PACIFIC
DENTAL SERVICES

January 10, 2011

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1393

Dear Ms. Johnson:

This comment letter is submitted on behalf of Pacific Dental Services, Inc. in response to the proposed rule issued by the Federal Reserve Board ("Board") to clarify certain provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("CARD Act"). Pacific Dental Services, Inc. appreciates the opportunity to comment on this proposal.

Pacific Dental Services, Inc. provides management services to over 200 dental offices in California, Nevada, Colorado, Arizona, and Texas. One of the services we provide for the patients of our practices is the ability for them to pay for their dental treatment over time by financing dental procedures through third party financing entities. As the costs of healthcare continue to increase and the relative amount of care being covered by dental insurance companies decreases, our patients are facing increasing out of pocket expenses. The availability of financing is key for our patients to be able to pay for their treatment over time and thereby take care of their dental needs.

Summary of the Proposed Clarification

When opening a new account, section 226.51 of Regulation Z requires an issuer to consider the applying consumer's ability to make the required minimum periodic payments on the account. The proposed clarification, however, would significantly change this ability to pay requirement in a way that would unfairly restrict the ability of many consumers, particularly women not working outside the home, to qualify for credit. The proposal also would restrict our ability, and the ability of many other retailers, to serve our core customers. Specifically, the proposed rule would prohibit a card issuer from using spousal or household income when considering whether to extend credit, unless both spouses are joint applicants or the spouse applying alone lives in a community property state. This proposed restriction would apply to the bank that issues our card, Smile Generation Financial Credit Card. We are concerned about the impact this proposed clarification would have both on our customers and on our business. So, we respectfully request that the Board not adopt this proposal.

The proposed clarification would have a detrimental impact on women not working outside the home

The proposed clarification would have a detrimental impact on non-working spouses, who are predominantly women and who depend on credit to manage the family household.

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Specifically, the proposed clarification would not permit a card issuer to extend credit to a non-working spouse if there is no evidence that the non-working spouse has the independent ability to repay the credit obligation, without considering the income of her spouse. Under these circumstances, the requested credit will likely be declined, and such declinations will have a significant adverse impact on non-working spouses who are core customers for most retailers, including us. In many—if not most—families, it is the non-working spouse who is responsible for running the household, including coordinating the finances of the household. As a result, the non-working spouse is more likely to be the person who applies for credit in our stores than the working spouse. And, this access to credit is important to enable the non-working spouse to make household purchases, including clothing, furniture and other household goods. The proposed clarification would significantly curtail many routine credit-granting practices that are valued by both retailers like us and by our customers, such as the opportunity to apply for a new account at the point-of-sale. In addition, the proposed clarification would have a chilling effect on the willingness of customers to apply for store credit because of the embarrassment of being denied credit at the point-of-sale, and the possibility of being told by a store clerk in front of other customers that she must have her husband co-sign for the account.

The inability to extend credit to our core customers will have a significant adverse impact on our ability to maintain profitability during this time of economic recovery. So, both retailers and their most important customers would lose under this proposed clarification. The Board notes in the supplemental information accompanying the proposed clarification that it "acknowledges that the proposed amendments . . . could prevent a consumer without [independent] income or assets from opening a credit card account despite the fact that the consumer has access to (but not an ownership interest in) the income or assets of a spouse or other household member." We find it hard to believe, however, that the Board fully understands the potential impact that the proposed clarification will have on consumers, especially married women who rely on their husbands' income to obtain credit necessary to maintain their joint household. And, we find it impossible to believe that Congress could possibly have intended to end the protection that non-working women have enjoyed for more than 30 years under the Equal Credit Opportunity Act through a back-door amendment to an entirely separate statute, the Truth in Lending Act. To the contrary, Congress carefully included an "independent ability" requirement in a provision of the CARD Act that applies only to under-age credit applicants, not to non-working spouses applying for household credit.

Accordingly, we recommend that the Board not adopt the proposed clarification that essentially prohibits an issuer from considering household income, and from granting separate credit to a non-working spouse.

Proposed clarification would undermine importance of non-working spouses

The proposed clarification would carelessly undermine the importance of non-working spouses by undervaluing the unpaid caregiving work that millions of women (and other non-working spouses) provide for society as a whole. For example, a non-working spouse cares for family members, supports school systems and our society as a whole. Instead of treating a non-working spouse with the respect that she or he deserves, the proposed clarification would make it

increasingly difficult for a non-working spouse to obtain credit by forcing issuers to deny that spouse credit if there is no evidence of the independent ability to make payments on the account. Not surprisingly, a majority of married women have no independent income of their own because they have opted to stay at home to raise children and care for family members. Accordingly, because the proposed clarification puts at risk these core values of our society, it should not be adopted.

Proposed clarification is inconsistent with the Equal Credit Opportunity Act

The proposed rule is inconsistent with the purposes of the Equal Credit Opportunity Act. The Equal Credit Opportunity Act requires creditors to make credit available to all creditworthy consumers without regard to sex, race, age, marital status. In particular, the legislative history of the Equal Credit Opportunity Act makes it clear that one "frequent complaint voiced by women during hearings leading to the passage of the Act . . . was their inability to obtain credit because the credit history of accounts shared with their husbands was maintained and reported only in the husbands names." The Act and its implementing Regulation B are designed to remedy a woman's inability to obtain credit without her husband by requiring that, on the applicant's request, the creditor must consider accounts reported in the name of the applicant's spouse that reflect the applicant's ability to repay the debt. The proposed rule would undercut this key purpose of the Equal Credit Opportunity Act and would have a chilling effect on the willingness of those very women to apply for store credit with the likelihood she would be denied credit, and the embarrassment of having this happen in front of other customers in our stores.

As noted above, Congress could not possibly have intended to subject non-working spouses to such demeaning experiences; nor could Congress have intended to restrict the ability of a non-working spouse to serve as an equal partner in the household.

In light of the harmful impact the proposed clarification would have on non-working spouses and their families, as well on retailers that rely on these core customers, we respectfully request that the Board not adopt the proposed changes to the ability to pay requirements.

Thank you for your consideration of our views. If you have any questions, please do not hesitate to contact David Swanson at (714) 508-3600.

Sincerely,

Brady Aase
Chief Financial Officer

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