

**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 independent 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.”<sup>1</sup>

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%<sup>2</sup> 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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<sup>1</sup> “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.

<sup>2</sup> 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.