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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.