Credit Union ASSOCIATION New York

January 7, 2013

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

RE: Ability to Pay Requirement
Docket No. CFPB-2012-0039

Dear Ms. Jackson,

On behalf of the Credit Union Association of New York, I would like to take this opportunity to comment on the Consumer Financial Protection Bureau's proposed amendments clarifying the application of the CARD Act's "ability to pay" requirements for stay-at-home spouses and individuals under the age 21. As the Bureau is well aware, regulations implementing the relevant statutory provisions have created much controversy and confusion by limiting the ability of spouses without income to get credit cards without assistance. The Association supports the amendment of these regulations to ensure that stay-at-home spouses are not denied credit for which they would otherwise qualify because of a misreading of the CARD Act. However, while these regulations are a step in the right direction, they do not go far enough to avoid confusion regarding the granting of credit cards to stay-at-home spouses, and as such should be amended before they are finalized.

This proposal is necessitated by the Federal Reserve Board's failed attempt to meld two distinct statutory mandates under one set of uniform regulations. Specifically, 15 U.S.C.A. § 1665e 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.

In contrast, Title III of the Act, dedicated to "the protection of young consumers from prescreened offers," prohibits financial institutions from extending credit cards to individuals under the age of 21 without a cosigner or guarantor unless the applicant has
"The independent means of repaying any obligation arising from the proposed extension of credit in connection with the account." [15 USC 1637 (C) (8)]

In writing regulations for these two provisions, the Federal Reserve required all individuals, irrespective of age or marital status to demonstrate the independent means to make required minimum payments. The Board further mandated that for purposes of making this determination,

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a request for "household income" was too vague to be a proper standard for qualifying such individuals.

The Association supports the Bureau's interpretation of the statute as creating two distinct standards: One for single persons under the age of 21 that Congress was concerned were accessing credit for which they were not qualified, and another less stringent standard curbing underwriting practices generally for individuals over the age of 21.

However, the Association disagrees with the Bureau's contention that credit unions and other financial institutions may not rely solely on an individual's stated "household income" in making credit card determinations for spouses over the age of 21. There is no indication that Congress intended spouses to be subject to greater regulatory restrictions under the CARD Act than any other member or customer. Furthermore, had the Federal Reserve initially interpreted the statute correctly, the CFPB would have no occasion to even be considering the circumstances under which stay-at-home spouses should be considered a unique class of individuals for credit purposes.

Household Income is an industry term of art and there is nothing in the legislative history or the past practices to suggest that financial institutions have been expanding the definition of household to qualify individuals based on the income of an individual who happens to live in the same dwelling with no other relationship to the applicant.

Furthermore, the use of "household income" is a more accurate description of the type of funds underwriters should take into account than are some of the terms approved for use on applications under these regulations and commentaries. Under these proposed regulations financial institutions can rely solely on an individual's stated "income and/or assets" or "available income" among other things. Available income is a more ambiguous term than is household income, which denotes the existence of either a family or social unit (See Merriam Webster's online dictionary http://www.merriam-webster.com/dictionary/household).

Another aspect of this regulation that could be improved involves married spouses under the age of 21. This regulation recognizes that spouses often co-mingle funds and that such funds may be considered in most circumstances when qualifying a spouse for a credit card. The simple truth is that there is nothing to suggest that a married spouse who happens be under the age of 21 is somehow less able to access his or her spouse's funds than is someone over the age of 21. However, under this regulation and the accompanying commentary, a spouse under the age of 21 faces much greater difficulty in obtaining credit. This was not the intent of Congress, which was primarily concerned with the provision of credit to young adults with no reasonable access to funds.

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In passing the CARD Act, Congress aimed to curb abusive credit practices; not restrict credit to qualified individuals. The Bureau's proposed regulations are an improvement over the existing rules but need to be refined even further to strike the proper balance between ending reckless underwriting and not denying credit to worthy applicants.

Sincerely,

William J. Mellin
President/CEO
Credit Union Association of New York