STATEMENT OF KIRK SIMME

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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

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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.