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Myths & Realities About the CARD Act Independent Ability-To-Pay Provision

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Recently, there has been a great deal of controversy over a rule under the Credit CARD Act issued by the Federal Reserve Board that requires credit card lenders to consider the *independent* ability-to-pay of the consumer who is liable on a credit card account. Some of the rhetoric in this debate has been based on incorrect assumptions:

Does the independent ability-to-pay provision mean that a stay-at-home parent can never get credit on his or her own or rely on household income?

> Absolutely not. Stay-at-home parents have many ways to get a credit card in their own name. They can show ability-to-pay based on assets in a joint account. If they have a legal entitlement to the household income, as they do in the nine community property states, they can rely on the spouse's income.
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> In fact, the current rule permits lenders to simply ask for "income" and rely upon what the consumer puts down. And it even permits lenders to skip asking for income altogether and use "income estimators" to guess at an applicant's income.
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> Lenders have other alternatives to permit stay-at-home parents to list income. For example, they could permit applicants to list "income deposited into a joint account." Indeed, lenders must assess the financial capability of many consumers who do not earn wages but who may have assets to support borrowing.

Does the provision prevent stay-at-home parents from building a credit history?

> Again, absolutely not. In addition to being able to open a credit card as discussed above, stay-at-home parents can build credit histories when they are joint borrowers on an account. They can even build credit histories when they are listed as an "authorized user" on an account, *i.e.*, when they are permitted to use the account but are not liable for the debt.

Won't this hurt most stay-at-home spouses, who have high enough household incomes that we don't have to worry about them?

> Contrary to the examples featured in recent media articles, the Census data shows that stay-at-home mothers tend to be less educated, younger, more likely to be in poverty, more likely to be Hispanic, and more likely to be foreign-born than other mothers. Stay-at-home mothers may be as much at risk from the financial stresses of unaffordable credit card debt as other vulnerable groups.
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> A study last year found that, after divorce, 44% of women fell into poverty.[1]

If the spouses were to divorce or the household to dissolve, the stay-at-home spouse could be burdened with debt that he or she cannot afford to repay.

For higher income spouses, concerns about the ability-to-repay rule are not about access to credit but simply a matter of principle. Though principles are important, lower income consumers face the more serious question about whether they are taking on debt they cannot escape that will harm their lives.

Won't this hurt domestic violence survivors, who might need to get a credit card to escape an abusive situation or might be afraid to ask their spouse to co-sign?

A recent study by Prof. Angela Littwin at the University of Texas School of Law shows that the major consumer financial problem faced by abuse survivors is not inability to obtain credit, but rather identity theft or "coerced debt" by the abuser.[2] In addition, in many cases the survivor is the primary earner and the abuser has little or no income. Changing the independent ability-to-repay provision would enable those abusers to take out credit cards based on the income of the survivor.

A woman is more at risk of violence, and more tied to an abusive spouse, if she incurs debt without her spouse's knowledge but has to depend on access to his income to repay it.

Why do consumer groups support the independent ability to pay provision?

We believe strongly that credit should only be given based on the ability to repay of the consumer who is liable on the account. A blanket rule permitting reliance on household income to which the consumer is not entitled could expose consumers to debt they cannot repay.

Others, such as adult children living with parents, significant others, or siblings sharing a household could also run into trouble if they rely on household income. Treating married couples differently could lead to discrimination based on marital status.

We are concerned that the credit card industry is using this issue as a way to weaken the overall ability-to-pay rule and to permit a return to reckless lending.

For more information, contact Lauren Saunders, lsaunders@nclc.org, (202) 452-6252 x 105, or Chi Chi Wu, cwu@nclc.org, (617) 542-8010.

[1] Family Research Council, *Marriage And Economic Well-Being: The Economy Of The Family Rises Or Falls With Marriage* (May 2011).
[2] Prof. Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, Calif. L. Rev. (forthcoming 2012).