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,

CAROLYN B. MALONEY
Member of Congress

LOUISE SLAUGHTER
Member of Congress