder are other forms of credit. So in our proprietary credit world, we are competing against the bank card market so that customers using proprietary credit allow us to make sure that we are keeping track of our customer's purchases and really using our card base as a kind of communication source.

Chairwoman CAPITO. In MomsRising, I am curious to know, Ms. Boyd, you mentioned some moms and dads—I am sure you have some dads in there who are stay-at-home dads. I am just curious to know, are you seeing a rising percentage of this getting involved with your group with the same kinds of issues that a stay-at-home mom—

Ms. BOYD. I think one of the things that has been an interesting byproduct of the recession is that I have read that the ranks of stay-at-home dads are increasing, so that if there has been dual income earners, whoever keeps their jobs goes out in the workforce, and sometimes it is the dad who has lost their job and stays home with the kids. So it has been an issue that stay-at-home dads have been tracking. We don't have—like I said, we generated 45,000 signatures. We don't know the percentage of those who are moms or dads or those who have been directly impacted. But I think—I am happy to see the inclusive language of stay-at-home parents since stay-at-home dads are experiencing the same thing and are experiencing the same concerns about their credit.

Chairwoman CAPITO. I think it is important for the whole—

Ms. BOYD. Absolutely.

Chairwoman CAPITO. —breadth of the issue to make sure it does—women are in that group more, but more and more frequently, it is men as well. Mrs. Maloney?

Mrs. MALONEY. First of all, I would like to thank all of the panelists for being here, particularly Ms. Boyd. I am one of your 1 million MomsRising, so I read your emails every day. And the 45,000 signatures you got is pretty impressive. Can you give us a little history of it? When did you go online with it? That was one petition I didn't sign. I must have had a heavy day that day. I didn't read my email. And have you submitted your list to the CFPB?

Ms. BOYD. Yes, we have. So we started—one of our members who is here today, Holly McCaul, actually—

Mrs. MALONEY. Where is Holly? Thank you, Holly. Good work.

Ms. BOYD. She actually wrote our general inbox and said that she had experienced this issue and was really surprised. She personally has an amazing credit score, one that we would all probably seek to have, and has a good income between she and her husband, but is a stay-at-home mom of two. And I remember getting the email from her. I was stunned to think that this would be impacting stay-at-home moms in this way. And I think for those of us who appreciate and value and have the experience of being stay-at-home parents know what hard work it is. So it just felt like a slap in the face to me and millions of others.

So we launched a petition in October—no, I guess it was in December of last year, and then went back out to our membership in February. It was in April that we partnered with Change.org, which also runs online petitions. So we have two complementary petitions, and together we have generated 45,000 comments. A couple of weeks ago, we did deliver our petitions to the CFPB and they were very generous and welcoming to us and appreciated our input.

We had a brief meeting with Director Cordray and he thanked us for our efforts. And we pledged to help give them the data that they may need, although it may be anecdotal and not in the mass quantities that they had hoped for from the credit card industry. We did pledge to help them in any data gathering that they needed to assess the impact of this rule.

Mrs. MALONEY. I think that is terrific. I would like a copy of your 45,000 comments.

Ms. BOYD. It is 12,000-plus here, to give you a sense. And I can give—

Mrs. MALONEY. I would love it. I am going to be speaking on this later on at a caucus meeting so I could flash it around—45,000 is really, really, really, really impressive.

Ms. BOYD. Thank you.

Mrs. MALONEY. Good work. You have raised the issue to everyone's attention, and it is an important issue, and it certainly was not the intent of the legislation. But since we have Mr. Simme here, I really want to know, how does the Fed's formulation of the ability to pay rule work on consumers who are at a point-of-sale, and they are getting a credit card at one of your retail stores, how does it work? Can they get the credit card, the stay-at-home moms, or what is the process there?

Mr. SIMME. The process is exacerbated by the fact that most of us have gone ahead and retrofitted all of our registers now to accept the keying of income at point of sale. For example, Mr. Ireland had mentioned income traditionally, because we are issuing low credit lines. It really hasn't necessarily been as predictive an indicator as the indicators I suggested earlier. So the problem is that retrofitting process obviously costs money, and obviously the discussion prior to when these laws get implemented here, there is a financial cost for retailers. We take our compliance responsibility seriously, and we want to be absolutely positively certain we do everything possible to comply in every way. So as a result of it, it definitely has had some impact on us. And quite frankly, it might be very hard to measure. Certain customers may just no longer apply thinking that they will be required to put income information into the process, therefore, it is almost more of a deterrent than anything else. It is very hard to measure.

Mrs. MALONEY. As one who represents the retail capital of the world, Madison Avenue, which probably has more retailers than anyone, how would the retailers like to see this resolved, how would you like to see this resolved?

Mr. SIMME. I think we would like to see it resolved by simply going back to the methodologies we have used in the past, using our tried and true credit scoring models. Again, most of us, including all the retailers in New York, use an automated instant credit process are probably processing 99 percent of their private label credit applications.

Mrs. MALONEY. Since I have the microphone, I want to ask really an unrelated question but a very important one. In Dodd-Frank, one of the areas I worked on was the interchange fees where they were lowered for merchants when they accept debit cards. And it was said that the merchants would then, with the savings, provide it over to consumers. But I am hearing from consumers that they haven't had any benefit from this. Could you just comment on that and how the interchange fee is working and any comments that you have? And consumers haven't seen the savings that they said they would get from the retailers. If you could comment?

Mr. SIMME. Certainly, we finally have the option now to give back discounts to customers where it was not permitted in the past if the customer used a debit card. And a lot of us are in the process right now of looking at that technique of figuring out within the networking environment how we can basically now re-route transactions over different networks to save money. And I will say that we have seen substantial and new benefits in terms of the reduction of the Act so far.

Retail is a competitive business. We provide basically benefits back in terms of lowering our merchandise retail prices to our customers, and as an offset, we did experience increases in our commodity prices, especially with cotton prices this past year. But as a result of other savings, for example, debit cards, we are able to continue to lower our prices to our consumers.

So I think you will find the retailers provide benefits back to customers in different ways, whether it is extended services, for others, or basically by lowering fees in other areas. But I think that overall, we were certainly in a much better position than we were last year. We appreciate your support and your efforts, and we were very happy with the outcome.

Mrs. MALONEY. My time has expired, but I just wanted to thank Mr. Ireland for his incredibly thoughtful presentation. Thank you very much. I wish I had time for a question. Anyway, I yield back.

Chairwoman CAPITO. Mr. Renacci for 5 minutes.

Mr. RENACCI. Thank you, Madam Chairwoman. I want to thank all of you also for being here. I do have some serious concerns with this final rule and its effect on stay-at-home moms and dads and really military families too. Ms. Boyd, you talked about the 45,000 signatures that you submitted, and that is great work. And you also said that you met with Mr. Cordray. I just wanted to find out, did you feel you got information back, and do you have a comfort level that at least they are looking at it and your concerns are being addressed?

Ms. BOYD. Yes. Thank you for the question. Absolutely. They were very gracious. And Mr. Cordray, Dr. Cordray, thanked us for our work and for being active on the issue and said how helpful that was to him and his work. So yes, I felt that they listened to us and our concerns. And the representative here today pledged to look into it, and we felt like that was very earnest and genuine.

Mr. RENACCI. Did they give you an idea when they would get back to you with some of your concerns?

Ms. BOYD. A similar timeframe of this summer. So I think there is some consistency there. But I felt like they also expressed that the public concern, and certainly your legislative concern on this matter had raised the visibility of this issue within the Bureau, and they were taking that very seriously.

Mr. RENACCI. Thank you. Mr. Ireland, the Equal Opportunity Act was originally enacted to ensure that women would gain access to credit, access that was generally unavailable at the time of the ECOA's enactment, especially for women who did not have significant independent assets. Do you believe that the Fed's ability to pay rule discriminates against certain credit applicants on the basis of their gender or marital status?

Mr. IRELAND. I believe it has that effect, yes. And I believe there is—if you look at the demographic information in my written testimony from consensus data, we tried to illustrate how that effect is likely taking place.

Mr. RENACCI. So you would say that it is in direct relationship to the Equal Credit Opportunity Act, it is actually totally against it, I assume?

Mr. IRELAND. I was stunned.

Mr. RENACCI. Mr. Simme, and again, this goes back to really elaborating on how it pertains to your stores, in your testimony, you state that the Board's interpretation of the law has the potential to undo beneficial aspects of the Equal Credit Opportunity Act. Can you kind of elaborate on that claim and how it really pertains to your stores, how will it affect your stores?

Mr. SIMME. Again, I go back to the notion that one-sixth of all of our customers, for the most part, are stay-at-home moms. And the fact that if the rule, the way it is written, continues to reduce the number of customers who apply for credit, obviously, that has an adverse effect on our ability to issue new credit.

Mr. RENACCI. Ms. Boyd, are you doing any additional things now that after you have been able to submit, are there any further things that your group is doing? I am very interested in all the work you have done already.

Ms. BOYD. Thank you for the question. Being here is an important step in our work, and I appreciate again the chance to testify on behalf of our members. We will be continuing to publish information about the rule and we will be awaiting the CFPB's action. So essentially, we are keeping those who signed the petition up-to-date about any changes or progress and so we will be hanging tight, I think, for the summer.

Mr. RENACCI. Thank you. I yield back.

Chairwoman CAPITO. All right. I think that will conclude our hearing. Before I conclude the hearing, I would like unanimous consent to insert into the record a statement from the U.S. Chamber of Commerce.

Without objection, it is so ordered.

Mrs. MALONEY. Madam Chairwoman, may I ask unanimous consent to enter into the record a statement from Representative Louise Slaughter, who worked very closely with me on this bill, particularly in the area for stay-at-home moms.

Chairwoman CAPITO. Without objection, it is so ordered.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to these witnesses and to place their responses in the record.

I appreciate you all coming, and I appreciate your patience as well for the in-and-out, and with that, this hearing is adjourned.

[Whereupon, at 3:39 p.m., the hearing was adjourned.]

A P P E N D I X

June 6, 2012

MomsRising.org

Written Statement of Ashley Boyd
Campaign Director, MomsRising

Submitted to the U.S. House Subcommittee on Financial Institutions and Consumer Credit Hearing on "An Examination of the Federal Reserve's Final Rule on the CARD Act's 'Ability to Repay' Requirement"

June 6, 2012

Good morning, Chairman Capito, Ranking Member Maloney, members of the Subcommittee. Thank you for inviting me to testify on behalf of MomsRising. I particularly want to thank Congresswoman Maloney for her history of strong and visionary leadership on issues related to family economic security.

I am Ashley Boyd, campaign director for MomsRising, a nonprofit, nonpartisan advocacy organization dedicated to ensuring and protecting family economic security. Since our founding in 2006, MomsRising has been fighting for legislation and public and workplace policies that will help families achieve or maintain financial stability. Our partners in that fight include more than one million MomsRising members and more than 100 aligned organizations.

Credit Card Policies Affect Family Economic Security

First and foremost, I want to establish that MomsRising fully supports the protections in the Credit Accountability, Responsibility & Disclosure Act – better known as the Credit CARD Act. We are, however, concerned about the unintended consequences of this law on stay-at-home parents, widowed or divorced spouses and spouses in abusive relationships.

We understand the perils of un-payable credit card debt and the burden that can put on individuals and families. We applaud all efforts to protect consumers from the egregious and predatory practices some credit card companies engage in – practices that trap people in a cycle of unending and unpayable debt. Holding a credit card is a privilege that must be earned by establishing and maintaining good credit. We know all too well that too often, young adults have not been educated about the importance of using credit cards wisely and have been given excessive lines of credit, far exceeding their ability to pay.

We also support the protections in the law that help give American families the tools they need to strengthen their economic security, and the protections from misleading and unfair practices involving payment due dates, late fees and over-the-limit fees.

According to a report[1] recently released by the non-profit, non-partisan research and advocacy organization, Dēmos, because of information which the card companies are now required to provide to consumers by the CARD Act, one-third of households are paying down their balances more quickly. The Dēmos report also finds that the CARD Act has contributed to a dramatic decline in the number of households being charged late fees, from half of all households in debt being charged late fees in 2008, to just 28 percent this year. Many fewer households are experiencing an increase in interest rates or being charged over-the-limit fees. In 2008, over half of all households that experienced a late fee also saw their interest rate increase. By this year, that figure had declined to 29 percent. In 2012, 22 percent of all households report that they are being charged over-the-limit fees less often; just 2 percent report having to pay the fees more often since the passage of the Credit CARD Act.

We applaud these changes and we know that they are increasing economic security. Credit cards are a critical financial tool for many families. As the economy continues to struggle out of the recession, some households must rely on credit cards to purchase basic necessities – groceries, household goods and more.

We Need Reconsideration of the 'Ability to Repay' Provision

While MomsRising strongly supports the CARD Act, we are extremely concerned about one aspect of it: the Federal Reserve Board's interpretation of the law's "Ability to Repay" provision. And that's the reason I'm here today. Requiring a credit card company to consider individual, rather than household income in *all cases*, may unfairly and unreasonably impact stay-at-home parents who often have contributed to the sound management of their households' finances.

It's a reality that today, most adults need credit cards to establish a credit rating in order to get a mortgage or a loan. More than a convenience, credit cards have become a necessity for many, and that's true for stay-at-home parents as well as those in the workforce.

Last month, MomsRising and Change.org delivered more than 45,000 signatures on a petition to the Consumer Financial Protection Bureau to reconsider the "Ability to Repay" rule. We were able to get those signatures because of the moms and other stay-at-home parents who have been harmed, or could be harmed, by this regulation as it stands now. We heard from many, many parents and these are just a few of the stories shared with us:

Lisa, a stay at home mother from Georgia, shared that soon after the new rules went into effect, she left her emotionally abusive husband and plans to get a divorce against her husband's wishes. In the meantime, she neither has the money to hire a lawyer to proceed with the divorce, nor access to credit without her husband's approval. Since he is opposed to the divorce, she's feeling trapped.

Tricia of Virginia was married for 11 years and a stay-at-home mom for most of that time. Although she came into the marriage with amazing credit, her husband was an irresponsible spender who made poor financial decisions, which left both of them with terrible credit histories. After her husband left her and the children recently, Tricia struggled to get any credit in her name due to her husband's poor financial management and having no credit cards in her name previously. This has had devastating consequences for her as she tries to make her way forward and be a responsible mother. She says, " I'm not a fan of credit cards, but trying to get a rental house was a huge nightmare because I was a stay-at-home mom at the time and all agencies required my husband co-sign on our lease due to my limited credit history. I can't get a loan for a new car, even though the thirteen-year-old one that I own has cost us more in repairs than a monthly payment on a more decent one would. It's come up against me and my children and has made it extremely difficult for me to obtain any kind of security and peace of mind and start over."

Potential Denials of Credit Could Have a Deleterious Impact on Economic Security

Clearly, being denied credit unless a spouse co-signs for the card is much more than a minor inconvenience. These stories could be just the tip of the iceberg. Because of the current interpretation of it:

- Unless the spouse is willing to co-sign or add them as an authorized user, stay-at-home parents may not be able to build an independent credit history they can rely upon in the case of spousal death, separation, or divorce.

- Partners in abusive relationships may have difficulty leaving a spouse due to the financial constraints of not having their own credit established.

- Widows of divorced spouses without their own credit history would find it impossible or very difficult to rent or own a home or secure future credit.

We need more information about the impact of this rule. We applaud the CFPB for taking on a study of the effect of the current interpretation on the ability of stay-at-home parents to obtain credit cards. The CFPB should also study how the interpretation of the rule affects the ability of stay-at-home parents to build credit histories.

Limiting Stay-at-Home Parents' Access to Credit is Unfair and Punitive

Rejecting household income as a basis for credit card qualification sends an insulting message that stay-at-home parents have no economic value and are as credit-unworthy as unemployed college students. In reality, they contribute as much to their household's credit rating as the family breadwinner, because in most cases, they are responsible for managing the family's budget.

We believe that stay-at-home parents should be exempt from current interpretation of the "Ability to Repay" provision of the CARD Act, if the data shows the interpretation is unfairly limiting credit for them. We fully support and even applaud the goals of the CARD Act and the "Ability to Repay" provision of the Act. However, the Federal Reserve's interpretation of this provision has created an unintended consequence – it unfairly punishes parents who do not work for pay outside the home by limiting their access to the credit they need and deserve. This must be addressed.

Chairman Capito and members of the Subcommittee, I thank you for the opportunity to address this issue. Thank you for taking the time to listen to me and to the voices of the moms and dads across the country who know that a credit card is an essential financial tool in today's society and that stay-at-home parents, who contribute to their families' credit ratings and who are often responsible for the majority of household purchases, need access to their own lines of credit. We look forward to working with you to make this law more equitable so that it can continue to provide the protections and information all families – and all individuals – need to safely manage their credit.

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[1] http://www.demos.org/publication/plastic-safety-net

Testimony of Gail Hillebrand
Associate Director, Consumer Financial Protection Bureau
Before the House Subcommittee on Financial Institutions and Consumer Credit
Submission for the Record
June 6, 2012

Chairman Capito, Ranking Member Maloney, and Members of the Subcommittee, thank you for this opportunity to testify before the Subcommittee and for the leadership you have shown on this issue. My name is Gail Hillebrand, and I am the Associate Director for Consumer Education and Engagement at the Consumer Financial Protection Bureau. I am honored to represent the Bureau here this afternoon.

Today's hearing is focused on a rule issued by the Federal Reserve Board last April, and inherited by the CFPB on July 21 of last year. That rule implements the general ability to pay provision of the Credit CARD Act. The CARD Act addresses a series of problems that existed in the credit card marketplace when the Act was passed in 2009.

Taken as a whole, the CARD Act illustrates how sensible regulation can make life better both for consumers and also for responsible providers of consumer financial products and services. Back-end re-pricing is a thing of the past. Consumers no longer face "for no reason" rate increases on the money they have already borrowed. Illusory "fixed rate" offers have been eliminated from the marketplace, and marketing claims now more accurately reflect how and when pricing can change. Balance transfer offers can't be structured so that payments above the minimum payment are applied to the zero interest rate balance while there are higher interest rate balances on the same card. A recent study indicates that the percentage of low- and middle-income consumers incurring late fees on their credit cards has been almost halved since 2008, before the CARD Act was enacted.[1]

After a major new set of regulations are put in place, there may be areas that warrant re-examination based upon experience with the regulatory changes. The CARD Act is no exception. Today's hearing is focused on an issue that has been of interest and concern to the Consumer Bureau since we took over responsibility for the administration and enforcement of the CARD Act less than a year ago.

Concerns have been raised that for consumers in some States, one element of the ability to pay regulation we inherited could have unintended negative impacts on stay at home spouses. The CARD Act says that a credit card issuer cannot open an account for a consumer unless the issuer "...considers the ability of the consumer to make the required payments...."[2] In February 2010, the Board of Governors of the Federal Reserve System issued regulations to implement this provision. In April 2011, the Board amended those regulations to specify that when a consumer applies individually for a credit card account, the issuer must consider the consumer's

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[1] Demos, "The Plastic Safety Net: Findings from the 2012 National Survey on Credit Card Debt of Low and Middle-Income Households," May, 2012, available at http://www.demos.org/sites/default/files/publications/PlasticSafetyNet-Demos.pdf

[2] Truth in Lending Act §150, 15 U.S.C. §1665e.

"independent ability" to make the payments.[3] The Federal Reserve Board's amendment was accompanied by Official Staff Commentary, which interprets the regulation. That Commentary states that in determining ability to pay, a card issuer may not rely on income or assets of a person who is not liable for the debt on the account unless a Federal or State statute or regulation grants a consumer who is liable for the debt an "ownership interest" in the income or assets of the other person.[4]

Even before responsibility for this regulation was formally transferred to the Consumer Bureau last July, we heard concerns about the impact this rule could have on the availability of credit to some individuals. In some families, all of the adults are employed outside the home. In others, someone stays at home or works part time. This is often, although not always, a woman.

Concerns have been voiced that the ability to pay rule could have the effect of limiting access to credit for the spouse or partner who is not employed outside the home (or who is employed part time) and who wants to open an individual credit card account rather than opening a joint account.

Here is what we have done about this issue so far. On December 5, 2011, the Bureau issued a Request for Information (RFI) seeking public input to identify areas for improvement in the rules that the Bureau had inherited.[5] In it, the Bureau specifically identified the CARD Act's ability to pay regulation as one potential area for change. We acknowledged at that time that this rule "may have the unintended consequence of precluding some individuals" from obtaining credit they are capable of repaying. We sought public comment on whether this specific regulation should be amended and, if so, how. We also encouraged commenters to submit or identify data we could use to "analyze and, if possible, to quantify...the potential costs and benefits" of any change they proposed, including a change in the ability to pay regulation. In addition, while the comment period was open, we reached out to industry to request information from credit card issuers about this provision to aid us in examining this issue.

The initial comment period closed on March 5, 2012 after which we allowed a 30-day period, closing on April 3, 2012, for the public to submit responses to the comments. However, we received several requests for more time to respond. We therefore extended the time for commenters to reply to other comments we received.[6] That reply period closed on Monday, June 4 – just two days ago. We are in the process of reviewing those responses, as well as input we have received from individuals who have petitioned the Bureau to express their concerns about this issue.

In examining the ability to pay issue, the Bureau starts from some basic principles. First, we understand the importance of the availability of credit to consumers, and we are committed to promoting access to credit on a fair, equitable, and non-discriminatory basis. That is a key part of our statutory mandate.

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[3] 12 CFR §1026.51(a).
[4] Supplement I to 12 CFR Part 1026, comment 51(a)(1)-4.ii.
[5] 76 FR 75825 (Dec. 5, 2011).
[6] 77 FR 14700 (Mar. 13, 2012).

Second, and at the same time, we are equally committed to ensuring that lenders make only loans that they reasonably believe consumers can afford to repay. No one benefits – in fact, everyone loses – when loans are made to consumers who cannot repay them.

Finally, where we are called upon to make decisions addressing the balance between the goals of access and ability to repay, those decisions should be grounded in the best available evidence on the actual impact of particular rules.

We are continuing to work to get that evidence. In issuing the ability to pay regulation, the Federal Reserve Board observed that the rule permits issuers to ask for "income" as opposed to "household income," and allows them to rely on the information provided to satisfy the ability to pay requirement.[7] Further, the Board stated that it was "unaware of any evidence" that card issuers who followed the practice of asking for income "extend less credit to married women who do not work outside the home."[8]

Now that the regulation has been in effect for eight months, it should be possible to fill the evidentiary gap. For example, are individuals who otherwise would have qualified for credit being turned down as a result of the rule, and if so, how often? The Bureau had anticipated that credit card issuers would have provided evidence in response to the Bureau's formal Request for Information about the actual impact of the ability to pay rule. Our preliminary review of the comments received suggests that they did not. We have asked a number of card issuers to share with us specific data that will bear on this issue.

In the meantime, in light of public concern and our ongoing responsibility to administer this regulation, we have been looking closely at the regulation and the related Commentary. We are looking to see if we can provide further clarity to mitigate the risk that stay at home spouses might be denied credit that they can, in fact, afford to repay. For example, the Board's rule focuses primarily on the issue of income. But income becomes an asset when put in a checking or savings account, and many families use joint checking and savings accounts. Once the income goes into a joint account, it is legally available to both account holders, and it may be considered in determining the ability of either one of them to repay a loan. The Commentary to the Board's rule states that a card issuer may "take into account assets such as savings accounts,"[9] but the Commentary does not specifically address joint accounts or checking accounts.

The Bureau is carefully considering options for providing guidance along these lines to bring greater clarity to the marketplace and to mitigate potential negative consequences from the Board's rule. We also are evaluating whether there are other situations in which money earned by one person is managed or controlled jointly with another and thus should be available to both individuals of qualifying credit. We expect to make a determination soon about how to best proceed on these issues. We intend to move forward, as appropriate, during the course of this summer.

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[7] 76 FR 22948, 22976-77 (Apr. 25, 2011).
[8] *Id.*
[9] Supplement I to 12 CFR Part 1026, comment 51(a)(1)-4.ii.

CONCLUSION

The Bureau is committed to ensuring both access to credit and that consumers who obtain credit have the ability to repay their loans. The Bureau is actively evaluating the regulation which we inherited from the Federal Reserve Board to ensure that both of these goals are served.

Thank you for the opportunity to testify today. I would be happy to answer your questions.

WRITTEN STATEMENT

OF

OLIVER I. IRELAND

ON

AN EXAMINATION OF THE FEDERAL RESERVE'S FINAL RULE
ON THE CARD ACT'S "ABILITY TO REPAY" REQUIREMENT

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

JUNE 6, 2012

Good afternoon, Chairman Capito and Ranking Member Maloney. My name is Oliver Ireland. I am a partner in the financial services practice in the Washington, D.C. office of Morrison & Foerster LLP. I have over 35 years of experience in financial services issues. I also worked for the Federal Reserve System for 26 years, and spent 15 years as an Associate General Counsel of the Board of Governors of the Federal Reserve System ("Board") in Washington, D.C. One of my earliest experiences in the Federal Reserve System was being seconded to the Board in the summer of 1975 to work on the rules to implement the original Equal Credit Opportunity Act, which prohibited discrimination in the granting of credit on the basis of sex or marital status. More recently, I have worked with credit card issuers to implement the provisions of the Credit CARD Act of 2009, including in particular the provisions of section 109 of that Act on "Ability to Pay."

Section 109 of the Credit CARD Act of 2009 added a new section 150 to the Truth in Lending Act, which provides that:

> A card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account.

As an initial matter, I note that credit card issuers have historically considered applicants and card holders' ability to repay in opening credit card accounts and in assigning credit lines to both new and existing accounts. Card issuers have developed and used sophisticated credit risk evaluation models for this purpose. Although the performance of credit card portfolios suffered during the recent recession, I believe that any problems were due to the severity of the recession and, in particular, the high level of unemployment, rather than any deficiencies in the historical credit risk evaluation process. Further, I believe that the statutory language could have been implemented by allowing issuers to continue to rely on existing practices for determining cardholders' ability to pay.

Nevertheless, the Board, which was then responsible for writing rules to implement the Credit CARD Act, in rules published in the *Federal Register* on February 22, 2010, chose to implement this requirement by adding the further requirement that the ability to pay determination be based on the consumer's income or assets and current obligations. The Board also clarified that the analysis was to be based on the required minimum periodic payments. Accordingly, the rule stated that:

> A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations. (Emphasis added.)

Historically, card issuers have found that income is not a particularly useful predictor of repayment in the case of smaller lines of credit, although it tends to become relatively more important as the size of the credit line increases. Accordingly, these additional requirements could be expected to have little, if any, effect on improving the credit quality of credit card portfolios. The likely effect of this rule was to deny credit to persons who otherwise would have received it.

The rule writing under the Credit CARD Act was particularly challenging because of the number and complexity of the issues involved, as well as the significance of the changes that the Act required in existing practices. Despite the best efforts of the Board and the Board staff, the rules that were initially adopted to implement the ability to pay and other provisions of the Credit CARD Act were unclear in a number of areas and, therefore, difficult for card issuers to implement. Accordingly, the Board issued clarifications of a number of provisions in March of

2011. One of these clarifications added the word "independent" to the ability to pay provisions so that it now reads:

> A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's independent ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations. (Emphasis added.)

In adopting this final rule, the Board stated that it was "unaware of any evidence that card issuers who request 'income' or 'salary' extend less credit to married women who do not work outside the home or to low-income families than issuers that request 'household income.'"

This additional requirement, that the consumer's income be independent, is not only unsupported by any evidence that it is necessary to protect the safety and soundness of credit card issuers, it serves both to complicate the provision of credit to married couples and disproportionately to disadvantage married women. First, and fundamentally, the independent income standard fails to recognize that family households are typically joint economic enterprises. The largest component of household debt is typically a home mortgage that generally is structured as a joint obligation of husband and wife or other family partners. In households where both the husband and wife are employed and have comparable incomes, the joint mortgage obligation, under which either party is liable for the full amount of the payments, could render both the husband and the wife ineligible for individual credit if each of their income and obligations are considered separately. This is the case because the full household obligations would be attributed to each of them, but only half of the household income would be available to either the husband or the wife. This mismatch of income and obligations would make it appear that neither the husband nor the wife would have the ability to take on additional credit. This mismatch of individual income and household debt not only complicates the credit-granting process, but also demonstrates the basic illogic of the independent income approach.

Second, where a married woman does not work outside the home or only works outside the home part time, the married woman may have little or no income to support credit in her own name and, therefore, may be ineligible to obtain a credit card, even though within the household division of labor, she is responsible for managing the household, and even the family finances. Based on my experience in working on the original regulations to implement the Equal Credit Opportunity Act, the unwillingness of creditors to extend credit to married women was a key concern at that time. The original rules to implement the Equal Credit Opportunity Act addressed this issue in part by trying to ensure that married women would benefit from the credit history on accounts that they are permitted to use, even if they are not jointly liable on the account.

As a practical matter, the independent income requirement in the ability to pay rule makes it difficult for married women to open credit accounts, particularly retail credit accounts, because they will have to get an application and get their husband to complete it either as an application in his own name, with the wife as an authorized user, or as a joint application. In dollars and cents, this inconvenience can translate into lost discounts on in-store purchases. More importantly, as Board economist James Smith noted in 1977, in an article on the costs and benefits of the original Equal Credit Opportunity Act, the benefits of that Act must be measured in terms of human dignity and the benefits to society that should flow from greater social equity.[1] In these terms, the current independent ability to pay rule is a step backward for human dignity and social equity and the cost is far greater than the cost in terms of dollars and cents.

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[1]The Equal Credit Opportunity Act of 1974; A Cost/Benefit Analysis, The Journal Of Finance, Vol. XXXIL No. 2, May 1977.

A more practical and equitable rule would base ability to pay decisions for credit card accounts on the income that an applicant states that the applicant is relying on to pay the debt, with a safe harbor for the consideration of household income. While this formulation raises issues as to the definition of household, the potential for abuse where applicants might list income inappropriately is limited and poses no real threat to the safety and soundness of credit card issuers. Credit card issuers typically use an ability to pay analysis to deny credit that otherwise would be granted under their historic risk analyses rather than to grant credit that otherwise would have been denied. Accordingly, a broader rule that allowed the consideration of income on which the applicant is relying, including household income, would pose essentially no additional risk to credit card issuers. Further, while I understand the concerns the Board has expressed about extending credit to married women who do not work outside the home and who may not be able to rely on future income from their husbands in the event that the marriage is dissolved, I do not think that these concerns outweigh the unfair treatment of married woman and the unintended consequences of the current rule.

With respect to the Board's statement that it was not aware of any evidence that the independent income rule would result in less credit to married women who do not work outside the home, I have worked with a number of credit card issuers to examine experience information as well as demographic data and market research on this point. Identifying the effects of the rule on individual applications across institutions has not proven to be feasible, and where effects can be identified, there are generally competing explanations for those effects. While it might be possible to identify some reductions in the availability of credit to married women who do not work outside the home either in terms of applications granted or denied or the size of credit lines, I believe that these statistics would significantly understate the actual effects of the independent income ability to pay rule.

First, credit card issuers do not identify card holders by gender and, therefore, do not have records that would show changes in the patterns of application approvals or line assignments on the basis of gender. Any gender identification would have to be done *post hoc* based on names, with the obvious confusions for Pats, Tonys and other gender-neutral names. Further, there is a great reluctance on the part of credit card issuers to undertake analyses of portfolios on prohibited credit granting bases, such as gender. The fact that the application and line assignment is blind to prohibited bases is the first defense against potential claims of discrimination.

The analysis of application and line assignment data is complicated further by the fact that credit card issuers implemented the independent income ability to pay rule at different times and at times when both economic conditions and other regulatory requirements were changing. These other changes affected the condition of applicants, credit underwriting standards and business strategies all at the same time. All of these factors make meaningful comparisons across institutions and analysis of data at individual institutions difficult. Further, some effects of the rule are inherently difficult to measure. For example, a reduced rate of applications declined may be due to married women's failure to complete applications once it is clear that they must have individual income in order to receive credit. Thus, even if it is possible to identify an increased rate in the denial of applications for married women attributable to the independent ability to pay rule, those numbers would likely understate the actual problem significantly.

Despite the difficulties inherent in individual institution data, the 2011 census data shows that among households where only the husband or the wife is in the labor force, the husband is almost three times more likely to be employed than the wife.[2] More detailed analyses of demographic data by individual issuers using hypothetical credit criteria have shown the likely result of the independent ability to pay rule on married women to be significant, with more adverse effects likely for younger and older applicants. For example, the attached chart based on analysis of more detailed 1999 census data shows that if all married men and women applied for credit under the independent ability to pay rule, the applications of married women are far more likely to be declined than the applications of married men.

For the reasons stated above, I strongly believe that the current independent income rule needs to be replaced by a provision that allows the consideration of household income. I do not believe that such a rule would increase risk in the credit granting process and I strongly believe that it would promote fairness, equity and human dignity.

Thank you. I would be happy to respond to any questions.

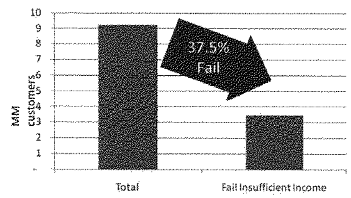
dc-680686

[2] Table FG1. November 2011.

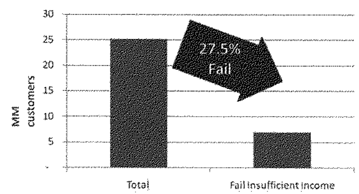
Likely Approval Rates for Married Men and Women

Married Male Applicants by Age

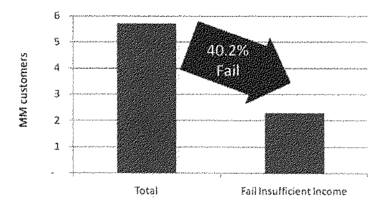
21-34



35-54

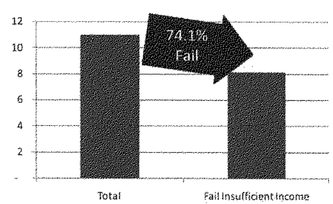


55-61



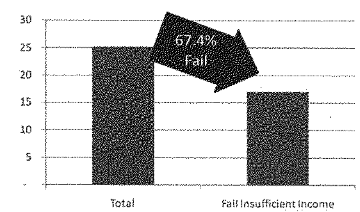
Married Female Applicants by Age

21-34



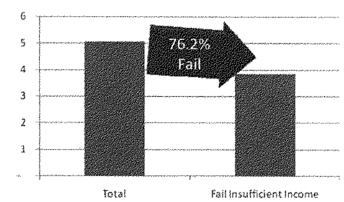
68.6% for unmarried

35-54



43.5% for unmarried

55-61



52.5% for unmarried

The impact is pronounced on married females, even where household income is high.

*Analysis using 1999 Census data regarding persons aged 21 –61 in households with a household income of ≥$28,000 in 1999 dollars (equivalent to $40,000 in 2010). Failure occurs where personal income <$28,000.

STATEMENT OF KIRK SIMME

Senior Vice President, Treasurer Credit and Corporate Finance

for Charming Shoppes, Inc.

on behalf of

the National Retail Federation

before the

U.S. House of Representatives
Financial Institutions & Consumer Credit Subcommittee

Hearing on

An Examination of the Federal Reserve's Final Rule on the CARD Act's 'Ability to Repay' Requirement

June 6, 2012

Chairman Moore Capito, Ranking Member Maloney and Members of the Committee, I am honored to appear before you today. My name is Kirk Simme and I am the Senior Vice President Treasurer Credit and Corporate Finance for Charming Shoppes, Inc. Charming Shoppes is a leading women's apparel retailer and is the parent company of Lane Bryant, Fashion Bug and Catherines Plus Sizes. We operate more than 1,800 stores nationwide and store related e commerce websites. In my capacity as Senior Vice President, I have overseen the company's proprietary credit operation, was President of Spirit of America National Bank and managed its private label and credit card operation. We currently have more than 2.7 million active accounts representing approximately 4% of the U.S. female population.

I am here today on behalf of the National Retail Federation to testify about the Federal Reserve Board's final rules under the CARD Act of 2009 clarifying the requirements pertaining to a cardholder's ability to make the required minimum payments. First, some background. As the world's largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing $2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. Many NRF members offer credit to their customers through proprietary and private label credit programs and thus we and our customers are interested in and affected by the final fed rule. In an effort to address a concern that some consumers under the age of 21 may become overloaded with debt, the CARD Act contained a provision requiring these consumers, when applying for credit cards, to affirmatively demonstrate they had income or assets necessary to repay any grant or extension of a credit card line. Given their young age, many do not have substantial credit histories sufficient for all credit grantors to make sufficiently precise decisions, thus the requirement to explicitly demonstrate sufficient income or assets is reasonable.

However, when issuing the rules in March 2011, the Federal Reserve Board restricted the ability of credit card issuers to rely upon "household income" when issuing credit or considering increases in credit limits even when the applicant is above the age of majority. In doing so, the Board ignored the CARD Act's distinction between an explicit income determination for minors and the more generalized ability to pay determination for adults. Instead, under the final rule, the credit grantor is required to consider a consumer's independent ability to make the required minimum periodic payments under the terms of the account based on a consumer's independent income or assets and current obligations, regardless of the consumer's age. Historically, credit card issuers have been able to make informed decisions on applicants over the age of 21 and their ability to repay using their years of repayment behavior. This is an important distinction because adults, unlike most minors, have managed their own financial affairs, which has resulted in a demonstrated record that can be used to make credit decisions. In this way retailers, who have issued their own proprietary cards, have always considered the ability to repay in making decisions to extend credit to its customers. Techniques include consumer reports, credit scores and consumers' individualized performance. As a former bank president, I know that both independently and in the private label context, retailers and their partner banks have always had a vested financial interest in making prudent credit decisions.

With respect to the customers we serve, our surveys indicate 16% of plus sized women (our core customer) are homemakers and another 16% to 21% are retired. By imposing the ill-considered income reporting requirement on adults, I believe the Federal Reserve has caused the following consequences that could potentially affect millions of people:

- Stay-at-home spouses are adversely impacted in a significant manner. Their ability to establish their own credit histories and obtain credit lines is severely encumbered. The Board's suggestion that stay-at-home spouses, who are predominantly women, can open joint accounts or as an authorized user ignores the vital role these women play in their households. They are responsible for running the household, managing its finances and making purchases of household items, clothing, furniture and much more. Often, these purchases are made during the absence of the spouse working outside the home, thereby precluding the option of opening a joint account or as an authorized user. This inconvenience is exacerbated for military families because of the increased likelihood the employed spouse is deployed away from home. Military families are already making great sacrifices in order to serve this country. They should not be subjected to unneeded inconveniences and it is highly unlikely this was Congress' intent when it passed the CARD Act.

  Furthermore, many retailers offer an extra discount or benefit for opening a new private label account. Without the ability to realistically open a new account, stay-at-home spouses are effectively denied the opportunity to save money for their households.

- Stay-at-home spouses who become widowed, divorced or those currently in abusive relationships are placed at a real disadvantage in creating the financial independence they will need to move on with their lives because the rule greatly limits their ability to establish their own credit histories.

  The Federal Reserve rule has placed stay-at-home spouses in the untenable position of either lying about their independent income, which might border on bank fraud, or if needing even a modest credit line increase at point-of-sale, potentially being embarrassed in front of several other customers when they are declined.

- Although we do not believe it was intended, the Board's interpretation of the law has the potential to undo beneficial aspects of the Equal Credit Opportunity Credit Act (ECOA). For many years, spouses, primarily women, could not get credit in their own names. Credit grantors required a woman to have the signature of the "breadwinner" before she could obtain credit and the credit was essentially treated as if it belonged solely to the husband. Speaking for a company whose existence is dependent on women customers and on behalf of an industry that strongly supports the ECOA, retailers would be very disappointed if the rule, even inadvertently began to return us to those days of inequity.

- For most retailers, private label cardholders are the most loyal customers. Given that the vast majority of shoppers are women and that stay-at-home spouses comprise a substantial segment of those customers, retailing in general (a major factor in our nation's economy) stands to be adversely affected financially. We are denied an opportunity to cultivate a more productive relationship with adult stay-at-home spouses even though the history since the passage of the ECOA has proven they present minimal to no incremental credit risk. There is minimal risk because many, many customers who have no "employment" income actually control a significant amount of disposable cash to pay household bills.

- The embarrassment of customers in our stores is not good for our customers, our store employees or our brands' reputations. As discussed previously, there is a real potential for stay-at-home spouses to be embarrassed when they are declined for credit. This may result in the customer directing anger and frustration towards the store employee and the brand. With the ubiquity of social media, an individual's dissatisfaction can spread widely almost instantaneously despite the best efforts to satisfy a good customer for a situation beyond the retailer's control. Customers are a precious commodity and it's challenging enough already to make their shopping experiences satisfying without additional, largely unnecessary obstacles.

- The detrimental effects of the rule are compounded because it applies to expansions of existing credit lines. Customers who have been paying their bills on time, and whose credit and personal history warrant it, are often given a credit line increase because they request it or need one at the point-of-sale (e.g. holiday purchases may push an individual slightly above her credit limit). In many cases, if the customer qualifies, the line is extended automatically and transparently while she is making the purchase, thus avoiding an embarrassing decline of the sale. Under the rule, the sales associate could be required to decline a slightly over-the limit purchase, collect the customer's income data and pass it on to our partner bank before the purchase could be completed. Not only is this cumbersome, and again potentially embarrassing, but since it's already been determined that her credit worthiness is sufficient for a credit line increase, it's a needless waste of time, effort and emotion.

  The income reporting requirements also raises questions on how credit line increases can be given to stay-at-home spouses between visits to the store. Typically, consumers receive a written notice that, based on their good performance and credit history, their credit line has been increased. This is particularly important in the retail environment where, as the credit grantor of first resort for many individuals, initial credit lines are relatively modest. Yet these low lines could not be increased unless the customer first mailed, without prompting, some statement of his or her income. Prudent credit line increases are an effective tool for retailers to satisfy families' needs as they grow.

Finally, while I, along with the National Retail Federation, support the effort of the Consumer Financial Protection Bureau (CFPB) to determine whether the rule, as written, is adversely affecting some consumers, we question whether that effort can give a true picture of the negative effects. The problem arises in part because it's difficult to establish a reliable "control" group against which to compare the new rule's effects. The past few years have been atypical financially. Retailers who unnecessarily decline a stay-at-home spouse based on a statement of no income (or require a co-signer) have no easy means of comparing that individual's "but for" activity. Everyone gets turned down.

Furthermore, to the extent the CFPB attempts to determine whether there have been measurable effects on the availability of credit for women generally, there is a good chance that whatever they measure will understate the true effect. This is because it is likely that some companies, perhaps frustrated by the Federal Reserve's rule, may not be following the rule's spirit. For example, some stay-at-home customers when asked for their "income" might inquire of sales clerks, "Do you want my household income?" Either through lack of training or intent, those sales associates may respond "Yes." As a result, even though it's a violation of the rule, those customers may receive appropriate credit. Since the precise facts of this "gray" transaction are unlikely to be remembered by the customer or admitted by the company, survey results will underreport the consequences. They will not reveal the fact that good companies who are sedulously complying with the rule will have a larger percentage of declines than the overall industry numbers might suggest.

Conclusion:
We believe the CFPB should revise the rule to reflect Congress' true intent, as demonstrated by the legislative language. Income or asset information should be collected from those, below the age of majority, who cannot demonstrate that they are financially independent of their parents. For those above the age of majority, a simple demonstration of the ability to repay is sufficient. If, and to the extent income data is necessary to make any such determination, the use of conservative income estimator models should be allowed.

I would be pleased to answer any questions.

RILA
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January 3, 2011

BY FEDERAL E-RULEMAKING PORTAL

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

Re: Docket No. R-1393 and RIN No. 7100-AD55; Proposed Revisions to Ability-to-Pay Requirements for Individual Credit Accounts

Dear Ms. Johnson:

On behalf of the Retail Industry Leaders Association (RILA), I offer the following comments in response to the Board of Governors of the Federal Reserve System's (FRB) Proposed Rule regarding a requirement that credit card issuers assess a consumer's ability to pay before opening a new credit card account or increasing the credit limit on an existing account (Proposed Rule).[1]

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

The Proposed Rule would implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the Credit CARD Act), which primarily amended the Truth in Lending Act (TILA) and require that "[a] card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account." Credit CARD Act § 109, amending TILA § 150. Under the Proposed Rule, credit card issuers would no longer be permitted to rely on a consumer's household income, along with other factors, when determining the consumer's ability to pay the obligations incurred by the consumer under the account. A credit card issuer would be required to consider only the individual applicant's independent income, along with other factors. Furthermore, the Proposed Rule would permit a credit card issuer to consider spousal income where the applicant's spouse is not a joint applicant or joint accountholder *only* to the extent that a federal or state statute or regulation grants the applicant an ownership interest in such income or assets.

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[1] Federal Reserve System, 12 CFR Part 226, Regulation Z; Docket No. R-1393.

RILA members – with their financial services partners – offer millions of consumers a wide variety of credit options every year. We strongly support the need for our customers to understand fully the nature and responsibilities of all credit products they sign up for, and are supportive of extending credit only to individuals who can show an ability to repay debts through income or assets. However, the Proposed Rule goes well beyond what Congress intended and would have the effect of shutting off credit availability to wide swaths of the population if household income cannot be used in determining credit worthiness. RILA appreciates this opportunity to share these comments with the FRB and hopes that the FRB will amend the Proposed Rule to permit credit card issuers to consider household income when making ability-to-pay decisions.

Proposed Rule Inconsistent with Congressional Intent

RILA supports the Proposed Rule's requirement that a credit card issuer have reasonable procedures to consider an applicant's ability to pay when making a decision about whether to extend or increase credit to the applicant. It is RILA's view, however, that the Proposed Rule appears to go further than the legislative language adopted by Congress or the legislative history of the Credit CARD Act. RILA does not believe that requiring a credit card issuer to consider only a consumer's *independent* income when evaluating the consumer's ability to pay is a fair or reasonable interpretation of the requirements of the Credit CARD Act. Where Congress intended to limit use of particular income sources, or require independent means of debt repayment as it did in the case of applicants/cardholders under the age of 21 years, it expressly did so and laid out specific requirements such as a creditworthy co-signer or proof of independent income.

Conversely, this was not the case with respect to general credit consideration. The Credit CARD Act merely required that the creditor consider the *ability* of the consumer to pay the debt. We assume that this difference in language as to what must be considered was deliberate and left open the door to consideration of household income as evidence of the ability of the consumer to pay the debt. RILA believes that the FRB is putting undue restrictions where none were expressed or intended by Congress.

In addition, the Proposed Rule requires the issuer to consider all debt reflected on an individual applicant's credit bureau report, notwithstanding that much of that debt is in the form of joint obligations such as mortgage loans or auto loans, for example. In light of the household debt burden that would be evaluated against an individual's ability to pay, it simply does not make sense for the Proposed Rule not to allow household income that is used to service that debt to be included. To do less is unfair to the individual consumer and risks a host of unintended consequences.

We note that the purpose of the Equal Credit Opportunity Act (ECOA) is to make credit available to all creditworthy applicants without regard to race, sex, marital status or age. It appears the proposed "independent ability to pay" requirement runs contrary to the purpose of the ECOA.

Impact of Proposed Rule on Stay-at-Home Moms, Retirees, and Military Families

With respect to making credit available at the point of sale in retail establishments, the Proposed Rule, if enacted as drafted, will cause consumers to have to change the way they shop. Most consumers share household duties, including shopping and obtaining credit. Restricting the use of household income will preclude members of the same household from efficiently performing their shared duties by requiring the presence of both income earners in a typical dual-income household to shop together, or effectively preventing the low/no income member of the household from shopping alone, such as non-working spouse and/or stay-at-home moms. The non-working spouse is more likely to be responsible for running the household and, therefore, the person who does the shopping. The Proposed Rule would greatly diminish the ability of a non-working spouse to have access to credit that is offered at a retail location. Thus, the effect of the Proposed Rule will be far more disruptive than we believe was intended or envisioned by Congress.

Moreover, the Proposed Rule would greatly curtail or eliminate the long-standing current credit granting practices that are compliant with the FRB's current regulations, including the Credit Card Act, that are considered safe and desirable by both retailers and their customers. The Proposed Rule would unfairly limit the ability of a spouse not employed outside the home to access consumer credit. Such a person would likely have no independent income and, when all joint household debt is taken into consideration, would have no "ability to pay" (as defined under the Proposed Rule) any obligations incurred under credit extended to that person. As a result, a spouse not employed outside the home would not be granted access to revolving credit products offered by credit card issuers.

Since women are more likely than men to be the low- or non-income earning spouse in a household, and minorities are more likely to be in the lower income ranges of two income households, this practice would have the effect of creating a disparate impact on women and minorities. This would run afoul of the ECOA and other regulations, which as noted above were designed to promote equal access to credit, and would also create legal uncertainty. Disallowing consideration of household income would inappropriately limit the income upon which these applicants/cardholders have traditionally and should reasonably be able to rely -- that is, the income of the other member of the household -- in applying for credit.

Additionally, the Proposed Rule, if enacted as drafted, is unfair to spouses of active duty members of the military and may severely restrict such individuals' access to credit. Even if a military spouse is employed and has independent income, he or she may be able to qualify for credit products jointly with their active duty spouse, but individually he or she may not. This problem would be exacerbated if the active duty member of the military is stationed overseas and his or her spouse remains in the United States. Such a states-side spouse who could not qualify on his or her own would have no access to credit because he or she would be unable to apply without the presence and signature of his or her active duty military spouse.

Furthermore, the Proposed Rule would restrict retirees' access to credit. A retiree with a small stream of pension benefits or similar type of income, or a retiree who relies on his or her spouse's stream of income, would likewise not be able to show sufficient independent, individual ability to pay. The credit card issuer would be required, under the Proposed Rule, to deny such retiree's credit application where it otherwise would be approved on the basis of household income today. RILA believes that none of the aforementioned cases was envisioned by Congress when the new requirements of the Credit CARD Act were adopted, and we urge the FRB to modify the Proposed Rule to allow consideration of household income to avoid such unintended consequences.

Compliance Challenges with Point of Sale Credit Environment

The additional guidance offered by the FRB about collection of income information or a card issuer's ability to consider the spouse's income or assets to the extent that a federal or state statute or regulation grants the applicant an ownership interest in that income or those assets is impractical and unrealistic in a point-of-sale credit environment. While the Proposed Rule would allow creditors to accept whatever the applicant discloses as income, applicants will interpret this requirement differently, and some applicants will disclose household income and others individual income, yielding wildly differing results for applicants with the same individual credit profile.

In addition, before issuing a credit card to a married applicant without sufficient "independent" income, a retailer would need to determine the applicant's state of residence under the Proposed Rule. Based on such residency information, the retailer would then need to determine whether the particular state is a community property state and the applicable state rules with respect to whether the married applicant has an ownership interest in his or her spouse's income or assets. This requirement seems to be inconsistent with other non-community property states (such as Massachusetts), which may treat assets acquired during the marriage as joint assets whether or not titled as such. This requirement also raises complex consideration concerning the effect of pre- and post-nuptial agreements governing spousal assets.

With these new requirements, under the proposed rule, the determination of "independent" income would become an impossible operational challenge for retailers to handle effectively in a point-of-sale credit environment. Retailers could not adequately train their employees on the nuances of the complex, multiple state laws governing community property or spousal assets, and customers would undoubtedly not be willing to delay the purchase transaction to try to work through these issues. Furthermore, customers may well refuse to divulge personal information in an environment where the privacy necessary to explain these complex issues cannot be assured. As a result, retailers and their credit-granting partners would be forced to deny the application, which would further restrict consumers' access to credit, a result that Congress assuredly did not intend when requiring consideration of an applicant's ability to pay.

Finally, we note that the Proposed Rule substitutes a "mechanical" methodology for the more rigorous typical credit assessment that creditors currently use to evaluate how family income meets the test of predicting the credit worthiness of an individual spouse. We believe that this frustrates the risk assessment and management processes and will inevitably result in a diminution of credit availability for a large population who are otherwise eligible today – and at a time when these individuals and the retail industry would benefit from credit availability.

Conclusion

RILA strongly believes that prohibiting credit issuers from considering household income when making an ability-to-pay decision about an applicant will present a significant and practical obstacle to many American's access to credit. By limiting credit issuers to considering only the individual income of an applicant, the Proposed Rule would essentially cut off consumer credit to many Americans with little or no income individually but whose household income would be more than sufficient to repay the credit for which they are applying. The restriction is particularly salient in the examples mentioned above in this letter. We believe the Proposed Rule goes far beyond Congressional intent of requiring an ability to repay credit obligations. RILA, therefore, strongly urges the FRB to permit credit card issuers to continue to consider household income when making ability-to-pay credit decisions.

RILA appreciates the opportunity to share its comments on the Proposed Rule. We would be pleased to discuss the views expressed in this comment letter with you further at your convenience. Please feel free to contact me at doug.thompson@rila.org or (703) 600-2065.

Respectfully submitted,

Doug Thompson

Doug Thompson
Vice President, Government Affairs

DC\1400611.1

STATEMENT FOR THE RECORD

THE FINANCIAL SERVICES ROUNDTABLE

On the

U.S. House of Representatives Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

Hearing entitled:

"An Examination of the Federal Reserve's Final Rule on the CARD Act's 'Ability to Repay' Requirement"

June 6, 2012

The Financial Services Roundtable ("Roundtable") respectfully offers this statement for the record in connection with the hearing of the House Subcommittee on Financial Institutions and Consumer Credit entitled ***"An Examination of the Federal Reserve's Final Rule on the CARD Act's 'Ability to Repay' Requirement."***

The Financial Services Roundtable represents 100 of the largest integrated financial services companies, including the nine largest credit card issuers, providing banking, insurance, and investment products and services to the American consumer. Member companies participate through their Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

The Financial Services Roundtable ("Roundtable") welcomes the opportunity to submit a statement to the House Financial Services Committee, Subcommittee on Financial Institutions and Consumer Credit entitled, *"An Examination of the Federal Reserve's Final Rule on the CARD Act's 'Ability to Repay' Requirement."* Since the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act") was enacted, the industry has worked quickly and efficiently to implement the changes required by law and regulation. The industry has taken affirmative steps to revise their lending policies to better serve their customers' needs. However, the Roundtable is concerned with about the impact of Regulation Z's ability-to-pay requirements on non-working and military spouses, specifically the Board's rules that require the separation of household income from an applicants' credit personal income when evaluating a consumer's ability to make the required payments before opening a new credit card account or increasing the credit limit on an existing account.

The Roundtable is concerned about the impact of Regulation Z's ability-to-pay requirements on non-working and military spouses:

The Roundtable is concerned that recent amendments to the ability-to-pay requirements in Regulation Z limit the availability of credit, especially credit to spouses not working outside the home and persons who have a spouse in the military who is on active duty and deployed overseas (and thus unable to apply for credit from overseas). Members of Congress, issuers, retailers, trade associations and individual consumers have all expressed concern about a rule that limits an issuer's ability to consider household income and, thus, reduces access to credit particularly for married women who do not work outside the home. Furthermore, the Board even admits that its own rules prohibiting the use of household income would likely result in credit being denied to many applicants.

Despite these concerns, the Board still amended Regulation Z to require an issuer to consider a consumer's <u>independent</u> ability to make the required payments on an account. Specifically, Section 1026.51 of Regulation Z prohibits an issuer from using spousal or household income when considering whether to extend credit, unless both spouses (or household members) are joint applicants, or the spouse applying separately lives in a community property state. In fact, the Board acknowledged, in connection with the proposed rule, that the amendments "could prevent a consumer without income or assets from opening a credit card account despite the fact that the consumer has access to the income or assets of a spouse or other household member."[1]

The Roundtable believes that the ability-to-pay requirements included in Regulation Z are not required by the underlying language of the CARD Act, and actually are inconsistent with the purposes underlying the Equal Credit Opportunity Act ("ECOA") and Regulation B. In this regard, the ability-to-pay requirements make it difficult for a spouse not working outside the home and for a military spouse, whose spouse may be deployed on active duty, to obtain credit in his or her own name by effectively forcing issuers to deny those spouses credit if there is no evidence of the "independent" ability to make payments on the account.

Moreover, we believe that the ability-to-pay requirements have a disproportionate impact on women. Specifically, available evidence clearly shows that there are adverse consequences to using only an applicant's independent income in considering whether or not an applicant has the ability to repay. Many applicants who do not work outside the home indicate that they have "no income," and most of these applicants are women, since nearly 98%[2] of stay-at-home spouses are women.

Neither the CARD Act nor Regulation Z requires the imposition of a prohibition against asking for and using household income. In fact, the CARD Act does not require the specific consideration of income at all. This requirement first appeared in the proposed rule issued by the Board. Therefore, it is fair to conclude that eliminating the "independent" requirement from general applicability in Regulation Z Section 51(a) while maintaining that standard in Section 51(b) to protect young consumers would fully and effectively implement Congressional intent as expressed in the CARD Act while simultaneously maintaining the ability of nonworking spouses to obtain credit as envisioned by the ECOA.

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[1] "The Board acknowledges that the proposed amendments to §226.51 and its commentary could prevent a consumer without income or assets from opening a credit card account despite the fact that the consumer has access to (but not ownership interest in) the income or assets of a spouse or other household member." 75 FR 67458 at 67474.

[2] According to the US Census Bureau, in 2009, there were 5.1 million stay-at-home mothers and 158,000 stay-at-home fathers; in 2008 there were 5.3 million stay-at-home mothers and 140,000 stay-at-home fathers; and in 2007 there were 5.6 million stay-at-home mothers and 165,000 stay-at-home fathers. U.S. Census Bureau Current Population Reports for March 2009, 2008, and 2007 at http://www.census.gov/population/www/socdemo/hh-fam.html.

Conclusion:

Since issuance of the ability-to-pay amendment to Regulation Z, several Members of Congress have expressed concern about the impact the ability-to-pay requirements will have on consumers, especially spouses not working outside the home and military spouses. We share this concern and believe that TILA should be amended to restore the availability of credit to non-working spouses and military spouses, consistent with the original purposes of the ECOA and the statutory language of the CARD Act, by permitting issuers to consider household income in their assessment of ability to pay.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

June 6, 2012

The Honorable Shelley Moore Capito
Chairman
Subcommittee on Financial Institutions
and Consumer Credit
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Carolyn B. Maloney
Ranking Member
Subcommittee on Financial Institutions
and Consumer Credit
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Capito and Ranking Member Maloney:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, applauds the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit for holding today's hearing regarding how the Consumer Financial Protection Bureau (CFPB) should correct a glaring problem with the implementation of the "ability to pay" provisions of the CARD Act.

As you know, in March 2011, the Federal Reserve finalized a regulation that requires card issuers to assess an individual's ability to repay credit card bills based solely upon independent income stream, rather than a family's collective income. Four months later, on July 21, the regulation and enforcement of the CARD Act transferred to the CFPB.

In the year since the regulation was finalized, there has been a groundswell of frustration with the new standard because, in effect, even adult non-income earning members of a family are no longer deemed creditworthy, regardless of their credit history. Often these family members have chosen to stay at home to manage a household and are in fact the primary purchasers for the family. Military spouses, even those with solid credit scores, are particularly affected because the family's income earner may be deployed and therefore unable to co-sign for a card.

Earlier this year, the CFPB began an ambitious regulatory streamlining project that is still ongoing, and specifically asked for public comment on this aspect of the CARD Act's "ability to pay" rule. The Chamber is hopeful that this request for information is the first step toward a timely resolution of this issue. Failing that, we would strongly support a legislative fix.

The Chamber greatly appreciates the Committee's longstanding leadership on this important issue.

Sincerely,

R. Bruce Josten

cc: The Members of the Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services

San Antonio, Texas 78288

USAA®

Statement
of the
United Services Automobile Association (USAA)
to the
United States House of Representatives
Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit
Hearing entitled "An Examination of the Federal Reserve's Final Rule on the CARD Act's 'Ability to Repay' Requirement"

June 6, 2012

Distinguished Chairwoman and Members of the Subcommittee:

The United Services Automobile Association (USAA) is pleased to offer comments to the House Committee on Financial Services Financial Institutions and Consumer Credit Subcommittee on the Federal Reserve's Final Rule on the CARD Act's "Ability to Repay" Requirement.

USAA is a membership-based association, which together with its family of companies, serves present and former commissioned and noncommissioned officers, enlisted personnel, retired military, and their families. Since USAA's inception in 1922 by a group of U.S. Army officers, we have pursued a mission of facilitating the financial security of our members and their families by providing a full range of highly competitive financial products and services, including personal lines of insurance, retail banking and investment products. Our core values of service, honesty, loyalty and integrity have enabled us to perform consistently and be a source of stability for our members, even in the midst of the unprecedented financial crisis of recent years.

At USAA, our mission drives us to address the unique financial needs of servicemembers and military families who often have limited time to manage their financial needs and who can be highly mobile. USAA offers products, tools and financial advice tailored to military families, focusing on major military milestones, such as deployment, permanent change of station and separating from the military. We offer those resources through employees who are trained to understand the unique needs of military personnel, as well as specialized and targeted member publications, face-to-face interactions and online resources.

1. Ability to Repay Requirement

On January 3, 2011, USAA wrote to the Board of Governors of the Federal Reserve System regarding its amendments to the Regulation Z provisions implementing the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the CARD Act).[1] At that time,

[1] Comment Letter from Ronald K. Renaud, Assistant Vice President Exec. Attorney, USAA Fed. Sav. Bank, to Jennifer J. Johnson, Sec'y, Bd. of Governors of the Fed. Reserve Sys. 5 (Jan. 3, 2011).

USAA expressed our concerns regarding the impact of the rule's ability to repay provisions on married consumers in general, and on married consumers in the military in particular.

Military spouses, especially military wives, are much more likely to be underemployed (e.g. less-than adequately full-time employed), working part-time, or out of the labor force completely.[2] When the ability to repay requirement was being considered, USAA cautioned that the rule would have a disproportionate impact on military wives who tend to earn much less than their "look-alike" civilian counterparts[3] and who depend more on spousal income.

Ultimately, the Federal Reserve's final rule[4] did create a uniform standard requiring all consumers to demonstrate an "independent" ability to pay,[5] and the rule has disadvantaged stay-at-home military spouses who do not have independent sources of income but have sufficient household income to secure lines of credit. Accordingly, we are providing our comments to the Subcommittee today to express our continued concerns regarding the rule's impact on married consumers and the disproportionate impact on married consumers in the military.

2. **Negative Impact on Married Consumers Generally**

As USAA stated in our comment letter to the Federal Reserve, Section 226.51 of Regulation Z does not permit a card issuer to consider household income or assets as part of its analysis of a consumer's ability to make minimum payments, unless the consumer has an ownership interest under federal or state law in the case of a community property state.[6] This has a significant impact on married consumers because it precludes consideration of a spouse's income while, at the same time, mandating the use of all the couple's joint obligations.

We provided several examples illustrating the large discrepancy between the credit card approval rates and credit limits for unmarried and married consumers that was likely to result from this formula.[7] By considering joint obligations, but not household income, the rule as implemented greatly understates the ability of a married consumer to make minimum payments on a credit card.

Married consumers with little or no income are precluded from obtaining a credit card under the ability to repay rule. These negative effects mainly impact the 27 percent of married women who do not work outside the home.[8] It was the inability of married

[2] Nelson Lim and David Schulker, *Measuring Underemployment Among Military Spouses*, xvi, RAND Corporation (2010), available at http://www.rand.org/pubs/monographs/MG918.
[3] *Id.*
[4] 76 Fed. Reg. 22,948 (Apr. 25, 2011).
[5] *Id.* at 22,975.
[6] Renaud, *supra*, at 2.
[7] *Id.* at 2-5 (providing examples demonstrating that a couple with one working spouse would be eligible for a lower credit card limit than a single applicant).
[8] Lim and Schulker, *supra*. at 36 (Figure 5.1)

women to obtain credit that led to the passage of the Equal Credit Opportunity Act of 1974 (the ECOA). The purpose of the ECOA was to make credit "equally available to all creditworthy customers without regard to sex or marital status."[9]

In conducting hearings in 1973, a Senate report identified the effects of this problem on women: "Women who are divorced or widowed have trouble reestablishing credit. Women who are separated have a particularly difficult time since their accounts may still be in the husband's name."[10] History has shown that the failure of a person to establish credit during a marriage could have devastating effects if the marriage ends in separation, divorce or death.

3. Negative Impact on Military Spouses Significantly Greater than on Civilians

Of greatest concern to USAA is the rule's disproportionate impact on military spouses, and particularly military wives. A full 50 percent of military wives do not work outside the home - 43 percent because they are not in the labor force and seven percent because they are unemployed.[11]

> Comparisons of military wives with their look-alikes - a group of weighted civilian wives, show that military wives have a much greater tendency to be underemployed. Military wives are much more likely than their look-alikes to be [not-in-the-labor force]. Military wives are more likely to involuntarily work part-time and to have relatively high[er] education for their jobs than their civilian counterparts. Finally, military wives are substantially less likely to be adequately [employed] full-time compared with similar civilian wives.

As a result, military wives must rely on their husband's income to a greater extent than civilian wives. In addition, the divorce rate among military couples is believed to be higher than for the civilian population and has been rising over recent years.[12] Accordingly, while the rule has a negative impact on the married consumer in general, its negative effects disproportionately impact military spouses.

Life in the military can be challenging and complicated. Servicemen, women and their families make sacrifices every day to keep our country safe and face unique financial stresses accompanying multiple deployments and frequent and costly relocations. Military families move 14 percent more often than civilian families.[13] These burdens are often borne by the "stay at home" military spouse who may rely on access to credit products to manage family finances while their active-duty spouse is unavailable.

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[9] See Equal Credit Opportunity Act of 1974, tit. V, §502.
[10] S. Rep. No. 93-278 (June 28, 1973).
[11] David Tarrant, *Stress of Separation takes its Toll on Military Families*, The Dallas Morning News, Dec. 19, 2010.
[12] *Id.*
[13] Dep't of Defense Community Relations, *Employment Resources for Our Military Community*, June 5, 2012, http://www.ourmilitary.mil/hot-topic/employment-resources-for-our-military-community/.

The ability to repay rule as currently implemented, has likely reduced military spouses' access to credit and made the already complicated management of financial stresses unique to the military community even more difficult. Currently, there are approximately 750,000 spouses of active-duty military personnel with a 26 percent unemployment rate among them.[14] Restricting the ability of non-working military spouses to access credit only exacerbates the financial strain on military families.

In addition, the rule's reliance on state law to determine ownership interest in the marital context results in a disparate impact on military spouses depending on their state of residence. The same non-working military spouse may be able to secure credit in California under the existing rule, but would be denied similar access to credit if he or she applied after changing his or her residence to Virginia, despite identical credit scores and family income.

4. Conclusion

USAA shares the concerns expressed by the twenty-five Members of Congress, including the Chairmen and Ranking Members of the House Financial Services Committee and the Financial Institutions and Consumer Credit Subcommittee, in a December 6, 2011 letter to the Consumer Financial Protection Bureau (CFPB) requesting a study of the effects of the uniform standard.[15] We urge the CFPB to conduct a study on the rule's impact and look forward to learning its results.

USAA also appreciates the opportunity to provide comments to the Financial Institutions and Consumer Credit Subcommittee on the Federal Reserve's Final Rule on the CARD Act's "Ability to Repay" Requirement and applauds the Subcommittee's focus on this important issue. We urge the Bureau to revise the regulation to permit card issuers to use household income when considering the ability of consumers to pay credit card debt. USAA believes this change is necessary to remedy the rule's negative impact on our military community and the disproportionate impact on military spouses.

Sincerely,

John W. Townes, III

John W. Townes, III

Rear Admiral, USN (Ret.)
Senior Vice President
Military Affairs

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[14] *Id.*

[15] Letter from Carolyn B. Maloney et al., Members of Congress, U.S. House of Reps., to Raj Date, Spec. Advisor to the Sec'y of the Treasury, Consumer Financial Protection Bureau (Dec. 6, 2011).

WIPP
Women Impacting Public Policy

June 5, 2012

House Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit
United State House of Representatives
Washington, DC 20515

To Whom It May Concern,

Women Impacting Public Policy (WIPP) is a national nonpartisan public policy organization, advocating on behalf of nearly 1 million women-owned businesses representing 60 business organizations. We are concerned about the "Ability to Pay Credit Card Debt" section of the "Streamlining Inherited Regulation" notice.

WIPP believes that the current rule could make it difficult for some women-owned businesses to obtain credit, especially smaller businesses. When applying for credit, some women business owners may choose to include household income as part of their application. The current rule would prohibit them from doing so, which could prevent them from obtaining credit that they are capable of repaying.

At a time when many small businesses find it difficult to access capital, the Government should not be making it more difficult.

Therefore, the section on "Ability to Pay Credit Card Debt" should be amended to include consideration of household income to assess an individual borrower's ability to repay credit.

Thank you for considering our comments.

Sincerely,

Barbara Kasoff

Barbara Kasoff, President and CEO
Women Impacting Public Policy

1156 15th St. NW Suite 1100, Washington, DC 20005~888.488.WIPP~Fax: (202) 872-8543
1714 Stockton Street, Suite 200, San Francisco, CA 94133~ 415.434.4314~Fax: 415.434.4331
Website: www.WIPP.org

Congress of the United States
Washington, DC 20515

December 6, 2011

Mr. Raj Date
Special Advisor to the Secretary of the Treasury
Consumer Financial Protection Bureau
1801 L Street NW
Washington, DC 20036

Dear Mr. Date,

We write to follow up on the "ability to pay" provisions in the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 that were the subject of rules issued by the Federal Reserve earlier this year. As you know, the Federal Reserve finalized its rules regarding Regulation Z on March 18, 2011 and they were effective on October 1, 2011. We would respectfully request that the CFPB conduct an extensive review of the potential impact that these new rules are having on the ability of consumers to obtain credit and amend Regulation Z if it finds a negative impact.

The Federal Reserve's final rules create a uniform standard requiring all consumers to demonstrate "an independent ability to repay." We believe that these rules contradict the Congressional intent of the Credit CARD Act since the Act created two distinct standards, one for younger consumers and one for all others. We also are concerned that these rules will disadvantage stay-at-home spouses who may not have an independent source of income but whom may have ample "household income" to secure lines of credit.

As you know, Members wrote to the Federal Reserve on May 6, 2011 requesting that the Federal Reserve, in consultation with the CFPB, undertake a study to look at the effects of applying a uniform standard on all consumers in the first six months after the implementation with a report back to Congress. We further requested that if it is found that stay-at-home spouses have been negatively impacted, the Board or the CFPB should then amend the rule to correct any problems it has found. We believe that especially in light of the approaching holidays and the increase in credit card usage, this study should begin as soon as possible.

We understand from some issuers that there may have already been a negative impact on the ability of stay-at-home spouses to secure a line of credit. One issuer has seen a greater decline in the size of the average line of credit assigned to women as opposed to men across all approved applicants. In addition, approval rates have declined significantly for women in certain age groups, especially for those 62 and over, who may be particularly likely to rely on the income of other household members (for example, a spouse's retirement income).

In a June 15th response to our request, the Federal Reserve agreed that a study would be useful to assess unintended consequences of the rules. The Fed noted that the Bureau has the authority to design and conduct a study to inform potential future rulemaking. The Federal Reserve also said it was ready to consult with the Bureau in order to share their experience and expertise in this area.

The CFPB has a unique perspective and can look across the credit card issuing industry to determine any potential negative impact. Through your consumer complaint line you can also learn first-hand from those directly affected. We believe that a study is both timely and necessary and we would urge the Bureau to begin this process before the end of the year.

Sincerely,

CAROLYN B. MALONEY
Member of Congress

BARNEY FRANK
Member of Congress

SPENCER BACHUS
Member of Congress

LOUISE SLAUGHTER
Member of Congress

SHELLEY MOORE CAPITO
Member of Congress

WALTER B. JONES
Member of Congress

GWEN MOORE
Member of Congress

(OH-16)
JAMES B. RENACCI
Member of Congress

CAROLYN MCCARTHY
Member of Congress

STEVE STIVERS
Member of Congress

LUIS V. GUTIERREZ
Member of Congress

MELVIN L. WATT
Member of Congress

NAN A. S. HAYWORTH
Member of Congress

MICHAEL G. FITZPATRICK
Member of Congress

AL GREEN
Member of Congress

MICHAEL G. GRIMM
Member of Congress

GREGORY W. MEEKS
Member of Congress

ROBERT J. DOLD
Member of Congress

GARY G. MILLER
Member of Congress

BLAINE LUETKEMEYER
Member of Congress

DAVID SCOTT
Member of Congress

STEPHEN F. LYNCH
Member of Congress

MICHAEL E. CAPUANO
Member of Congress

KEITH ELLISON
Member of Congress

JOHN J. DUNCAN JR.
Member of Congress

Congress of the United States
Washington, DC 20515

January 12, 2011

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

Re: Docket No. R-13 93

Dear Ms. Johnson:

We are writing to express our concern with proposed rules clarifying the Federal Reserve's "ability to pay" regulations that were issued in November, 2010. As a principal author of the Credit Card Act including the ability to pay provisions and as the principal proponent of the provisions affecting younger consumers, we believe the Fed's proposal goes beyond the intent behind both the specific provisions and the law itself.

The Board proposes to amend sec. 226.51 of its rules to "require that, regardless of the consumer's age, a card issuer must consider the consumer's independent ability to make the required payments." In doing so, the Board states that "[w]hen evaluating a consumer's ability to make the required payments before opening a new credit card account or increasing the credit limit on an existing account, card issuers must consider information regarding the consumer's independent income, rather than his or her household income." The Board acknowledges that this could prevent a consumer over the age of 21, or a spouse who does not work, from obtaining a credit card in his or her own name. Even if the household income is sufficient for an issuer's underwriting, a stay-at-home mom would not be able to use that income for her application. This may have a negative impact on her debt-to-income ratios and her credit score in cases where she is jointly named on other extensions of credit such as mortgages or car loans where household income was considered in those credit decisions.

The Credit Card Act contains two separate provisions concerning "ability to pay." The first, sec. 109, states that the issuer must consider "the ability of the consumer to make the required payments." The second, sec. 301, requires issuers to assess "an independent means of repaying any obligation." Section 109 does not specify "an independent means." Title III of the law is dedicated to consumers under age 21 and was intended to end specific predatory practices aimed at younger consumers. The original intent of the "ability to pay" requirement was to ensure that underage consumers couldn't apply for credit cards using their parents income without having a means on their own to make payments on the card. Creating a uniform standard for underage consumers and for spouses who do not earn a salary goes beyond that intent. For this reason, we believe that there should be two different standards for assessing income, one for consumers under age 21 and one for everyone else.

The Board states that the consumer can always jointly apply for the card. The Board also notes that in several community property states, both spouses have a joint interest in all of the income and assets in a household and can therefore use that joint interest when applying for credit cards. However, only nine states in the U.S. are community property states, leaving that option available to a small minority of American consumers.

We are concerned that the Board's proposal will hamper a stay-at-home mom's ability to establish her own independent credit history by applying independently for a card. Many stay-at-home moms have a strong work history, yet the proposed regulations ignore their demonstrated credit-worthiness because of their lack of current market income. While stay-at-home moms may not be contributing to the market economy as workers, they make the majority of the day-to-day financial decisions on behalf of their household. Women's consumer power represents 73 percent of household spending, or over $4 trillion in annual discretionary spending. Finally, requiring married women to have their own earnings in order to qualify for credit represents a serious risk for women in abusive domestic partnerships. Women trapped in abusive marriages may be unable to work due to a controlling spouse, a hallmark of relationships characterized by domestic violence. The availability of an independent credit card may represent her best chance at establishing independence and a path out of a dangerous relationship. By not allowing these women to apply independently for a credit card, the proposed regulations represent a significant – and potentially dangerous – set-back. We would accordingly urge the Board to amend its proposed rules so that issuers have the flexibility to consider household income in the cases of non-working spouses applying for credit.

Sincerely

Louise M. Slaughter

CAROLYN B. MALONEY
Member of Congress

LOUISE SLAUGHTER
Member of Congress

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

BEN S. BERNANKE
CHAIRMAN

April 27, 2011

The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Ranking Member:

Thank you for your letter regarding the Board's March 2011 final rule amending the regulations that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act). This rule clarifies that a credit card issuer is not permitted to open an account based on the income of a person who is not an applicant and will not be liable for debts incurred on that account. Your letter expressed concern that this rule is inconsistent with the Credit CARD Act and could prevent spouses who do not work outside the home, military spouses, and domestic partners from developing their own credit histories.

The Credit CARD Act contains two provisions that address a consumer's ability to repay debts incurred on a credit card account. Although these provisions differ in certain respects, both require credit card issuers to evaluate the ability of an applicant to repay debts incurred on a credit card account before extending credit. The Board believes that these provisions were intended to strengthen credit card underwriting standards in order to protect consumers from incurring unaffordable levels of credit card debt. Thus, the Board concluded in the March 2011 final rule that it would be inconsistent with the language and intent of the Credit CARD Act to permit issuers to open accounts based on the income of non-applicants who will not be legally responsible for repaying debts incurred on those accounts.

Before adopting this rule, the Board carefully considered its potential impact on spouses and domestic partners who do not have sufficient income to open a credit card account independently. The Equal Credit Opportunity Act (ECOA) and Regulation B, however, generally require creditors to use the same standards for evaluating married and unmarried applicants. Therefore, the Board could not have adopted a rule that, for example, permitted only married applicants to rely on the income of a person who is not liable for debts incurred on the account.

Furthermore, the Board believes that spouses and domestic partners who do not have sufficient independent income to open a credit card account will continue to have access to credit after the rule takes effect on October 1, 2011. For example, spouses or domestic partners with adequate collective income may open a credit card account by assuming joint liability for debts incurred on that account. In such cases, both applicants would develop credit histories based on the account. In addition, ECOA and Regulation B provide that, when one spouse is authorized to use the other spouse's credit card account (which is a common practice), the issuer must report the participation of both spouses when furnishing information regarding the account to the credit bureaus. Although ECOA and Regulation B do not specifically address domestic partners, the Board understands that issuers generally report the participation of authorized users without regard to marital status.

I hope that this information addresses your concerns.

Sincerely,

Congress of the United States
Washington, DC 20515

May 6, 2011

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Chairman Bernanke:

We write to follow up on the Board's final rules that it approved on March 18 concerning Regulation Z and specifically the "Ability to Pay" provision standard that is contained in those rules. We are disappointed that in issuing this rule with a unified standard for assessing ability to pay, the Federal Reserve has chosen to ignore the intent of Congress which created two standards, one for consumers under 21 and one for all other consumers.

We continue to be concerned that applying an *independent* ability to pay standard for consumers other than those under 21 may have a negative impact on stay-at-home spouses who rely on household income and do not themselves have independent salaries. While we understand that the Federal Reserve does not share this concern, we believe you will agree about the importance of insuring that the rule will not negatively impact stay-at-home spouses.

We would therefore request that the Federal Reserve, in consultation with the CFPB, undertake a study to look at the effects of applying a uniform standard on all consumers. The study should examine the effects of the uniform standard for the first six months after the implementation with a report back to Congress. If it is found that stay-at-home spouses have been negatively impacted, the Board or the CFPB should then amend the rule to correct any problems it has found.

We understand the difficulty the Board confronted as it attempted to clarify initial confusion that was raised about applying the ability to pay rules. We are sure the Board understands that it was never the intention of Congress that there would be any impact on stay-at-home spouses, and that we should make sure that that is in fact the case.

We appreciate your attention to this matter.

Sincerely,

Carolyn B. Maloney
CAROLYN B. MALONEY
Member of Congress

Barney Frank
BARNEY FRANK
Member of Congress

Louise M. Slaughter
LOUISE M. SLAUGHTER
Member of Congress

Mike Fitzpatrick
MIKE FITZPATRICK
Member of Congress

Statement of the Honorable Louise M. Slaughter
Before the House Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

"An Examination of the Federal Reserve's Final Rule on the CARD Act's 'Ability to Repay' Requirement "
June 6, 2012

Madame Chairwoman, I thank you for the opportunity to submit my statement for the record for this important hearing on federal "ability to pay" standards for credit cards. I would also like to thank the Ranking Member of the Subcommittee, Congresswoman Maloney, for working with me to address our concerns that recent federal regulations are going against Congressional intent of the Credit CARD Act (P.L. 111-24) , which was to have a separate "ability to repay" standard for traditional college-aged consumers under 21 years of age. I am grateful for the opportunity to clarify the congressional intent of the young consumer provision of the Credit CARD Act (Sec. 301 of P.L. 111-24) and to work towards eliminating the unintended consequences of the subsequent federal regulations.

Since 1999, I had worked on the "College Student Credit Card Protection Act", along with my good friend Representative John "Jimmy" Duncan, Jr. Our goal with this legislation was to protect college students from entering into credit card agreements they could not afford. In recent years, too many college students have been forced to drop out of school because of credit card debt, and there have been tragic stories of students taking their lives due to the insurmountable student debt. In the face of these terrible events, I decided to take action to halt credit card companies from luring college students into credit card agreements they couldn't afford. My legislation would have set specific underwriting standards for college student credit cards, including limiting credit lines to the greater of 20 percent of a students' annual income or $500 without a co-signer, requiring parental approval to increase credit lines for jointly-liable accounts and require creditors to obtain a proof of income, income history, and credit history from college students before approving credit applications.

From the 106th to the 110th Congress, I introduced this legislation. In April 2009 of the 111th Congress, I offered the College Student Credit Card Protection Act as an amendment to Representative Maloney's Credit Cardholder Bill of Rights, now known as the Credit CARD Act, and it was adopted by a vote of 276-154. When the bill went to the Senate, the language was changed to what we see today in Sec. 301 of the law, requiring under Sec. 127 of the Truth in Lending Act (TILA) that all consumers under the age of 21 prove they have the "independent" ability to repay to obtain a credit card without a cosigner, and that federal regulators promulgate rules to set those "ability to repay" standards.

I regret that this change was made, and believe that the failure to apply clear limits is what led to the undeserved denial of independent lines of credit to responsible adults. Furthermore, this has left our youngest and most vulnerable consumers – college students – unprotected, and that is a shame. While I agree that students should not be able to obtain a credit card based on household income they cannot access, my legislation's provisions requiring creditors to obtain a proof of income, income history, and credit history from college students before approving credit applications will properly addressed this concern without unintended consequences. It is imperative that the CFPB and Congress refocus the regulations on the real problem - college students are falling into devastating debt due to aggressive and predatory credit card companies.

We must act now to address the injustice of credit card companies profiting off of the demise of our nation's college students. What's more, colleges and financial institutions have also been entering into debit card agreements that take advantage of college students who are simply trying to access their bank accounts and financial aid. It is long past time for Members of Congress and federal regulators to protect college students from the abuses of the financial industry. For that reason, I intend to address specific underwriting standards for college student credit cards once again during this session of Congress.

The crux of today's hearing is that the Federal Reserve's interpretation of the statute ignored the Congressional intent for two separate standards: one for young, traditionally college-aged consumers in Sec. 127 of the Truth in Lending Act (TILA), and one for everyone else in Sec. 150 of TILA. The Consumer Financial Protection Bureau (CFPB) has the opportunity to go back to the drawing board and rewrite the young consumer regulations required in the CARD Act to properly and effectively protect college students from predatory credit card solicitations, as well as to allow stay-at-home spouses the ability to obtain a credit card of their own by citing their household income on a credit card application, as they once were able to do. In fact, a January 24, 2012 letter from CFPB Director Cordray, in response to a letter from myself, Congresswoman Maloney, and 23 bipartisan colleagues in the House requesting a review of these regulations, stated that the Bureau was conducting such a review of the effects on consumers. I appreciate Director Cordray's attention to this matter and look forward to an expedient response.

In closing, let me reiterate that my efforts to protect college students from falling into suffocating credit card debt have been taken beyond the original context to undeservedly limit stay-at-home spouses' access to an independent line of credit. This regulation is a change in status quo that was not intended by Congress and that could strip away the financial freedoms of all consumers, especially those that women have fought so hard for throughout the years. This is of particular concern to me in situations where domestic violence may be causing a woman to seek her independence, which she cannot do financially without an independent credit history. It is imperative that the federal regulators re-examine the congressional intent behind the separate ability to pay standards in Sec. 127(8) and Sec. 150 of TILA and take the necessary actions to remedy the negative unintended consequences of existing regulations.

Thank you once again, for the opportunity to address "ability to pay" standards, and the need to correctly interpret Congressional intent when it comes to the aforementioned legislation. I look forward to continuing to work with Congresswoman Capito and Congresswoman Maloney to address these concerns, and to work with the CFPB to find a reasonable and responsible solution to the matter.

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