

# FROM THE SCHOOLHOUSE TO THE POORHOUSE: THE CREDIT CARD ACT'S FAILURE TO ADEQUATELY PROTECT YOUNG CONSUMERS

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## I. INTRODUCTION

As commonly recognized in our society, higher education often serves as a gateway of opportunity for many young adults.<sup>1</sup> Obtaining a college or professional degree provides not only an essential prerequisite for securing certain types of employment,<sup>2</sup> but also facilitates access to the leadership and democratic institutions that shape our society.<sup>3</sup> Unfortunately, the doors of opportunity can be closed to many young adults due to the substantial amounts of credit card debt they amass during their college careers. Whether it be their inability to qualify for additional student loans or to pass an employer credit check,<sup>4</sup> the educational, financial, and personal prospects of debt-laden students can be severely hindered by the quagmire of credit card debt in which many find themselves.

In recent years, credit card usage by college students has hit an all time

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1. See JOHN IMMERWAHR ET AL., NAT'L CTR. FOR PUB. POL'Y AND HIGHER EDUC., SQUEEZE PLAY: HOW PARENTS AND THE PUBLIC LOOK AT HIGHER EDUCATION TODAY 8 (2007), available at [http://www.highereducation.org/reports/squeeze\\_play/squeeze\\_play.pdf](http://www.highereducation.org/reports/squeeze_play/squeeze_play.pdf) (reporting prevalent belief that higher education is necessary for professional and personal success); Lani Guinier, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARV. L. REV. 113, 128 & n.63 (2003) (detailing positive economic benefits of obtaining college degree); Jennifer Elrod, Article, *Academics, Public Employee Speech, and the Public University*, 22 BUFF. PUB. INT. L.J. 1, 12 (2004) (referencing public's view of higher education as means to obtain "greater social status and higher paying positions").

2. See Brief for the United States as Amici Curiae Supporting Petitioner at 13, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 176635 ("A university degree opens the doors to the finest jobs and top professional schools, and a professional degree, in turn, makes it possible to practice law, medicine, and other professions.").

3. See Lani Guinier, *Reframing the Affirmative Action Debate*, 86 KY. L.J. 505, 516 (1998) (noting that "higher education has become a gateway to democratic citizenship: It is difficult to get a secure job without a college degree, and without a job, you are not treated as a contributing member of this society"); Susan Sturm, *The Architecture of Inclusion: Advancing Workplace Equity in Higher Education*, 29 HARV. J.L. & GENDER 247, 333 (2006) ("Courts, policymakers, and advocates recognize higher education as the gateway to citizenship, leadership, and democratic participation.").

4. For a discussion of these and other negative consequences associated with student credit card debt, see *infra* notes 120-54 and accompanying text.

high.<sup>5</sup> On college campuses throughout the country, young and financially inexperienced students are applying for and receiving credit cards at astonishing rates.<sup>6</sup> Colleges and universities are partnering with credit card companies to receive financial compensation for allowing companies on campus to solicit and market to this group of consumers.<sup>7</sup> While it may appear that the majority of student cardholders are managing their debt in a responsible manner,<sup>8</sup> a more thorough examination of the realities that characterize the management or, rather, mismanagement of student credit card debt reveals that numerous students experience difficulty managing their rising levels of credit card indebtedness.<sup>9</sup>

Students' increased credit card usage is symptomatic of our society's escalating dependence on credit cards.<sup>10</sup> In 2006, 173 million cardholders amassed \$886 billion in outstanding credit card debt.<sup>11</sup> These numbers represent a fourteen million person increase in the number of cardholders since 2000 and a

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5. See SALLIE MAE, HOW UNDERGRADUATE STUDENTS USE CREDIT CARDS: SALLIE MAE'S NATIONAL STUDY OF USAGE RATES AND TRENDS 5 (2009) [hereinafter SALLIE MAE STUDY], available at <http://inpathways.net/SLMCreditCardUsageStudy41309FINAL2.pdf> (reporting that college students' average credit card debt increased from \$1,879 in 1998 to \$3,173 in 2008).

6. *Id.* (reporting that from 1998 to 2008, percentage of undergraduate college students with credit cards increased from sixty-seven percent to eighty-four percent).

7. See Shea Connelly, *Banks Partner with Colleges to Market Use of Credit Cards*, THE CAVALIER DAILY (Jan. 15, 2009), available at <http://www.cavalierdaily.com/news/2009/jan/15/banks-partner-with-colleges-to-market-use-of-credi/> (discussing relationship between University of Virginia and Chase Bank); Jonathan D. Glater, *Colleges Profit as Banks Market Credit Cards to Students*, N.Y. TIMES, Jan. 1, 2009, at B1 (reporting that Bank of America, one of country's largest card issuers on college campuses, has "agreements with about 700 colleges and alumni associations").

8. See, e.g., Michael E. Staten & John M. Barron, *Usage of Credit Cards Received Through College Student-Marketing Programs*, 34 NASFAA J. STUDENT FIN. AID 1, 7, 13-14 (2004) (reporting that student cardholders are more likely to pay their balance in full in any given month and less likely to use their cards for cash advances as compared to non-student cardholders); Michael McNamara, *Conventional Wisdom on Student Debt Inaccurate*, AM. BANKER, Jan. 27, 2003, at 5 (reporting findings from student credit card study and concluding "that the overwhelming majority of college students are responsible users of credit cards"). In 2008, "only 7 percent [of college students] admit[ted] to paying less than the minimum required some of the time when their credit card bill comes due." SALLIE MAE STUDY, *supra* note 5, at 14.

9. See *id.* ("[O]nly 17 percent of college students say they regularly pay off all cards each month . . . . Thus, while they are making at least the required payments each month, more than three-quarters of college students are incurring finance charges by carrying over credit card debt month to month.") For a discussion of how college students mismanage their credit card debt, see *infra* notes 92-119 and accompanying text.

10. See ROBERT D. MANNING, CREDIT CARD NATION 2, 12-13 (2000) [hereinafter MANNING, CREDIT CARD NATION] (providing detailed discussion of "the ascendance of the consumer credit society"); see also TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 108-40 (2000) [hereinafter SULLIVAN ET AL., FRAGILE MIDDLE CLASS] (discussing development and growth of credit society and its financial impact on middle-class consumers).

11. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2009: BANKING FINANCE, AND INSURANCE 724 tbl.1148 (2009), available at <http://www.census.gov/prod/2008pubs/09statab/banking.pdf>.

\$206 billion increase in the amount of outstanding debt since that time.<sup>12</sup> From 2005 to 2008, the amount of total outstanding revolving debt, which is primarily comprised of credit card debt,<sup>13</sup> increased from \$829.6 billion to \$957.5 billion.<sup>14</sup>

Since 2008, however, the amount of outstanding credit card debt has steadily declined as consumers have reacted to the current economic recession by paying down their balances, refraining from borrowing on their cards, and using debit cards more frequently than credit cards.<sup>15</sup> The decline may also be due to a decrease in the availability of credit during the financial crisis. Over the past two years, many lenders have reduced consumers' credit limits and closed inactive accounts in efforts to reduce their risk.<sup>16</sup> While some are doubtful that consumers' newfound "frugality" will continue once the economy rebounds, there are some indications that consumers' tempered use of credit cards will continue post-recovery.<sup>17</sup>

As consumers' credit card borrowing increased, the credit card industry sought to take advantage of this increased usage by implementing policies and procedures that, while profitable to the companies, have proven costly and detrimental to consumers. From the imposition of exorbitant late and over-the-limit fees<sup>18</sup> to the practice of universal default,<sup>19</sup> the industry has made it very

12. *Id.*

13. Adam J. Levitin, *Hydraulic Regulation: Regulating Credit Markets Upstream*, 26 YALE J. REG. 143, 191 & n.249 (2009) ("The majority of revolving debt is credit card debt.").

14. FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS, STATISTICAL RELEASE G.19: CONSUMER CREDIT 1 (2010), available at <http://www.federalreserve.gov/releases/g19/20101007/>.

15. See *id.* (reporting that as of August 2010, amount of outstanding revolving debt was \$822.4 billion, which is lower than that outstanding in 2005); see also Sandra Block, *Credit Card Use Plunges as Hard Times Drag On, Debit Use Rises*, USA TODAY, Sept. 10, 2010, [http://www.usatoday.com/money/perfi/credit/2010-09-10-credit10\\_ST\\_N.htm](http://www.usatoday.com/money/perfi/credit/2010-09-10-credit10_ST_N.htm) [hereinafter Block, *Credit Card Use Plunges*] (reporting survey findings that "56% of consumers used credit cards in 2009, down from 87% in 2007" and noting that "[i]n 2009, payment volume for debit cards exceeded credit cards for the first time, a trend that's expected to continue in 2010"); Ronald J. Mann, *The Good, the Bad and the Doubtful in Credit Card Reform*, LOMBARD STREET (June 22, 2009), <http://www.finreg21.com/lombard-street/the-good-bad-and-doubtful-credit-card-reform> [hereinafter Mann, *Credit Card Reform*] (noting that many cardholders paid down their balances in response to economic downturn).

16. See Shelly Banjo, *Credit Card Companies Slash Credit Limits*, WALL ST. J., Jan. 5, 2009, available at <http://online.wsj.com/article/SB123117246022354083.html> ("[C]redit card companies are slashing consumer credit lines and closing inactive cards."); see also Block, *Credit Card Use Plunges*, *supra* note 15; Nancy Trejos, *Less Power to Purchase: Consumers' Credit Limits Slashed as Companies Try to Reduce Risk*, WASH. POST, Nov. 16, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/15/AR2008111500216.html> (noting that credit card companies "are taking a wide range of steps to mitigate their risk").

17. See Allie Johnson, *Frugality: Just a Fad? Or Will Consumers Keep Saving Post-Recession?*, CREDITCARDS.COM (Nov. 30, 2009), <http://www.creditcards.com/credit-card-news/frugality-fad-consumer-saving-spend-recession-behavior-1264.php>.

18. Industry consultants estimate that in 2009 credit card issuers will have generated over \$20 billion from late fees and over-the-limit penalties. See Andrew Martin, *Credit Card Industry Aims to Profit from Sterling Payers*, N.Y. TIMES, May 19, 2009, at A1. This amount represents an approximate \$5 billion increase in the amount collected by credit card compa-

difficult, and in some cases impossible, for cash-strapped consumers to end the cycle of debt in which many find themselves. These and other unfair and deceptive practices prompted Congress to pass the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the Credit CARD Act or the Act).<sup>20</sup>

In passing the Credit CARD Act, Congress prohibited the practice of universal default on outstanding balances<sup>21</sup> and established consumer “opt in” procedures that must be followed before a creditor can assess over-the-limit fees for extensions of credit that exceed consumers’ credit limits.<sup>22</sup> Congress’s enactment of these and other consumer-friendly provisions of the Act should be and have been applauded.<sup>23</sup> For decades, consumer advocates have been urging Congress to take action against the credit card industry to end unfair practices and to improve consumer disclosures,<sup>24</sup> both of which the Credit CARD

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nies in 2004. See Seana Valentine Shffrin, *Are Credit Card Late Fees Unconstitutional?*, 15 WM. & MARY BILL RTS. J. 457, 460 n.12 (2006); see also MANNING, CREDIT CARD NATION, *supra* note 10, at 94; Ronald J. Mann, *Bankruptcy Reform and the “Sweat Box” of Credit Card Debt*, 2007 U. ILL. L. REV. 375, 389 (2007) [hereinafter Mann, *Sweat Box*]; Kathleen Day & Caroline E. Mayer, *Credit Card Penalties, Fees Bury Debtors*, WASH. POST, Mar. 6, 2005, at A01.

19. Universal default permits credit card companies to raise a cardholder’s interest rate if the cardholder defaults on *any* credit obligation, including those owed to creditors other than the credit card issuer. Usually without warning or prior notification, a credit card company can increase a cardholder’s interest rate if the cardholder is late paying his mortgage, another credit card bill, or even a utility bill. Events other than late payments, such as exceeding one’s credit limit on any card, having too much available credit, or obtaining a new mortgage or car loan, can also trigger universal default interest rate increases. See Ben Woolsey, *Universal Default: What It Is, and How to Avoid It*, CREDITCARDS.COM (May 1, 2006), <http://www.creditcards.com/credit-card-news/universal-default-could-raise-your-interest-rates-1270.php>.

20. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (codified in scattered sections of 15 U.S.C.).

21. *Id.* § 101(b).

22. *Id.* § 102(a). The Credit CARD Act also mandates that over-the-limit charges as well as other penalties, such as late payment fees, “be reasonable and proportional to [the] omission or violation” that precipitated the imposition of the fee. See *id.* § 102(b).

23. See, e.g., Sandra Block, *Fed Rules to Cap Late Fees on Credit Cards, Ban Inactivity Fees*, USA TODAY, June 18, 2010, [http://www.usatoday.com/money/perfi/credit/2010-06-15-fed-credit-card-rules\\_N.htm](http://www.usatoday.com/money/perfi/credit/2010-06-15-fed-credit-card-rules_N.htm) [hereinafter Block, *Fed Rules*] (“Taken together, the new rules will provide consumers with numerous tools for better management of their credit costs.”) (internal quotation marks omitted); Phyllis Furman & Michael McAuliff, *Consumer Advocacy Groups Praise Credit Card Reform Bill, but Warn It Offers Only Partial Protection*, N.Y. DAILY NEWS, May 21, 2009, available at [http://www.nydailynews.com/money/2009/05/21/2009-05-21\\_consumer\\_advocacy\\_groups\\_praise\\_credit\\_card\\_reform\\_bill\\_but\\_warn\\_it\\_offers\\_only.html](http://www.nydailynews.com/money/2009/05/21/2009-05-21_consumer_advocacy_groups_praise_credit_card_reform_bill_but_warn_it_offers_only.html)

ml (describing Credit CARD Act as “probably the strongest piece of consumer legislation to pass Congress in a decade”) (internal quotation marks omitted); Ben O’Brien, *Our View on Consumer Protection: Beyond Credit Reform*, USA TODAY, May 27, 2009, <http://content.usatoday.com/topics/post/USA+TODAY+editorial/67302959.blog/1> (praising legislation as “big victory” for consumers).

24. See, e.g., Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1 (2008); Adam J. Levitin & Todd Zywicki, *Modernizing Consumer Protection in the Financial Regulatory System: Strengthening Credit Card Protections*, AM. BANKR. INST. J., March 2009, at 10, 10; John Dugan, *We Support Strict Safeguards*, USA TODAY, Sept. 9, 2008, at A12; Elizabeth Warren, *Consumer Protection As Systemic Safety: If We Safeguard*

Act purports to do.<sup>25</sup> Congress's good deed, however, is not immune to criticism,<sup>26</sup> especially as it concerns protection for the subset of young consumers who incur debt without the sufficient financial means to repay it.<sup>27</sup>

The Credit CARD Act primarily seeks to protect college-aged consumers<sup>28</sup> by prohibiting certain solicitation practices and by attempting to limit their access to credit cards.<sup>29</sup> By prohibiting consumers under the age of twenty-one from receiving pre-screened credit offers without their consent<sup>30</sup> and by requiring them to satisfy certain prerequisites before obtaining a card,<sup>31</sup> Congress hopes to decrease the negative consequences that many young cardholders have experienced due to their accumulation of credit card debt. This Article questions whether the Credit CARD Act's narrow approach to protecting young consumers will achieve this goal.

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*Consumers, We Also Save the Entire Financial System from Its Own Excesses*, THE AM. PROSPECT, June 2010, at A6; Elizabeth Warren, *Making Credit Safer: The Case for Regulation*, HARV. MAG., May-June 2008, at 34-37, 94; *see also* *Consumer Debt--Are Credit Cards Bankrupting Americans: Hearing Before the Subcomm. On Commercial & Administrative Law of the H. Comm. On the Judiciary*, 111th Cong. 8-10 (2009) (statement of Adam J. Levitin, Prof., Georgetown Univ. Law Ctr.).

25. See Press Release, The White House Office of the Press Secretary, Fact Sheet: Reforms to Protect American Credit Card Holders (May 22, 2009), *available at* [http://www.whitehouse.gov/the\\_press\\_office/fact-sheet-reforms-to-protect-american-credit-card-holders/](http://www.whitehouse.gov/the_press_office/fact-sheet-reforms-to-protect-american-credit-card-holders/) (summarizing Credit CARD Act's key provisions).

26. See Block, *Fed Rules*, *supra* note 23 (noting one consumer advocate's view that "the Fed missed an opportunity to require a rollback of all the outrageous interest rate hikes consumers have been slammed with in recent years"); Sandra Block, *What You Need to Know About the New Credit Card Reforms*, USA TODAY, Feb. 26, 2010, [http://www.usatoday.com/money/perfi/credit/2010-02-22-cardreforms22\\_ST\\_N.htm](http://www.usatoday.com/money/perfi/credit/2010-02-22-cardreforms22_ST_N.htm) (detailing potentially harmful practices employed by credit card industry that remain permissible under Credit CARD Act); *Credit Card Reform Is Mixed Blessing*, WASH. TIMES, Feb. 22, 2010, *available at* <http://www.washingtontimes.com/news/2010/feb/22/credit-card-reform-mixed-blessing/print/> (asserting that Credit CARD Act is less effective than anticipated due to card industry's nine-month window within which to increase interest rates, create new fees and cut credit lines); Furman & McAuliff, *supra* note 23 (detailing consumer advocates' opinions that final legislation was "watered down" and did not provide for beneficial consumer protections such as caps on interest rates); Kimberly Palmer, *Credit Card Bill Already Affects Consumers*, U.S. NEWS & WORLD REP. ALPHA CONSUMER BLOG (July 28, 2009), <http://money.usnews.com/money/blogs/alpha-consumer/2009/7/28/credit-card-bill-already-affects-consumers> (discussing Credit CARD Act's negative short-term effect on consumers as evidenced by credit card industry's interest rate increases and balance transfer offer changes); Diana Ransom, *Card Sharp: Where the Credit CARD Act is Falling Short*, SMARTMONEY (June 1, 2010), <http://www.smartmoney.com/personal-finance/debt/where-the-card-act-is-falling-short/> (reporting consumer advocates' concerns that Credit CARD Act did not adequately address consumer protection issues such as lowering and closing of credit lines and accounts and payment allocation toward cardholders' debt).

27. See, e.g., Regina L. Hinson, Note, *Credit Card Reform Goes to College*, 14 N.C. BANKING INST. 287 (2010) (discussing strengths and weaknesses of Credit CARD Act as it relates to young consumers).

28. For purposes of this Article, the term "college-aged consumers" refers to those consumers who are under the age of twenty-one.

29. See Credit CARD Act, Pub. L. No. 111-24, §§ 301-302, 304, 123 Stat. 1734, 1747-48, 1749 (codified in scattered sections of 15 U.S.C.).

30. *Id.* § 302.

31. *Id.* § 301.

In light of the increased levels of young consumer credit card indebtedness and the negative consequences that befall many college-aged consumers as a result of this debt, this Article asserts that the current legislation misses an important opportunity to provide greater and more effective protection for this cohort of consumers. By narrowly focusing on the availability of credit cards to college-aged consumers, the Credit CARD Act fails to include provisions that provide protection for young consumers once they obtain and begin to use credit cards.<sup>32</sup> This Article also questions the efficacy of the current provisions, which, in concert with rules promulgated by the Federal Reserve Board (the Board), appear to permit issuers' practice of lending to young, unemployed consumers who do not possess the financial resources with which to repay their debt. Therefore, this Article argues that more comprehensive and effective measures are needed to help protect the financial and personal futures of college-aged consumers.

Part II of this Article provides an overview of the banking industry's decision to enter the young consumer market, specifically as it relates to undergraduate students. It details card issuers' aggressive marketing and solicitation efforts that have succeeded in expanding not only the number of college-aged cardholders but also their levels of indebtedness. Part III discusses this indebtedness in terms of student cardholders' increased rates of credit card usage and the negative consequences that some experience as a result of such use.

Part IV of this Article critiques Congress's recent efforts to address the problem of credit card indebtedness among young consumers through the Credit CARD Act. Although the Act attempts to limit college-aged consumers' access to credit cards, this Part argues that such attempts will likely prove futile for two primary reasons. Both the provisions of the Act itself and the lenient regulations promulgated by the Board pave the way for card companies to continue issuing cards to young, unemployed consumers, many of whom may be unable to repay the debt they incur.

In light of this probability, Part V of this Article proposes several measures that could more effectively and comprehensively protect young consumers' financial and personal futures. The spectrum of proposals range from prohibiting consumers under the age of twenty-one from obtaining a credit card to reducing the length of time negative credit card history is included in young consumers' credit reports. Depending on the goals policymakers seek to achieve, one or more of these proposals can be implemented in efforts to both restrict lending to college-aged consumers who lack the financial resources to repay their debt and lessen the negative financial consequences brought on by excessive debt. The serious consideration of these and other measures is imperative if lawmakers

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32. While the Credit CARD Act does include a provision requiring cosigner approval for limit increases on cards for which he/she is jointly liable, which arguably protects young consumers from amassing high balances, this provision is not applicable to consumers under the age of twenty-one who obtain a card without a cosigner. *See id.* § 303. Subject to the Credit CARD Act's rules regarding consideration of ability to repay, card issuers are free to increase consumers' credit limits without their express approval, thereby paving the way for them to sink deeper into debt. For a proposal to rectify this oversight, see *infra* notes 245-66.

hope to have a significant impact on young consumers' credit card indebtedness.

## II. NEW HORIZONS: THE RISE OF THE YOUNG CONSUMER MARKET

Although it is now considered commonplace for unemployed eighteen-year-olds to have ready access to credit cards, this was not always the case.<sup>33</sup> Young consumers' current accessibility to credit cards is a direct result of the banking industry's strategy to target new markets in an effort to sustain and expand profitability.<sup>34</sup> One such market is comprised of undergraduate student consumers. While card companies' on-campus marketing and solicitation efforts have been integral to the expansion of this market, they have also been widely criticized by lawmakers, consumer advocates, and university administrators.<sup>35</sup> Concerns regarding the industry's solicitation methods, which, according to some, border on being predatory and deceptive,<sup>36</sup> have prompted university officials and state and federal lawmakers to implement policies restricting solicitation efforts that target student consumers. It is their hope that such policies will help stem the wave of credit card indebtedness that has engulfed this profitable, yet vulnerable, market.

### A. *High Risk, High Reward*

Prior to the late 1980s, credit card issuers did not aggressively seek to lend to student consumers.<sup>37</sup> Due in part to the financial industry's "concern that young and impressionable consumers would act irresponsibly with 'gifts' of unearned money,"<sup>38</sup> it was standard industry practice to refrain from initiating mass marketing campaigns that targeted young consumers and to require a parental cosigner before approving a college-aged consumer's credit card application.<sup>39</sup> Both of these practices were consistent with the industry's initial unitary credit card business model that sought to reserve lending for non-risky,

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33. See MANNING, CREDIT CARD NATION, *supra* note 10, at 166-68.

34. See *id.*; SULLIVAN ET AL., FRAGILE MIDDLE CLASS, *supra* note 10, at 135-37; Ronald J. Mann, *Patterns of Credit Card Use Among Low and Moderate Income Households* 5-9 (April 10, 2008) [hereinafter Mann, *Patterns*], available at <http://ssrn.com/abstract=1119268>.

35. See U.S. GEN. ACCOUNTING OFFICE, GAO-01-773, CONSUMER FINANCE: COLLEGE STUDENTS AND CREDIT CARDS 27-28 (2001) [hereinafter GAO REPORT], available at <http://www.gao.gov/new.items/d01773.pdf>; Lucy Lazarony, *Marketing Plastic to Students Causes Lawmakers, Educators to Melt Down*, BANKRATE.COM (June 21, 1999), <http://www.bankrate.com/brm/news/cc/19990621.asp?keyword=CREDITCARDS>.

36. See GAO REPORT, *supra* note 35, at 27-28; Creola Johnson, *Maxed Out College Students: A Call to Limit Credit Card Solicitations on College Campuses*, 8 N.Y.U. J. LEGIS. & PUB. POL'Y 191, 201-02 (2005); Martin Merzer, *Student Credit Card Issuers Losing Their Welcome on Campus*, CREDITCARDS.COM (Dec. 8, 2008), <http://www.creditcards.com/credit-card-news/student-credit-card-issuers-losing-welcome-on-campus-1279.php>.

37. See MANNING, CREDIT CARD NATION, *supra* note 10, at 167 (noting that "[p]enetration of the student credit card market began in the late 1980s").

38. *Id.*

39. See *id.* at 166-68.

creditworthy borrowers with reliable streams of income.<sup>40</sup> Student consumers, many of whom had (and continue to have) income generated from part-time and summer jobs or had no employment income at all,<sup>41</sup> did not fit into this category of optimal cardholders.<sup>42</sup> The traditional model, however, changed as the banking industry experienced deregulation<sup>43</sup> and card issuers began to utilize more sophisticated underwriting measures that facilitated their ability to more reliably predict consumers' spending and payment behavior.<sup>44</sup>

After effectively developing and employing new technologies to design profitable strategies for market specialization and segmentation,<sup>45</sup> card companies have become more willing to issue cards to segments of the consumer population, such as low-income borrowers, who were previously considered "unacceptably risky."<sup>46</sup> The formerly untapped market of student consumers has become particularly attractive to the credit card industry as other market segments have become saturated.<sup>47</sup> As noted by Elizabeth Warren, "[credit card companies] 'target high-school and college-age people because they see them as the only growth opportunities in a saturated market.'"<sup>48</sup>

40. See Mann, *Patterns*, *supra* note 34, at 4-5; Adam J. Levitin, *Priceless? The Economic Costs of Credit Card Merchant Restraints*, 55 UCLA L. REV. 1321, 1377 (2008) [hereinafter Levitin, *Priceless*].

41. See GAO REPORT, *supra* note 35, at 35. Although the GAO Report refers to a study reporting that in 2000, fifty-five and nine percent of college students had part-time or full-time employment, respectively, students' discretionary income after paying for education expenses averaged only \$195 each month. See *id.* Considering the fact that most college students carry balances on more than one credit card, this is not a substantial amount of income with which to pay multiple credit card bills. See SALLIE MAE STUDY, *supra* note 5, at 6 (reporting that by time students are seniors in college, sixty-two percent have four or more cards).

42. See MANNING, CREDIT CARD NATION, *supra* note 10, at 166-67.

43. See *id.* at 167; SULLIVAN ET AL., FRAGILE MIDDLE CLASS, *supra* note 10, at 19, 135.

44. See Mann, *Patterns*, *supra* note 34, at 5-6.

45. See *id.* at 7-9.

46. *Id.* at 6; see also MANNING, CREDIT CARD NATION, *supra* note 10, at 167 (discussing banks' strategy to mass market to "struggling middle- and working-class families"); SULLIVAN ET AL., FRAGILE MIDDLE CLASS, *supra* note 10, at 129 (discussing card issuers' aggressive pursuit of "high-risk-high-profit" consumers such as those with "incomes too low to make more than minimum repayments"); Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373, 1383 (2004) (attributing credit card industry's targeting of "less credit-worthy consumers" to its ability to charge higher interest rates to this segment of consumers); Andrew P. MacArthur, *Pay to Play: The Poor's Problems in the BAPCPA*, 25 EMORY BANKR. DEV. J. 407, 478 (2009) (asserting that "credit card companies have targeted the poor 'as a source of major profits'" (citation omitted)); Mann, *Patterns*, *supra* note 34, at 6-9; Jennifer M. Smith, *Credit Cards, Attorney's Fees, and the Putative Debtor: A Pyrrhic Victory? Putative Debtors May Win the Battle but Nevertheless Lose the War*, 61 ME. L. REV. 171, 180-81 (2009) (discussing industry's practice of lending to risky borrowers).

47. See MANNING, CREDIT CARD NATION, *supra* note 10, at 167 (attributing banks' decisions to pursue student consumers to "the saturation of the high-yield consumer services market"); SULLIVAN ET AL., FRAGILE MIDDLE CLASS, *supra* note 10, at 134-37 (discussing market saturation and credit card industry's strategic response of marketing to poor and young consumers); Todd J. Zywicki, *The Economics of Credit Cards*, 3 CHAP. L. REV. 79, 142 (2000) (noting that "[t]he credit card market has been saturated for many years and every credit worthy person who wants a credit card already has one").

48. Dirk Smillie, *Bankrupt by 25: People Under the Age of 25 Make Up the Fastest-*



Every day, new prospective cardholders reach the age of eighteen and become contractually eligible to independently obtain a credit card.<sup>49</sup> Card issuers are eager to lend to these new customers for two primary reasons: customer loyalty and profitability.<sup>50</sup> Research indicates that many consumers develop long-lasting relationships with their card companies.<sup>51</sup> This also appears to be the case for young student cardholders, many of whom remain customers of their first credit card company for fifteen years or more.<sup>52</sup> As admitted by Bank of America spokeswoman Betty Riess, “[Bank of America’s] objective in serving the student market is to create the foundation for a long-term banking relationship.”<sup>53</sup> Issuers seek to capitalize on this relationship by cross-marketing products and services with other companies and by offering to meet cardholders’ future financial services needs, ranging from student loans to mortgages.<sup>54</sup>

Card companies also target young consumers because they provide long-term profitability for issuers.<sup>55</sup> Considering that a significant portion of the card industry’s revenues are generated by interest income,<sup>56</sup> cardholders who

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*Growing Age Group Filing for Bankruptcy*, N.Y. TIMES UPFRONT, Apr. 5, 2004, available at [http://findarticles.com/p/articles/mi\\_m0BUE/is\\_12\\_136/ai\\_n17206851/](http://findarticles.com/p/articles/mi_m0BUE/is_12_136/ai_n17206851/); see also SULLIVAN ET AL., FRAGILE MIDDLE CLASS, *supra* note 10, at 134, 137 (noting that bank credit card market was considered by industry experts to be 80.5% saturated in 1980); Johnson, *supra* note 36, at 201-02 (noting that credit card companies aggressively market to college students because “students entering college are the only adult demographic group largely made up of non-credit card holders”).

49. In most states, eighteen is the age of majority for entering into contracts, including credit card agreements. See E. ALLAN FARNSWORTH, CONTRACTS § 4.3, at 221-22 (4th ed. 2004).

50. See Kimberly M. Gartner & Elizabeth R. Schiltz, *What’s Your Score? Educating College Students About Credit Card Debt*, 24 ST. LOUIS U. PUB. L. REV. 401, 404 (2005) (discussing student market’s attractiveness to banking industry in terms of “the importance of establishing early relationships with customers and issuing a person’s first card” and “the potential profitability” of market) (citation omitted).

51. See Lawrence M. Ausubel, *The Failure of Competition in the Credit Card Market*, 81 AM. ECON. REV. 50, 68-69 (1991) (discussing effects of search/switch costs on card companies’ ability to create and profit from “a base of ‘loyal customers’”). But see Zywicki, *supra* note 47, at 141-42 & n.250 (discussing industry claims that many issuers have difficulties retaining customers due to plethora of direct mail promotions offered by competitors).

52. See MANNING, CREDIT CARD NATION, *supra* note 10, at 167; AnnaMaria Andriotis, *Credit-Card Issuers’ New College Strategies*, SMARTMONEY (Feb. 24, 2010), <http://www.smartmoney.com/personal-finance/college-planning/credit-card-issuers-new-college-strategies/>.

53. Ben Protess & Jeannette Neumann, *Banks Paying Colleges for Students Who Rack Up Credit Card Debt*, THE HUFFINGTON POST (June 8, 2010), [http://www.huffingtonpost.com/2010/06/08/banks-paying-colleges-for\\_n\\_604109.html](http://www.huffingtonpost.com/2010/06/08/banks-paying-colleges-for_n_604109.html).

54. See MANNING, CREDIT CARD NATION, *supra* note 10, at 167.

55. Although some issuers assert that student cardholders are not as profitable as non-student consumers, the industry continues to pursue the student market because student cardholder accounts “[become] more profitable than nonstudents’ accounts” following students’ graduation from college. See GAO REPORT, *supra* note 35, at 35.

56. See SULLIVAN ET AL., *supra* note 10, at 135 (reporting that “interest payments account for more than 80 percent of the profits of credit issuers”); see also CONSUMER FED’N OF AM., FACTS ABOUT CONSUMER CREDIT CARD DEBT AND BANKRUPTCY 3, available at [http://www.nacba.com/files/new\\_in\\_debate/Credit\\_Card\\_Debt\\_Bankruptcy.pdf](http://www.nacba.com/files/new_in_debate/Credit_Card_Debt_Bankruptcy.pdf) (reporting that

fail to pay their balances in full each month are more profitable to card companies than those who do not.<sup>57</sup> Not surprisingly, most student consumers fall into the former category. According to one survey, in 2008, only seventeen percent of student cardholders reported paying their balances in full each month.<sup>58</sup> This percentage is considerably lower than the fifty-five percent of cardholders in the general population who, in 2007, reported that they usually pay their balances in full each month.<sup>59</sup> In addition, because student cardholders often do not have established credit histories, card companies can charge them higher interest rates.<sup>60</sup> The payment of these higher interest rates further enlarges issuers' profitability.

The fact that the vast majority of student consumers are "borrowers" instead of "convenience users"<sup>61</sup> impacts issuers' ability to generate not only interest revenues but also fee income from this profitable segment of consumers. As noted by Ronald Mann, "once the borrower begins to carry a balance, the likelihood of late and overlimit fees can increase substantially."<sup>62</sup> Unfortunately, numerous student borrowers have found themselves paying such fees,<sup>63</sup> thereby contributing to the \$20 billion in late and overlimit fees that the card industry was able to collect in 2009.<sup>64</sup>

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seventy-five percent of issuers' revenues are comprised of interest paid by cardholders who carry over balances from month to month); Jaclyn Rodriguez, Note, *The Credit CARD Act of 2009: An Effective but Incomplete Solution Evidencing the Need for a Federal Regulator*, 14 N.C. BANKING INST. 309, 323-24 (2010) (discussing profitability of interest payments for credit card issuers).

57. As noted by Ronald Mann:

Financially secure customers or "convenience users" do not generate any interest income, late fees, or overlimit penalties. The only source of revenue they provide typically comes from annual fees in some instances and interchange revenues. These charges might be substantial in some cases, but they account for only about 20% of industry revenues. Thus, for issuers that rely on lending, "convenience users" are useful only because of the possibility that they will mature into borrowers--as caterpillars mature into butterflies.

For the credit card lender, the first hint of sustained profitability comes when the cardholder (now borrower) stops regularly paying her balance in full each month.

Mann, *Sweat Box*, *supra* note 18, at 385.

58. SALLIE MAE STUDY, *supra* note 5, at 14.

59. See Brian K. Bucks et al., *Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances*, FED. RES. BULL., Feb. 12, 2009, at A1, A46, available at <http://www.federalreserve.gov/pubs/bulletin/2009/pdf/scf09.pdf>; see also Mann, *Sweat Box*, *supra* note 18, at 385 n.54.

60. See GAO REPORT, *supra* note 35, at 7, 39-40.

61. For the distinction between "convenience users" and "borrowers," see *supra* note 57.

62. Mann, *Sweat Box*, *supra* note 18, at 386.

63. See EDMUND MIERZWINSKI ET AL., U.S. PUB. INTEREST RESEARCH GROUP EDUC. FUND, *THE CAMPUS CREDIT CARD TRAP: A SURVEY OF COLLEGE STUDENTS AND CREDIT CARD MARKETING* 6 (2008), available at <http://cdn.publicinterestnetwork.org/assets/ymirZbG5OLxH2NPUxQENdA/correctedthecampuscreditcardtrapmar08all.pdf> (reporting that percentage of student cardholders who reported having paid at least one late fee or over-limit fee was twenty-five and fifteen percent, respectively).

64. For a discussion of late and over-the-limit fees, see *supra* note 18 and accompany-

As the young consumer market continues to expand,<sup>65</sup> so do issuers' abilities to collect more interchange fees from merchants. An interchange fee is a percentage (usually ranging from one to three percent) of every credit card transaction that a merchant pays to the issuer.<sup>66</sup> Professor Adam Levitin cautions that "[b]ecause interchange is based on transaction volume, it creates an incentive for banks to issue as many cards as possible, regardless of the creditworthiness of the borrower. By creating a huge revenue stream unrelated to credit risk, interchange encourages card issuers to engage in reckless lending . . ."<sup>67</sup> These concerns are particularly salient when one considers the marketing and solicitation efforts that card companies have employed in their attempts to expand the student consumer market.

### B. *Marketing to the Inexperienced Masses*

Having abandoned former policies of not marketing or lending to college-aged consumers, credit card companies now welcome young cardholders and encourage their accumulation of debt through aggressive solicitation and marketing efforts. Their solicitation strategies have ranged from on-campus mass marketing campaigns such as "tabling," which is often accompanied by free giveaways such as pens, t-shirts, and pizza,<sup>68</sup> to entering into financial partnerships with universities, alumni associations, and student organizations to solicit new customers. In 2009, credit card issuers entered into 1,044 such partnership or "affinity" agreements<sup>69</sup> and "made total payments of \$83,462,712 to institu-

ing text.

65. For a further discussion of the growth of the young consumer market, see *supra* notes 5-6 and accompanying text and *infra* Part III.A (discussing statistics and gravity of credit card usage and debt).

66. See Levitin, *Priceless*, *supra* note 40, at 1333; see also Levitin & Zywicki, *supra* note 24, at 75-76.

67. Levitin & Zywicki, *supra* note 24, at 76.

68. Tabling is a marketing strategy whereby card issuers and vendors erect and staff tables on which to display and distribute promotional materials and credit card applications. The tables are often set up in or near high traffic areas such as student unions and dining halls. Tabling also occurs at university sponsored events such as athletic competitions. See GAO REPORT, *supra* note 35, at 7 n.8; see also CHERYL HYSTAD & BRAD HEAVNER, GRADUATING INTO DEBT: CREDIT CARD MARKETING ON MARYLAND COLLEGE CAMPUSES 8 (2004) [hereinafter GRADUATING INTO DEBT], available at <http://cdn.publicinterestnetwork.org/assets/bIzK3y7l5ovX-ALVTKnhog/CreditCard04.pdf>; Johnson, *supra* note 36, at 191-92.

69. Such partnerships are often referred to as "affinity" relationships whereby the card issuer pays a sponsoring organization a fee in exchange for access to the group's membership contact information and its use of the organization's logo on the credit card. See GAO REPORT, *supra* note 35, at 7 n.9, 27-28, 30-31; MANNING, CREDIT CARD NATION, *supra* note 10, at 162; MIERZWINSKI ET AL., *supra* note 63, at 3-4, 7-9; Johnson, *supra* note 36, at 191-93, 198, 202-04, 233-36; Dylan Williams et al., *An Investigation into Credit Card Debt Among College Students*, 1 CONTEMP. ISSUES IN EDUC. RES. 43, 43 (2008), available at <http://www.cluteinstitute-onlinejournals.com/PDFs/1127.pdf>. Card issuers are now required to submit copies of their partnership agreements to the Federal Reserve Board. See Credit CARD Act, Pub. L. No. 111-24, § 305, 123 Stat. 1734, 1749-50 (amending 15 U.S.C. § 1637). For a further discussion of the relationship between credit card companies and univer-

tions and organizations pursuant to these agreements.”<sup>70</sup> Card companies have also solicited college-aged consumers through direct mail<sup>71</sup> and internet marketing.<sup>72</sup>

Based upon the belief that many college-aged consumers lack financial experience and knowledge,<sup>73</sup> some consumer advocates question the ethical implications of aggressively marketing to this potentially vulnerable class of consumers.<sup>74</sup> Some assert that credit card companies take advantage of young consumers’ naiveté and “‘lack of financial awareness.’”<sup>75</sup> Banking industry representatives, however, contest these claims and “maintain[] that students are independent adults who rely on credit cards for essential expenses, such as schoolbooks and emergencies, and that assuming they’ll take on more debt because of free T-shirts insults their intelligence.”<sup>76</sup> Although this industry contention may accurately describe many student consumers,<sup>77</sup> university officials and state and federal lawmakers have become so concerned about issuers’ pervasive marketing and solicitation efforts that they have enacted policies and laws to restrict such efforts targeting college-aged consumers.

University policies have ranged from requiring credit card issuers and vendors to “register, pay a fee, and comply with specific policies”<sup>78</sup> to completely

sities, see *supra* note 7 and accompanying text.

70. BD. OF GOVERNORS OF THE FED. RESERVE SYS., REPORT TO THE CONGRESS ON COLLEGE CREDIT CARD AGREEMENTS 1 (2010), available at [http://www.federalreserve.gov/boarddocs/rptcongress/creditcard/2010/downloads/CCAP\\_October\\_web.pdf](http://www.federalreserve.gov/boarddocs/rptcongress/creditcard/2010/downloads/CCAP_October_web.pdf).

71. See GAO REPORT, *supra* note 35, at 19 (reporting studies’ findings that majority of students (thirty-six to thirty-seven percent) “obtained their cards by responding to mail offers”).

72. See GRADUATING INTO DEBT, *supra* note 68, at 8.

73. See ROBERT MANNING, LIVING WITH DEBT 37-39 (2005) [hereinafter MANNING, LIVING WITH DEBT], available at [http://www.lendingtree.com/livingwithdebt/collateral/full\\_report.pdf](http://www.lendingtree.com/livingwithdebt/collateral/full_report.pdf); see also KIT YARROW & JAYNE O’DONNELL, GEN BUY: HOW TWEENS, TEENS, AND TWENTY-SOMETHINGS ARE REVOLUTIONIZING RETAIL 67 (2009); Johnson, *supra* note 36, at 225-30; Cliff A. Robb & Deanna L. Sharpe, *Effect of Personal Financial Knowledge on College Students’ Credit Card Behavior*, 20 J. FIN. COUNSELING & PLANNING 25, 27 (2009).

74. See Laurie A. Lucas, *Integrative Social Contracts Theory: Ethical Implications of Marketing Credit Cards to U.S. College Students*, 38 AM. BUS. L.J. 413, 422-26 (2001) (concluding that issuers’ direct marketing to U.S. college students “should be considered unethical under the [Integrative Social Contracts Theory] framework”); see also Johnson, *supra* note 36, at 197-98, 265-67 (advocating for legislative intervention regarding credit card marketing “to combat the potential exploitation of college students by credit card companies”).

75. Kimberly Palmer & Emily Brandon, *The Rush to Push Plastic: Companies Use Free Food and Facebook to Lure Students*, U.S. NEWS & WORLD REP., Jan. 28, 2008, at 58 [hereinafter Palmer, *Rush to Push Plastic*], available at 2008 WLNR 1048324; see also Johnson, *supra* note 36, at 267.

76. Palmer & Brandon, *supra* note 75, at 58.

77. See, e.g., GAO REPORT, *supra* note 35, at 20 (reporting that occasional and emergency expenses and books and school supplies accounted for sixty-seven and fifty-seven percent, respectively, of students’ credit card charges); see also SALLIE MAE STUDY, *supra* note 5, at 11 (reporting that in 2008, ninety-two percent of student cardholders used their card for school related expenses).

78. Johnson, *supra* note 36, at 233; see also GAO REPORT, *supra* note 35, at 25-28 (re-

banning them from campus.<sup>79</sup> States such as Arkansas and Louisiana have passed legislation banning certain on-campus marketing strategies such as the distribution of gifts to consumers under twenty-one<sup>80</sup> and the solicitation of undergraduate students during periods of class registration.<sup>81</sup> The recently enacted Credit CARD Act also includes provisions restricting card companies' solicitation practices on or near college campuses and at college-sponsored events.<sup>82</sup>

Despite these efforts to curtail on-campus marketing to student consumers, students continue to acquire cards and amass significant amounts of credit card debt at alarming rates.<sup>83</sup> This trend could be explained in part by the fact that a majority of students obtain their credit cards online (sixteen percent) and through direct mail solicitations (thirty-eight percent) rather than from on-campus vendor booths (five percent).<sup>84</sup> The Credit CARD Act now prohibits card issuers from sending prescreened credit card offers to young consumers under twenty-one unless they consented to receiving such offers.<sup>85</sup> It remains to be seen whether this restriction will significantly reduce the number of direct

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porting colleges' various solicitation policies); MANNING, CREDIT CARD NATION, *supra* note 10, at 162 (noting that during 2000-2001 academic year, over 800 higher education institutions formulated restriction policies); Jack Phillips, *Cuomo, SUNY Announce Credit Card Protection for Students*, EPOCH TIMES, Sept. 9, 2010, at A8 (discussing SUNY's adoption of code of conduct that limits time and location of on-campus credit card marketing).

79. See Johnson, *supra* note 36, at 231-32 n.171 (discussing universities' on-campus solicitation policies, including examples of schools that have banned marketers from their campuses); Lazarony, *supra* note 35 (reporting that in 1999, approximately 300 colleges and universities banned on-campus solicitations); see also Ron Matus, *Students Are Still Hooked on Plastic*, ST. PETERSBURG TIMES, Aug. 3, 2004, [http://www.sptimes.com/2004/08/03/Tampabay/Students\\_are\\_still\\_ho.shtml](http://www.sptimes.com/2004/08/03/Tampabay/Students_are_still_ho.shtml) (noting that several colleges in Florida have barred credit card issuers from on-campus solicitations); Merzer, *supra* note 36 (discussing Florida Atlantic University's decision to ban credit card marketers from its seven campuses).

80. See ARK. CODE ANN. §§ 4-104-202, 4-104-203 (West 2010). The legislation also prohibits solicitation inside an academic building or within 100 feet of an academic building and requires colleges and universities to include a credit seminar during freshman orientation if they permit solicitations at athletic events. See *id.*

81. See LA. REV. STAT. ANN. § 17:3351.2 (2010). For a detailed list of other states that had enacted or proposed legislation addressing on-campus marketing and solicitation from 1999 to 2001, see GAO REPORT, *supra* note 35, at 53-66. More recently, in 2009, Illinois passed the Credit Card Marketing Act of 2009, which regulates credit card marketing to undergraduate students. See 110 ILL. COMP. STAT. ANN. §§ 26/1-97 (2009).

82. See Credit Card Act, Pub. L. No. 111-24, § 304, 123 Stat. 1734, 1749 (amending 15 U.S.C. § 1650) (prohibiting card companies engaged in solicitation on or near campus or at college sponsored event from offering "tangible items" to induce students to apply for credit cards).

83. See Johnson, *supra* note 36, at 231 n.171 (citing research "finding that students on campus which had banned on-campus solicitation actually carried higher balances (average balance \$1079) than students at universities that permitted on-campus solicitation (average balance \$792)") (citing Mary Beth Pinto et. al., *Credit Card Solicitation Policies in Higher Education: Does "Protecting" Our Students Make a Difference?*, 42 J.C. STUDENT DEV. 169, 170 (2001)).

84. See *supra* note 68; see also SALLIE MAE STUDY, *supra* note 5, at 7.

85. See Credit CARD Act, Pub. L. No. 111-24, § 302.

mail solicitations received by young consumers<sup>86</sup> and, consequently, their levels of credit card indebtedness. As the next part details, students' credit card debt has significantly increased over the past decade resulting in negative financial and personal consequences for many young consumers.

### III. DEBT BECOMES THEM

For the past several years, young consumers, especially college students, have turned to credit cards to finance everything from clothes to college education.<sup>87</sup> Although many college-aged consumers receive their first credit card before entering college,<sup>88</sup> university campuses across the country serve as breeding grounds for student consumer indebtedness. Whether fueled by skyrocketing tuition and fees coupled with diminishing student aid<sup>89</sup> or by students "liv[ing] beyond their means"<sup>90</sup> in attempts to conform to perceived peer ex-

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86. In 2010, Professor Jim Hawkins conducted a survey of 338 University of Houston undergraduate students to examine the impact of the Credit CARD Act on college campuses. See Jim Hawkins, *The CARD Act on Campus* (2010) (data results on file with author). His preliminary results found that notwithstanding the Act's marketing restrictions, seventy-six percent of students surveyed reported having received a credit card offer in the mail since the beginning of 2010. *Id.* Only twenty-four percent had not. *Id.*

87. In 2008, ninety-two percent of undergraduate cardholders reported using their cards for college expenses. See SALLIE MAE STUDY, *supra* note 5, at 11.

88. According to a recent survey conducted by Sallie Mae, thirty-nine percent of students had obtained a credit card before beginning their freshman year. This 2008 figure marked a sixteen percent increase since 2004. See *id.* at 6; see also Joyce M. Wolburg & James Pokrywcznski, *A Psychographic Analysis of Generation Y College Students*, J. ADVERTISING RES., Sept.-Oct. 2001, at 33, 36 (reporting that many eighteen- to twenty-four-year-olds received credit card cosigned by parent during high school).

89. A number of sources are useful in informing the discussion as to the impact that increased educational costs have on student debt. See MANNING, CREDIT CARD NATION, *supra* note 10, at 163-66; LINDA NAZARETH, THE LEISURE ECONOMY: HOW CHANGING DEMOGRAPHICS, ECONOMICS, AND GENERATIONAL ATTITUDES WILL RESHAPE OUR LIVES AND OUR INDUSTRIES 109-10 (2007); see also *As College Costs Rise, Student Loans Are Harder to Find*, INSIDE THE VAULT, Fall 2009, 1, 3-4, available at [http://www.stlouisfed.org/publications/pub\\_assets/pdf/itv/2009/ITV\\_fall\\_09.pdf](http://www.stlouisfed.org/publications/pub_assets/pdf/itv/2009/ITV_fall_09.pdf) (discussing trends of escalating college costs and decreasing student loan availability); Jay MacDonald, *Lenders Curtail College Student Loans*, CREDITCARDS.COM (Sept. 29, 2008), <http://www.creditcards.com/credit-card-news/lenders-cut-back-on-private-student-loans-1279.php> (discussing lenders' curtailment of private student loans during time in which "the average cost of tuition at four-year public and private colleges and universities [has risen] more than 20 percent, from \$21,235 to \$26,833"); SALLIE MAE STUDY, *supra* note 5, at 11-12 (reporting that in 2008, thirty percent of undergraduate cardholders used their credit cards to pay for college tuition and fees). But see Daniel de Vise, *Financial Aid Rising Faster than Tuition*, WASH. POST COLLEGE INC. BLOG (June 29, 2010, 12:41 PM), [http://voices.washingtonpost.com/college-inc/2010/06/aid\\_rising\\_faster\\_than\\_tuition.html](http://voices.washingtonpost.com/college-inc/2010/06/aid_rising_faster_than_tuition.html) (reporting that for second consecutive year, tuition increases have been "in the 4-percent range" as compared to 6 percent "[d]uring the 10 years prior to the recession" and that students are receiving larger student aid packages due to increases in institutional aid budgets).

90. SALLIE MAE STUDY, *supra* note 5, at 3; see also GAO REPORT, *supra* note 35, at 9 (noting that "[t]he convenience of credit cards may tempt students to live beyond their means").

peptions,<sup>91</sup> the prevalence of credit card usage by college students is troubling, especially when one considers the negative academic, personal, and financial consequences that many experience as a result of such usage. Such detrimental effects necessitate young consumer credit card reforms in addition to those currently included in the Credit CARD Act.

#### A. College Students' Credit Card Usage

Several scholars and researchers have detailed young consumers' general lack of financial experience and knowledge,<sup>92</sup> both of which contribute to the suboptimal and detrimental financial decisions or "mistakes" that many young consumers make.<sup>93</sup> Unfortunately, many of these mistakes are made on college campuses as student consumers apply for and use credit cards without fully contemplating or understanding the consequences associated with credit card debt.<sup>94</sup> Obviously, there are many student consumers who are financially sophisticated and make prudent financial decisions;<sup>95</sup> however, recent studies show that credit card indebtedness remains a problem for a number of student cardholders.<sup>96</sup>

In 2004, seventy-six percent of college undergraduate students had credit

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91. See MANNING, CREDIT CARD NATION, *supra* note 10, at 170–77 (discussing strong influence peer pressure and need to belong can have on students' accumulation of debt); YARROW & O'DONNELL, *supra* note 73, at 51–52, 108–13 (discussing how young consumers' purchasing decisions are influenced by their desire to join and connect with peer groups); Craig A. Martin & L.W. Turley, *Malls and Consumption Motivation: An Exploratory Examination of Older Generation Y Consumers*, 32 INT'L J. RETAIL & DISTRIBUTION MGMT. 464, 470–71 (2004) (describing many young consumers as socially motivated consumers who are image-conscious and driven by opinions of others).

92. See *supra* note 73; see also Troy Adams & Monique Moore, *High-Risk Health and Credit Behavior Among 18- to 25-Year-Old College Students*, 56 J. AMER. COLL. HEALTH 101, 101 (Sept.-Oct. 2007) (summarizing research findings that "lack of knowledge" and "psychological characteristics, such as self-control and beliefs about money" may affect students' credit behavior); Annamaria Lusardi et al., *Financial Literacy Among the Young: Evidence and Implications for Consumer Policy* 4–5, 11 (Pension Research Council, Working Paper No. 9, 2009), available at <http://ssrn.com/abstract=1459141>.

93. See Sumit Agarwal et al., *The Age of Reason: Financial Decisions over the Life-Cycle with Implications for Regulation* 12–20 (Brookings Papers on Econ. Activity, Working Paper, 2009), available at <http://ssrn.com/abstract=973790> (discussing research findings evidencing "U-shaped age-related curve in the prices people pay for ten financial choices" indicating that majority of costly financial mistakes are made by "young borrowers [who] have low levels of experience" and "older borrowers [who] have . . . lower levels of analytic function").

94. See Kathleen Arano & Carl Parker, *Modeling Credit Card Borrowing by Students* 6 (Sw. Econ. Rev., Working Paper, 2007), available at <http://ssrn.com/abstract=1140767> ("Students are more likely to be impulsive and fall prey to instant gratification by using credit cards to finance consumption, and may place less importance on the future implications and consequences of going into debt."); see also GAO REPORT, *supra* note 35, at 9 (noting consumer advocates', college administrators', and debt counselors' concerns "that students may not understand the consequences of incurring excessive debt and making payments late").

95. See *supra* note 8.

96. See Arano & Parker, *supra* note 94, at 1 (referring to studies that "found that although a majority of the students are responsible and can handle their credit well, there is a significant minority who were having problems").

cards.<sup>97</sup> By 2008, this number had increased to eighty-four percent.<sup>98</sup> Not surprisingly, the amount of credit card debt college students amassed during this time also increased.<sup>99</sup> In 2004, college students had an average of \$2,169 in credit card debt.<sup>100</sup> By 2008, students' average credit card debt had increased to \$3,173.<sup>101</sup>

Student cardholders are not only accumulating more credit card debt, but they are also acquiring debt at earlier ages. In 2004, fifty-six percent of students reported obtaining their first card at the age of eighteen.<sup>102</sup> From fall 2004 to spring 2008, the percentage of freshmen with credit cards rose from forty-two percent to sixty-seven percent, a sixty percent increase.<sup>103</sup> Of this sixty-seven percent, only fifteen percent had a zero balance, compared to sixty-nine percent in 2004.<sup>104</sup> The percentage of freshmen carrying four or more cards also increased during this period from fifteen percent to twenty-three percent.<sup>105</sup>

Perhaps more troubling are the figures illustrating students' credit card indebtedness as they progress through their college careers. By the time students reach their senior year, eighty-eight percent of them have at least one credit card and sixty-two percent have four or more cards.<sup>106</sup> While freshmen carry an average of \$2,038 in credit card debt, seniors' average outstanding debt more than doubles this amount, totaling \$4,138.<sup>107</sup> Nineteen percent of seniors carry balances greater than \$7,000 compared to only five percent of freshmen.<sup>108</sup> These figures are particularly disconcerting when one considers the amount of student loan debt that many students are also incurring.<sup>109</sup>

According to a recent report issued by The Project on Student Debt, "around two-thirds of students graduating from four-year colleges had student

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97. NAZARETH, *supra* note 89, at 110; SALLIE MAE STUDY, *supra* note 5, at 5.

98. SALLIE MAE STUDY, *supra* note 5, at 5.

99. See RONALD J. MANN, CHARGING AHEAD: THE GROWTH AND REGULATION OF PAYMENT CARD MARKETS 177 (2006) [hereinafter MANN, CHARGING AHEAD] (noting that credit cards "are associated with substantial increases in consumer spending and borrowing levels"); Cathy Bakewell & Vincent-Wayne Mitchell, *Generation Y Female Consumer Decision-Making Styles*, 31 INT'L J. RETAIL & DISTRIBUTION MGMT. 95, 98 (2003) (noting that "access to credit is a contributory factor in . . . overspending").

100. SALLIE MAE STUDY, *supra* note 5, at 5.

101. *Id.*

102. NAZARETH, *supra* note 89, at 110.

103. SALLIE MAE STUDY, *supra* note 5, at 6; see also MANNING, CREDIT CARD NATION, *supra* note 10, at 170 (reporting that percentage of students who receive their first credit card by end of their freshman year is nearly eighty percent).

104. SALLIE MAE STUDY, *supra* note 5, at 9.

105. *Id.* at 6.

106. *Id.*

107. *Id.* at 8; see also MIERZWINSKI ET AL., *supra* note 63, at 6 (reporting findings from 2008 study showing that college seniors carry more than double amount of credit card debt as freshmen).

108. SALLIE MAE STUDY, *supra* note 5, at 9.

109. See Susan Tompor, *Student Loan Debt Exceeds Credit Card Debt in USA*, USA TODAY, Sept. 10, 2010, [http://www.usatoday.com/money/perfi/college/2010-09-10-student-loan-debt\\_N.htm](http://www.usatoday.com/money/perfi/college/2010-09-10-student-loan-debt_N.htm) (reporting that outstanding student loan debt (\$850 billion) exceeds outstanding revolving debt (\$828 billion), which is primarily comprised of credit card debt).



loan debt [and] [t]he average amount these students owe has grown about six percent per year since 2003-04, reaching \$23,200 for the class of 2008.”<sup>110</sup> When coupled with a 10.6% unemployment rate for recent college graduates,<sup>111</sup> young consumers’ ability to successfully manage repayment of both their student loan and credit card debt is severely hindered.<sup>112</sup>

Although some researchers and industry representatives often argue that most college consumers successfully manage their credit card debt,<sup>113</sup> many consumer advocates counter that such assertions are exaggerated and overstated.<sup>114</sup> Take, for instance, the reported percentage of college cardholders who pay their balances in full every month.<sup>115</sup> According to various sources, this number has declined from fifty-nine percent in 1998<sup>116</sup> to seventeen percent in 2008.<sup>117</sup> Consumer advocates such as Robert Manning argue that because these figures do not account for the number of students whose parents pay their bills for them or who use student loans to pay their bills, they mask the

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110. MATTHEW REED ET AL., THE PROJECT ON STUDENT DEBT, STUDENT DEBT AND THE CLASS OF 2008 1 (2009), *available at* <http://projectonstudentdebt.org/files/pub/classof2008.pdf>.

111. *Id.*

112. See GAO REPORT, *supra* note 35, at 3 (expressing concern about students’ ability to pay both their credit card bills and student loans following graduation from college).

113. See *supra* note 8; see also MANNING, CREDIT CARD NATION, *supra* note 10, at 169 (refuting industry representative’s assertion that “[c]ollege students can pay, do pay and are using their plastic cards responsibly”) (citation omitted); Matus, *supra* note 79 (quoting spokeswoman from American Bankers Association as stating that “[college students] are actually more responsible” than greater consumer population in terms of paying their balance in full each month); Merzer, *supra* note 36 (according to banking industry spokesman, “Anecdotes of student problems in the card area fail to paint the real picture that students, as a broader group, are in fact managing their credit obligations well . . . .”); Staten & Barron, *supra* note 8, at 25 (concluding that research did not show that student cardholders “are misusing cards so frequently as to warrant singling them out as a group for special protections from marketing solicitations”). But see Robert D. Manning & Ray Kirshak, *Credit Cards on Campus: Academic Inquiry, Objective Empiricism, or Advocacy Research?*, 35 NASFAA J. STUDENT FIN. AID 39, 39 (2005) (critiquing Staten and Barron’s conclusions and objectivity of their research).

114. See MANNING, CREDIT CARD NATION, *supra* note 10, at 161 (describing industry’s research as “methodologically flawed”); *id.* at 169 (characterizing industry reported data and conclusions as “misleading,” “unreliable,” and “obscur[ing] . . . the complexity of student credit card debt”); Johnson, *supra* note 36, at 223 n.135 (discussing and critiquing credit card industry’s research related to student debt management); Merzer, *supra* note 36 (discussing consumer group research that shows greater credit card usage by college students than that reported in industry studies); see also Lazarony, *supra* note 35 (discussing Dr. Manning’s claims that “past studies of students and credit cards have under-reported the problem”). But see Michael E. Staten & John M. Barron, *Credit Cards on Campus: Academic Inquiry, Objective Empiricism, or Advocacy Research? A Response*, 35 NASFAA J. STUDENT FIN. AID 49, 49-50 (2005) (asserting that Dr. Manning stands to gain financially by exaggerating severity of “the student credit card problem”).

115. For a detailed discussion of studies reporting the percentage of college cardholders who pay their balances in full every month, see Johnson, *supra* note 36, at 222 n.136.

116. THE EDUCATION RESOURCES INSTITUTE (TERI), CREDIT RISK OR CREDIT WORTHY? COLLEGE STUDENTS AND CREDIT CARDS 11 (1998), *available at* <http://www.ihep.org/assets/files/publications/A-F/CreditRiskWorthy.pdf>.

117. SALLIE MAE STUDY, *supra* note 5, at 14.

complexity and gravity of students' indebtedness.<sup>118</sup>

In fact, one could argue that this precipitous ten-year decline in the percentage of students paying off their balances each month and, thereby, avoiding costly finance charges is further evidence of students' mismanagement of credit and debt. As noted in a recent consumer study, "maintaining a good credit history is only part of the story when managing credit. Reducing finance charges is an important part of debt reduction and . . . help[s] consumers to balance [their] budgets."<sup>119</sup> The financial costs borne by college students who have revolving debt are often exacerbated by the negative academic and personal consequences that many experience as a result of their credit card usage—consequences that detrimentally impact both their current and future lives.

### B. *Paying the High Price for Credit*

For several college cardholders, their accumulation of debt has significant ramifications for their academic and personal lives. Some full-time students who feel pressure to work more hours to pay their bills reduce their course load or enter part-time programs.<sup>120</sup> Unfortunately, some also opt to withdraw from school for a semester or year to facilitate their efforts to work and pay down their debt.<sup>121</sup> Studies also show that students with greater credit card debt have a more difficult time managing their debt and are more likely to have lower grade point averages.<sup>122</sup> As some students become preoccupied with addressing their debt problems, their academic performance suffers due to a lack of concentration and priority placed on course work.<sup>123</sup>

For many young consumers, debt-induced academic pressures are often coupled with negative personal consequences ranging from stress to depression.<sup>124</sup> Research shows that a significant percentage of college consumers experience high levels of payment anxiety.<sup>125</sup> Of the students surveyed, only

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118. See MANNING, CREDIT CARD NATION, *supra* note 10, at 176–77 (discussing “increasingly popular practice” of students using loans to pay credit card bills); *id.* at 186 (recounting one consumer’s practice of using at least half of her Stafford student loan disbursements to pay down her credit cards); Johnson, *supra* note 36, at 224 (reporting research findings that “73% of freshmen and 67% of upperclassmen had used student loans to pay off credit card balances”); Lazarony, *supra* note 35 (citing student loan refinancing and private debt consolidation loans as measures that mask college students’ true levels of credit card debt); Matus, *supra* note 79 (reporting Dr. Manning’s estimate that twenty percent of college students use student loans to hide their more than \$10,000 credit card indebtedness); *see also* Staten & Barron, *supra* note 8, at 25 (acknowledging “that the relative performance of student accounts improves over time in part because parents of college students may intervene to help pay the monthly credit card bills”).

119. SALLIE MAE STUDY, *supra* note 5, at 14.

120. See Johnson, *supra* note 36, at 209; Lazarony, *supra* note 35.

121. See GAO REPORT, *supra* note 35, at 33–34; Lazarony, *supra* note 35.

122. See DAVID L. TAN, OKLAHOMA COLLEGE STUDENT CREDIT CARD STUDY 5 (2003), available at <http://pdfcast.org/pdf/oklahoma-college-student-credit-card-study>.

123. See *id.* at 5.

124. See Gartner & Schiltz, *supra* note 50, at 425–26; Johnson, *supra* note 36, at 209–10.

125. See SALLIE MAE STUDY, *supra* note 5, at 15.

thirteen percent reported feeling no anxiety regarding their ability to pay their credit card bills while forty-five percent felt extremely or highly anxious.<sup>126</sup> There have also been cases, albeit extremely rare, where payment anxiety and other factors have contributed to debt-laden students' decisions to take their own lives.<sup>127</sup>

Contrary to previously discussed industry contentions regarding how well college cardholders manage their debt,<sup>128</sup> students' mismanagement of debt is evidenced not only by the aforementioned academic and personal consequences but also by the financial costs that many must bear as a result of their credit card usage. For instance, a recent study conducted by the U.S. Public Interest Research Group found that twenty-five percent of students surveyed had paid at least one late fee while fifteen percent of respondents had paid at least one over-the-limit fee.<sup>129</sup> Another study reported that in a given month, 18.4% of student accounts were assessed late and over-the-limit fees as compared to only 12.5% of accounts held by older adults.<sup>130</sup> Further findings show that while only five percent of older adult cardholders were either at or over their credit limit, twelve percent of students had either reached or gone over their credit limit.<sup>131</sup>

Student cardholders and young consumers also experience higher delinquency rates than older consumers, and their accounts are more often past due compared to those held by older adults.<sup>132</sup> "[T]he 90-day delinquency rate of student accounts (3.1%) is nearly triple that of older adults and 29% higher than that of non-student young adults."<sup>133</sup> In addition, although having their cards for a relatively short period of time, over six percent of students had so mismanaged their card usage that the issuer canceled their card for delinquent behavior.<sup>134</sup> These literal and figurative "costs" are compounded by the negative impact such delinquencies can have on students' credit reports—reports that, in many cases, adversely affect their financial futures for years to come.<sup>135</sup>

Two common, long-term economic consequences of students' mishandling of debt are their inability to qualify for subsequent loans and to receive favora-

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126. *Id.*

127. See MANNING, CREDIT CARD NATION, *supra* note 10, at 160–61; Johnson, *supra* note 36, at 208 n.82.

128. See *supra* notes 8, 95, 113 and accompanying text.

129. MIERZWINSKI ET AL., *supra* note 63, at 6.

130. Staten & Barron, *supra* note 8, at 15.

131. *Id.* at 12.

132. See *The Importance of Financial Literacy Among College Students: Hearing Before the Comm. on Banking, Hous., and Urban Affairs*, 107th Cong. 24 (2002) (statement of Michael E. Staten, Prof., McDonough Sch. of Bus., Georgetown Univ.) ("Delinquency rates on both student accounts and young adult, nonstudent accounts are higher than for older adult accountholders. In a given month, 12 percent of active student accounts are past due, versus about 11 percent for other young adults under age 25 and 8 percent for adults 25 and older.").

133. Staten & Barron, *supra* note 8, at 17.

134. See MIERZWINSKI, ET AL., *supra* note 63, at 6; see also Staten & Barron, *supra* note 8, at 18 (reporting data showing that greater percent of charge-offs occurred for student and non-student young consumer accounts than older adult accounts).

135. See Merzer, *supra* note 36.

ble interest rates on the loans for which they do qualify.<sup>136</sup> When many college cardholders seek to purchase a car or home, they often find that their previous failures to make card payments on time or their over-the-limit delinquencies have negatively affected their credit scores.<sup>137</sup> In light of the fact that such scores are often a paramount factor in lenders' decisions,<sup>138</sup> having an adverse credit history can negatively impact young consumers' future borrowing opportunities and the terms on which they borrow. As noted by Ronald Mann:

In truth, the most effective lever the credit card lender has is the threat of damaging the credit report of the borrower. A credit card debtor that does not pay will suffer a substantially lower credit rating. Although the lower credit card rating will have only a limited impact on the debtor's access to credit card debt, it will substantially increase the cost of subsequent borrowing.<sup>139</sup>

In dire situations, some young consumers experience perhaps the most costly financial consequence of debt—bankruptcy.<sup>140</sup> In 1999, eighteen- to twenty-four-year-olds accounted for 6.9% of debtors filing for bankruptcy.<sup>141</sup> This figure represented a fifty-one percent growth rate of bankruptcy filings for consumers under the age of twenty-five from 1991 to 1999.<sup>142</sup> In 2001, consumers in this age group accounted for 150,000 bankruptcy filings.<sup>143</sup> Interestingly, the percentage distribution of bankruptcy petitioners under the age of twenty-five has declined over the years from 8.7% in 1991 to 4.2% in 2007.<sup>144</sup> As Deborah Thorne, Elizabeth Warren, and Teresa A. Sullivan acknowledge:

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136. See GAO REPORT, *supra* note 35, at 9–10; Johnson, *supra* note 36, at 215–17; Susan Donaldson James, *Credit Borrowing Tightens for Under-21s*, ABC NEWS/MONEY (Aug. 21, 2009), <http://abcnews.go.com/Business/credit-card-law-strangles-college-student-borrowing/story?id=8357735>; Matus, *supra* note 79.

137. As explained by Sumit Agarwal, Souphala Chomsisengphet, and Chunlin Liu: A credit score, whether a generic FICO score or an internal behavior score, is an index constructed to evaluate an individual's relative risk of default conditional on his/her profile. For example, a lower FICO score implies a higher probability of a consumer defaulting on his outstanding debt in the next 24 months.

Sumit Agarwal et al., *The Importance of Adverse Selection in the Credit Card Market: Evidence from Randomized Trials of Credit Card Solicitation*, 42 J. MONEY, CREDIT & BANKING 743, 746 (2010).

138. Joe Nocera, *Credit Score Is the Tyrant in Lending*, N.Y. TIMES, July 24, 2010, at B1 (noting that credit scores have essentially become most important factor in banks and underwriters' lending decisions); *Shedding Light on Credit Scores*, CREDIT CARD MGMT., Jan. 3, 2005, at 20, 20 (discussing that while most consumers realize that lenders use credit scores in making lending decisions, they do not realize that poor score will result in higher interest rates on various purchases as compared to effects of good credit score).

139. Mann, *Patterns*, *supra* note 34, at 4.

140. See GAO REPORT, *supra* note 35, at 11–14.

141. *Id.* at 13.

142. *Id.* at 14; see also Johnson, *supra* note 36, at 218 (reporting that from 1995 to 2000, "the number of people under the age of twenty-six who filed for bankruptcy tripled").

143. See Smillie, *supra* note 48.

144. Deborah Thorne, Elizabeth Warren & Teresa A. Sullivan, *The Increasing Vulnerability of Older Americans: Evidence from the Bankruptcy Court*, 3 HARV. L. & POL'Y REV. 87, 94 (2009).

The corresponding decline in filing rates among young Americans might signal better financial security than that enjoyed by their earlier counterparts. . . . However, the fact that previous generations show a sharp rise in filings among those in early middle age may signal instead that people are living with financial stress for years, putting off the day of reckoning in bankruptcy for as long as possible.<sup>145</sup>

Because bankruptcy filings are included in consumers' credit reports for ten years,<sup>146</sup> they can have long-term financial and personal ramifications for many debtors.<sup>147</sup>

In addition, young consumers' poor credit histories can negatively affect their prospective employment and professional opportunities. Employers are increasingly checking prospective employees' credit reports prior to hiring.<sup>148</sup> Therefore, unbeknownst to many college students, "their employment prospects are limited due to their college legacy of credit card debt."<sup>149</sup>

When considering the impact of credit card debt on the lives of college-aged consumers, it is important to consider an emerging trend that suggests that young consumers, including students, are choosing to use debit cards more often than credit cards.<sup>150</sup> This occurrence could be attributable to the growing

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145. *Id.* at 88 n.1.

146. See Fair Credit Reporting Act § 605(a)(1), 15 U.S.C. § 1681c(a)(1) (2000).

147. See Johnson, *supra* note 36, at 218.

148. A recent study conducted by the Society for Human Resource Management reported that thirteen percent of organizations surveyed conducted credit background checks on all job applicants. See SOC'Y FOR HUMAN RES. MGMT., BACKGROUND CHECKING: CONDUCTING CREDIT BACKGROUND CHECKS 3 (2010), available at <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx>. Forty-seven percent reported conducting checks on selected job candidates. *Id.*; see also MANNING, CREDIT CARD NATION, *supra* note 10, at 177; Johnson, *supra* note 36, at 214. There have been state and federal legislative initiatives to address this issue. To date, three states have banned employers' use of credit reports to pre-screen prospective employees: Washington, Hawaii, and Oregon. Representative Steve Cohen from Tennessee is pursuing federal legislation to ban the practice nationally. See Dana Dratch, *States Weigh Limits on Credit Checks for Employment*, CREDITCARDS.COM (Aug. 10, 2009), <http://www.creditcards.com/credit-card-news/states-weigh-limits-credit-checks-for-employment-1282.php>; Jessica Hoch, *Law Bans Employment Credit Checks*, OREGONBUSINESS (July 6, 2010), <http://www.oregonbusiness.com/the-latest/3766-law-bans-employment-credit-checks>; see also Andrew Martin, *As a Hiring Filter, Credit Checks Draw Questions*, N.Y. TIMES, Apr. 9, 2010, at B1.

149. MANNING, CREDIT CARD NATION, *supra* note 10, at 177; see also MANNING, LIVING WITH DEBT, *supra* note 73, at 38 (discussing students' lack of knowledge regarding how their credit reports can negatively impact their employment and lending opportunities).

150. See Block, *Credit Card Use Plunges*, *supra* note 15 (discussing consumers' preferences for debit cards rather than credit cards); Brian Burnsed, *New Rules Place Barriers Between Students, Credit Card Issuers*, U.S. NEWS & WORLD REP., Feb. 19, 2010, available at 2010 WLNR 3720727 ("The burgeoning popularity of debit cards has caused credit card use to slide, though a healthy portion of students still opt to carry [a credit card]."); Kimberly Palmer, *The Rise of the Debit Card: Credit Balances Dip, but Loan Debt Is Growing*, U.S. NEWS & WORLD REP., Jan. 28, 2008, at 58, available at 2008 WLNR 1048321 (suggesting that debit cards may be replacing credit cards on campuses); Ronald J. Mann, *What Is Changing? Age, Economic Crisis, and Shifting Patterns of Card Use*, PYMNTS.COM, <http://www.pymnts.com/what-is-changing-age-economic-crises-and-shifting-patterns-of-card->

practice of colleges and universities partnering with banks to make student ID cards available as a debit card.<sup>151</sup> It could also reflect “a generational shift” in that young consumers may “have an inherent preference for real-time payment methods like debit.”<sup>152</sup> As observed by Ronald Mann:

The rapidly accelerating shift to debit card use in the last 24 months, for example, suggests a shift away from borrowing-based consumption, a shift that would have a much greater effect on the credit card product than anything Congress is contemplating. This is particularly true if that trend is truly age-based—so that it becomes ever harder to identify young and middle-aged households that will use cards as a routine transaction and borrowing vehicle.<sup>153</sup>

Both Professor Mann and banking industry representatives acknowledge that it is too soon to determine if this trend will amount to a permanent shift away from credit cards and towards debit cards, or if the current preference for debit cards is simply a reaction to the economic recession such that consumers will revert back to using credit cards once the economy recovers.<sup>154</sup> These uncertainties coupled with college-aged consumers’ continued use of credit cards<sup>155</sup> necessitate the consideration of measures that can help protect their financial futures. To that end, Congress incorporated specific provisions concerning college-aged consumers in the recently enacted Credit CARD Act. The next part questions whether these provisions will be effective in protecting this important group of consumers.

#### IV. THE CREDIT CARD ACT: AN EMPTY PROMISE?

Signed into law by President Barack Obama on May 22, 2009, the Credit CARD Act is considered “the most significant credit card reform legislation” in over four decades.<sup>156</sup> Amid concerns regarding the economic recession and

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use-2/ (last visited Nov. 10, 2010) [hereinafter Mann, *What Is Changing?*] (reporting data indicating that more consumers under age of thirty-five are debit users rather than credit card holders). But see generally Katherine Porter, *The Debt Dilemma*, 106 MICH. L. REV. 1167, 1171 (2008) (reviewing RONALD J. MANN, CHARGING AHEAD: THE GROWTH AND REGULATION OF PAYMENT CARD MARKETS (2006)) (noting that “[d]ebit cards . . . are growing, but have not yet eclipsed the popularity of the credit card in America”).

151. See David Migoya, *Colorado Colleges Cash in Big on Credit Deals*, DENVER POST, Sept. 19, 2010, [http://www.denverpost.com/business/ci\\_16114567?source=rss](http://www.denverpost.com/business/ci_16114567?source=rss).

152. Block, *Credit Card Use Plunges*, *supra* note 15.

153. Mann, *Credit Card Reform*, *supra* note 15, at 3.

154. See Block, *Credit Card Use Plunges*, *supra* note 15; Mann, *What is Changing?*, *supra* note 150.

155. See *supra* Part III.A.

156. Adam Levitin, *Credit Card Legislation*, CREDIT SLIPS BLOG (May 19, 2009, 8:13 PM), <http://www.creditslips.org/creditslips/2009/05/credit-card-legislation.html> [hereinafter Levitin, *Legislation*] (referencing Truth in Lending Act, enacted in 1968, as previous credit card reform legislation); see also Adam Levitin, *The Credit C.A.R.D Act: Opportunities and Challenges for Credit Unions 1* (Georgetown Law and Economics Research Paper No. 10-09, 2010) [hereinafter Levitin, *Credit Union Report*], available at <http://ssrn.com/abstract=1544885> (describing Credit CARD Act as “the most significant piece of credit card legislation in a generation”).

recovery efforts, both the President and lawmakers consider the Act to be an integral component of comprehensive financial reform intended to better protect consumers.<sup>157</sup> With goals to end unfair and deceptive practices and to improve consumer disclosures, the Act includes new rules regarding interest rate increases,<sup>158</sup> allocation and timing of payments,<sup>159</sup> and periodic statement disclosures.<sup>160</sup> Pertinent to this Article are the Act's provisions concerning college-aged consumers.<sup>161</sup>

As discussed below, the Credit CARD Act seeks to protect young consumers by restricting access to those potential cardholders who do not have the financial means with which to repay their debt. In theory, this is a sound approach because it allows young, creditworthy consumers, many of whom prove to be responsible cardholders, to obtain credit while preventing those who do not have adequate means to repay their debt from obtaining a credit card. However, due to the broad latitude afforded issuers by the new rules and regulations, it is doubtful that this approach will significantly reduce the number of non-creditworthy, college-aged cardholders or curtail their credit card usage. Therefore, as proposed in Part V, additional legislation and regulations are needed both to reduce the number of young consumers who are permitted to obtain a card without the financial means to repay the debt and to diminish the negative long-term consequences that many young cardholders suffer as a result of amassing significant credit card debt.

In its efforts to stem young consumers' credit card indebtedness, Congress passed legislation that seeks to curtail the number of young consumers who obtain credit cards and the amount of debt that they incur.<sup>162</sup> The Credit CARD Act includes three primary provisions aimed at reducing credit card indebtedness for college-aged consumers.<sup>163</sup> First, effective February 22, 2010, consumers under the age of twenty-one are not permitted to obtain a credit card un-

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157. See 155 CONG. REC. S5314, S5316 (daily ed. May 11, 2009) (statement of Sen. Christopher Dodd) [hereinafter Senator Dodd Statement]; Presidential Statement on the Implementation of the Credit Card Accountability Responsibility and Disclosure Act of 2009, 2010 DAILY COMP. PRES. DOCS. NO. 00115 (Feb. 22, 2010).

158. Credit CARD Act, Pub. L. No. 111-24, § 101(b), 123 Stat. 1734, 1736-37 (codified in sections of 15 U.S.C. §§ 1666j, i-1).

159. *Id.* §§ 102(a), 106(a)-(b).

160. *Id.* § 201(a).

161. The college-aged consumer protection provisions are found in Title III of the Credit CARD Act entitled "Protection of Young Consumers." See *id.* §§ 301-305.

162. See Senator Dodd Statement, *supra* note 157, at S5316 (stating that Act seeks to end deceptive card practices aimed at young people and protect them from "onslaught of credit card offers, often years before they turn 18, usually as soon as they set foot onto a college campus"); see also 155 CONG. REC. H5013, H5020 (daily ed. Apr. 30, 2009) (statement of Rep. Louise Slaughter) [hereinafter Representative Slaughter Statement] (discussing her support of measures "to protect college students from the hardship of excessive credit card debt and bankruptcy").

163. Although the Senate bill contained a provision permitting consumers under the age of twenty-one to obtain a card if they complete an approved financial literacy course, the final version of the Act omitted this provision. See S. REP. NO. 111-16, at 12 (2009); see also Hinson, *supra* note 27, at 303 (discussing earlier version of House bill that included underwriting requirements for student consumers).

less their application includes the following: (1) the signature of a cosigner who is at least twenty-one years old; or (2) financial information indicating that they have independent means of paying the bill.<sup>164</sup> In addition, card issuers are no longer permitted to send prescreened credit offers to consumers under the age of twenty-one unless the consumer has previously consented to receiving such offers.<sup>165</sup> Finally, card issuers and creditors that engage in solicitation on or near a university campus or at a university-sponsored or related event are now banned from offering college students “free” gifts as inducements to complete a credit card application.<sup>166</sup> At first glance, one would think that these measures could indeed keep credit cards out of the hands of many young consumers and, thereby, inhibit their ability to rack up thousands of dollars in credit card debt. However, upon further inquiry, it becomes apparent that several existing factors will hinder the Credit CARD Act’s promise of young consumer protection from being fulfilled—the most disconcerting of which being the Act’s rules and regulations themselves.

Because the Credit CARD Act permits college-aged consumers with independent means of paying their bill to obtain a card without a cosigner, it leaves the door open for young consumers to continue amassing large amounts of credit card debt. The likelihood that this will occur is particularly great when one considers the Federal Reserve Board’s newly promulgated regulations that accompany the Act.<sup>167</sup>

Consider, for instance, the regulations concerning a card applicant’s ability to pay. While the Act and regulations both require card issuers to verify that all consumers, including college-aged consumers, have the ability to pay before issuing them a card,<sup>168</sup> this requirement only applies to prospective cardholders’ ability to pay “required minimum periodic payments under the terms of the account.”<sup>169</sup> Thus, the issuer is *not* required to ensure that a consumer has the ability to pay the *entire* credit amount that will be made available to him or her under the credit card agreement. Rather, the issuer is only required to ensure that the consumer has the ability to pay the *minimum* monthly amount due.<sup>170</sup> The regulations do require card issuers to assume “utilization . . . of the full credit line that the issuer is considering offering to the consumer”<sup>171</sup> when “estimating the minimum periodic payments the consumer would be required to pay.”<sup>172</sup> However, depending on the amount of the credit line and the mini-

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164. Credit CARD Act, Pub. L. No. 111-24, § 301.

165. *Id.* § 302.

166. *Id.* § 304.

167. See *generally* Truth in Lending (Regulation Z), 75 Fed. Reg. 7658 (Feb. 22, 2010) (codified at 12 C.F.R. pt. 226). With regard to the provisions discussed in this Article, the Board’s final rules were, in most respects, the same as those proposed. Compare *id.* (final rule), with Truth in Lending (Regulation Z), 74 Fed. Reg. 54124 (proposed Oct. 21, 2009).

168. Credit CARD Act § 109; Truth in Lending (Regulation Z), 12 C.F.R. § 226.51 (2011).

169. 12 C.F.R. § 226.51(a)(1)(i).

170. See Truth in Lending (Regulation Z), 75 Fed. Reg. at 7660.

171. 12 C.F.R. § 226.51(a)(2)(ii)(A).

172. 12 C.F.R. § 226.51(a)(2)(i).



minimum payment formula employed by the issuer,<sup>173</sup> this required payment amount could be as low as \$25 to \$50 per month.<sup>174</sup> With such a low payment threshold, it appears that card issuers can easily comply with the Act's ability to pay rules and regulations by endeavoring to qualify college-aged consumers who have independent financial means to pay these low amounts. As demonstrated below, credit card issuers will likely accomplish this undertaking with ease due to the wide latitude granted to them by the Board's regulations concerning issuers' verification (or lack thereof) of young consumers' independent ability to pay.

As previously mentioned, consumers under the age of twenty-one can obtain a credit card without a cosigner if they can show that they have independent financial resources with which to make their minimum periodic payments.<sup>175</sup> According to the Board's official staff interpretations, both current resources as well as "*reasonably expected*"<sup>176</sup> resources can be considered in establishing a college-aged consumer's independent ability to pay. "For example, a card issuer may use information about current or expected salary, wages, bonus pay, tips, and commissions. Employment may be full-time, part-time, seasonal, [or] irregular. . . ."<sup>177</sup> In addition, card issuers are permitted to consider consumers' "*assets or income*," which includes savings accounts, to establish their ability to pay.<sup>178</sup>

Take, for instance, an eighteen-year-old incoming college freshman who is interested in obtaining a credit card. According to the regulations, this individual can submit the tips and wages he or she expects to earn while working as a server in a restaurant during holiday break to substantiate an independent ability to pay the low minimum monthly payments. According to the regulations, it does not matter that he or she will not actually receive this income for approximately four months because expected wages and tips from seasonal work qualifies as evidence of independent means to pay. Moreover, if this incoming student takes out student loans to fund his or her educational expenses, these loans can be treated as "income" to independently qualify for a card—a disconcerting practice that some student consumers have already begun to implement.<sup>179</sup>

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173. See 12 C.F.R. § 226.51(a)(2)(ii)(B); see also Kristin Arnold, *Calculating Your Minimum Payment*, BANKRATE.COM (May 3, 2005), <http://www.bankrate.com/brm/news/debt/20050503b1.asp> (reporting that although it varies by issuer, consumer's minimum payment is commonly two to four percent of card balance).

174. For an exercise in calculating monthly minimum payments, see BANKRATE.COM, *Credit Card Calculator*, <http://www.bankrate.com/calculators/managing-debt/minimum-payment-calculator.aspx> (last visited Oct. 30, 2010).

175. See Credit CARD Act, Pub. L. No. 111-24, § 301, 123 Stat. 1734, 1747-48 (amending 15 U.S.C. § 1637(c)); 12 C.F.R. § 226.51(b)(1)(i).

176. Truth in Lending (Regulation Z), 75 Fed. Reg. 7658, 7900 (Feb. 22, 2010) (emphasis added).

177. *Id.*

178. *Id.* (emphasis added).

179. In his survey of undergraduate students, Professor Hawkins found that thirty percent of college-aged students who obtained a credit card since the beginning of the fall 2010 semester reported using student loan proceeds as income for card qualification purposes. See Hawkins, *supra* note 86; see also, e.g., Susan Tompor, *Credit Card Offers Still Contain*

This student can also place loan disbursement money into a savings account and use it to independently qualify for a card because the account could be considered an “asset” under current regulations.

Student loan refund accounts themselves may be deemed a permissible asset in light of the emerging practice of colleges and universities partnering with companies to distribute student loan refund cards.<sup>180</sup> Such cards, which take the place of traditional refund checks, essentially operate as debit cards except that purchases and withdrawals are deducted from students’ loan refund accounts rather than their checking or savings accounts.<sup>181</sup> Although touted by university officials as both an administrative cost- and time-saving measure as well as a way to generate income in difficult economic times, many students and consumer advocates complain about the fees associated with the cards, which are not currently regulated under the Credit CARD Act.<sup>182</sup>

Perhaps even more disturbing than these potential assets on which issuers can rely to qualify college-aged consumers is the fact that young consumers can merely state on their credit card application that they have (or expect to have) these financial resources, and the regulations do not require card issuers to independently verify the truthfulness or accuracy of such statements.<sup>183</sup> Effectively, the regulations create a “stated” income and assets regime similar to that employed in the subprime housing market—a regime that not only invites and facilitates fraudulent financial representations but also results in consumers obtaining credit and debt that they cannot afford to repay.<sup>184</sup> In the housing context, this practice of deceptive and irresponsible lending not only caused grave

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*Trouble Spots for Consumers*, DETROIT FREE PRESS, Sept. 30, 2010, <http://www.freep.com/article/20100930/COL07/9300471/Credit-card-offers-still-contain-trouble-spots-for-consumers>.

180. See Ylan Q. Mui, *Debit Cards Replacing Credit Cards on College Campuses*, WASH. POST, Oct. 4, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/03/AR2010100304352.html>.

181. See *id.*

182. See *id.* (“[S]tudents say several of the fees associated with Higher One’s card are particularly irksome, including the \$19 inactivity fee, a 50-cent charge for using a PIN to make a purchase rather than a signature, and a \$2.50 fee for using other banks’ ATMs.”).

183. See Truth in Lending (Regulation Z), 75 Fed. Reg. at 7722 (discussing reactions to Board’s rules regarding issuers’ ability to simply rely on income and asset information stated on applicant’s application without independently verifying information).

184. See A. Mechele Dickerson, *Over-Indebtedness, the Subprime Mortgage Crisis, and the Effect on U.S. Cities*, 36 FORDHAM URB. L.J. 395, 400–03 (2009) (stating that “some borrowers intentionally inflated their incomes on liar loan [applications]” resulting in outright fraud); Todd J. Zywicki & Joseph D. Adamson, *The Law and Economics of Subprime Lending*, 80 U. COLO. L. REV. 1, 41 (2009) (stating that “stated” income loans, also known as liar loans, are “the most common form of mortgage fraud” because of opportunity to lie about one’s income on application); see also Alan M. White, *The Case for Banning Subprime Mortgages*, 77 U. CIN. L. REV. 617, 634 (2008). As noted by Professor White:

The prevalence of “no-doc” loans, i.e., subprime mortgages made without requiring any written verification of borrower income or assets, fostered a climate in which borrower’s income, assets, and property value were routinely falsified. No-doc or “liar loans” reached a level of \$276 billion in 2006, accounting for 46% of all subprime mortgages.

*Id.* at 634 (footnote omitted).

consequences for thousands of consumers but also contributed to the “mortgage meltdown” and global financial crisis.<sup>185</sup> Young consumers may experience similar negative consequences, such as delinquencies and bankruptcies, if credit card issuers are permitted to engage in this same sort of imprudent and exploitative lending behavior.

One would think that Congress surely intended stricter requirements than these when attempting to protect young consumers and to restrict creditors’ abilities to issue credit cards to those who cannot afford to repay the debt.<sup>186</sup> As recognized by Senator Christopher Dodd:

Just as we saw in the mortgage crisis with lenders and borrowers, too often issuers offer cards to young people without verifying any ability to repay whatsoever. This is particularly true for students. . . . It is time to insist that credit card companies take into account a young person’s ability to repay before allowing them to take on what is all too often a lifetime worth of debt. Very little we do in our legislation will be more important than these provisions.<sup>187</sup>

Unfortunately, the Board does not appear to share this intention. As acknowledged in the regulations, the Board clearly rejected consumer advocates’ recommendations that it “require a more stringent evaluation of a consumer’s ability to make the required payments for consumers under the age of 21 than the one required” generally for all consumers.<sup>188</sup> According to the Board:

[C]onsumer group commenters suggested, for example, that card issuers be required to only consider income earned from wages or require a higher residual income or lower debt-to-income ratio for consumers less than 21 years old. A state regulatory agency commenter suggested that the Board require card issuers to verify income or asset information stated on an application submitted by a consumer under the age of 21. *The Board declines to make the suggested changes.* The Board believes that the heightened procedures already set forth in [the

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185. See Dickerson, *supra* note 184, at 412 (detailing evidence of housing crisis that was precipitated, in part, by unscrupulous and predatory lending); David Anderson & Sarah Hodges, *Credit Crisis Litigation: An Overview of Issues and Outcomes*, 28 BANKING & FIN. SERVICES POL’Y REP., June 2009, at 1, 1 (“The subprime mortgage crisis that began in the summer of 2007 has exploded into a global financial crisis more severe than anything seen in the past 70 years.”); Tami Luhby, *Senate Votes to Ban Liar Loans*, CNNMONEY.COM (May 13, 2010), [http://money.cnn.com/2010/05/13/news/economy/senate\\_mortgage\\_rules/index.htm?section=money\\_realestate](http://money.cnn.com/2010/05/13/news/economy/senate_mortgage_rules/index.htm?section=money_realestate) (stating that Senate banned controversial liar loans that brought down housing market).

186. See *supra* note 162 and accompanying text; see generally Representative Slaughter Statement, *supra* note 162, at H5020 (discussing lawmakers’ efforts to “ensure that credit card companies cannot provide students with extravagant limits and require the creditors to obtain a proof of income, income history and credit history from the students before approving the application”).

187. Senator Dodd Statement, *supra* note 157, at S5316.

188. Truth in Lending (Regulation Z), 75 Fed. Reg. at 7722.

Truth in Lending Act]. . . , as adopted by the Board. . . , will provide sufficient protection for consumers less than 21 years old without unnecessarily impinging on their ability to obtain credit and build a credit history.<sup>189</sup>

Considering the low threshold that card companies must meet to continue issuing cards to young consumers, it is doubtful that the Board's beliefs will be realized, especially when one considers the credit card industry's strategic ability to adjust their practices to accomplish their economic goals.

As recognized by Adam Levitin, "[t]he card industry has shown that it is quite skilled at adaptation, and economic theory tells us that regulation has a hydraulic effect—if practice A is banned, the market will simply move to practice B."<sup>190</sup> As evidenced by a recent report issued by the Pew Health Group, this effect is exactly what has happened since the enactment of the Credit CARD Act.<sup>191</sup> While banks have eliminated troubling practices such as the imposition of over-the-limit fees without consumers' consent and unfair payment allocation, some have also increased surcharges for cash advances and stopped disclosing the size of penalty interest rates.<sup>192</sup>

Interestingly, with respect to the Credit CARD Act's provisions related to young consumers, the report found that out of its entire survey of over 450 card-issuing banks and credit unions,<sup>193</sup> only *one* "mentioned special provisions for young people, indicating that a co-signer would be required if the applicant was under age 21. These new protections have not been widely reflected in card issuers' terms and conditions."<sup>194</sup> This finding begs the question: Why are issuers seemingly paying such little attention to these "protections"? Perhaps, they have been preoccupied with complying with other provisions of the Act. It may also be possible that the current legislation and regulations are not likely to have a significant impact on the way issuers currently do business with college-aged

189. *Id.* (emphasis added).

190. Levitin, *Legislation*, *supra* note 156; *see also* Levitin, *Credit Union Report*, *supra* note 156, at 12 (noting that when new legislation limits "tricks and traps" relied upon by large bank issuers, it also "incentivize[s] large issuers to come up with new ones"); Todd Wallack, *Credit Card Firms Raise Fees Before Law Changes*, BOSTON GLOBE, July 27, 2009, available at [http://www.boston.com/business/personalfinance/articles/2009/07/27/credit\\_card\\_firms\\_raise\\_fees\\_before\\_law\\_changes/](http://www.boston.com/business/personalfinance/articles/2009/07/27/credit_card_firms_raise_fees_before_law_changes/) (discussing card companies' practices of increasing rates and fees in response to passing of Credit CARD Act).

191. *See* PEW HEALTH GROUP, TWO STEPS FORWARD: AFTER THE CREDIT CARD ACT, CREDIT CARDS ARE SAFER AND MORE TRANSPARENT--BUT CHALLENGES REMAIN 1–2 (2010) [hereinafter PEW HEALTH GROUP], available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Credit\\_Cards/PEW-CreditCard%20FINAL.PDF?n=1231](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Credit_Cards/PEW-CreditCard%20FINAL.PDF?n=1231); Sudeep Reddy, *Card Issuers' Novel Ways Outflank Law*, WALL ST. J., June 3, 2010, [http://online.wsj.com/article/NA\\_WSJ\\_PUB:SB10001424052748704515704575282890099634622.html](http://online.wsj.com/article/NA_WSJ_PUB:SB10001424052748704515704575282890099634622.html) (discussing banks' new tactics to raise interest rates and charge credit card fees in wake of Credit CARD Act).

192. PEW HEALTH GROUP, *supra* note 191, at 1–2.

193. *See id.* at 1.

194. *Id.* at 20.

consumers.

Prior to the Board's promulgation of final regulations, some industry representatives speculated that issuing cards to college-aged consumers would be so burdensome and costly that some banks may decide to stop extending credit to this class of consumers.<sup>195</sup> It does not appear that this will be the case.<sup>196</sup> Card issuers are aware of the lenient regulations related to establishing young consumers' independent ability to make periodic payments; they know that they are permitted to simply rely on the financial information submitted by young consumers on their card applications.<sup>197</sup> In fact, the regulations state that "[i]ndustry commenters were supportive of the Board's approach"<sup>198</sup> regarding this matter.

While some issuers such as Discover state "that full-time students under age 21 will need to show verifiable income that's above \$2,000 a year and must have 'an acceptable debt-to-income ratio' to qualify for the Discover Student card,"<sup>199</sup> credit card companies have routinely customized or waived underwriting standards for students in attempts to increase their number of student cardholders.<sup>200</sup> Considering the current and future profitability of this segment of the market,<sup>201</sup> it is doubtful that credit card companies will end these customization practices, which appear allowable under the Act. Therefore, creditors will most likely continue issuing cards to consumers under the age of twenty-one who do not possess the financial means to repay their debt and, in so doing, continue to facilitate the escalating problem of young consumer indebtedness.

One final factor that may hinder the effectiveness of the Credit CARD Act in protecting young consumers is the Act's allowance of college-aged consumers to obtain a card if they are able to secure a cosigner who is at least twenty-one years old.<sup>202</sup> Ideally, the cosigner would be someone such as a parent or guardian who has the knowledge and experience to fully understand and appreciate the financial liabilities associated with being a cosigner. Indeed, issuers

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195. See Maria Aspan, *Final Semester for Credit Cards Aimed at Students?*, AM. BANKER, Aug. 25, 2009, at 1.

196. For example, Citibank currently offers six college student credit cards, three of which are advertised as "no cosigner needed." See CITIBANK, *All Student Credit Cards*, <https://creditcards.citi.com/credit-cards/all-student-credit-cards/> (last visited Oct. 30, 2010).

197. See Truth in Lending (Regulation Z), 75 Fed. Reg. 7658, 7722 (Feb. 22, 2010).

198. *Id.*

199. AnnaMaria Andriotis, *Credit-Card Issuers' New College Strategies*, WALL ST. J. CLASSROOM ED., May 2010, [http://wsjclassroom.com/cre/articles/10may\\_colm\\_creditcard.htm](http://wsjclassroom.com/cre/articles/10may_colm_creditcard.htm) [hereinafter Andriotis, *Strategies*].

200. See GAO REPORT, *supra* note 35, at 34 (reporting that, according to one issuer, location where students attend college is more important to approving application than whether or not they are employed); Hinson, *supra* note 27, at 290 ("Student applicants on college campuses are generally not required to meet income standards and background checks that would otherwise be required."); MacDonald, *supra* note 89 (discussing issuers' tendency to "waive the normal underwriting criteria for students" in attempts to establish brand loyalty by being one of first cards that students obtain (internal quotation marks omitted)).

201. See *supra* Part II.A.

202. Credit CARD Act, Pub. L. No. 111-24, § 301, 123 Stat. 1734, 1747-48 (amending 15 U.S.C. § 1637(c)).

have already begun marketing to parents in their attempts to attract student consumers.<sup>203</sup> However, since any qualifying adult who is age twenty-one or older can cosign on the application for college-aged consumers, older students, who may already have student loan and/or credit card debt, are permitted to cosign if they meet the issuers' requirements. There have already been reports of some college students paying older students and friends to serve as cosigners.<sup>204</sup> Therefore, the Act paves the way for increasing the indebtedness of not only college-aged consumers but also of their cosigning parents, guardians, friends, and relatives.

Despite its efforts to restrict the issuance of cards to young consumers who do not have adequate financial resources with which to repay the debt, it is doubtful that the Credit CARD Act will significantly impact the number of young cardholders or the amount of debt that they amass. In view of these factors, more comprehensive legislation is needed to diminish the negative long-term effects that credit card debt can have on the lives and futures of many young consumers.<sup>205</sup>

#### V. PROTECTING OUR YOUTH—PRESERVING THEIR FUTURES

As previously discussed in Part III of this Article, credit card usage by college-aged consumers has increased significantly over the past several years resulting in detrimental academic, financial, and personal consequences for several young cardholders.<sup>206</sup> Congress has recognized the significance of this problem; however, its recent attempts to address it may very well prove futile.<sup>207</sup> Not only does the Credit CARD Act provide methods by which card companies can continue to issue cards to college-aged consumers who may not be able to repay their debt, but it also fails to include provisions that can provide protection for young consumers once they receive and begin to use their cards.<sup>208</sup> Consequently, additional measures are needed to more effectively protect young consumers' personal and financial futures.

This part discusses several additional provisions that could be implemented to provide greater protection for college-aged consumers. Inherent in the sug-

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203. See Andriotis, *Strategies*, *supra* note 199 (discussing issuers' use of direct mail to parents' homes to market student credit cards).

204. See *College Students Skirt Rules to Get Credit Cards*, PUB. RADIO INT'L (Sept. 24, 2010), <http://www.pri.org/business/economic-security/college-students-skirt-rules-to-get-credit-cards2166.html>; see also David Migoya, *More College Students Duck Credit Card Law*, DETROIT NEWS, Sept. 20, 2010, at 20; Tompor, *supra* note 179.

205. See Hinson, *supra* note 27, at 302 (stating that Credit CARD Act does not fully protect young consumers because once credit card is issued, they can still amass large amounts of debt for which they do not have income or financial means to pay).

206. See *supra* Part III; see also SALLIE MAE STUDY, *supra* note 5, at 3 (reporting that "[n]early every indicator measured in spring 2008 showed an increase in credit card usage [by college students] since the last study was conducted in fall 2004").

207. See *supra* Part IV.

208. See Hinson, *supra* note 27, at 303-04 (critiquing Credit CARD Act's lack of protective provisions for college-aged consumers once they obtain cards, such as limits on amount of credit and number of cards young consumers can obtain).

gestion and consideration of any proposal are inevitable normative questions related generally to credit availability and debt accumulation and, specifically, to young consumer indebtedness. Policymakers, lawmakers, and scholars can and often do disagree on how best to approach and resolve these complex issues.<sup>209</sup> Even among those policymakers who may agree that college-aged consumers need greater protections than those currently provided in the Act, they would surely have differing opinions regarding various aspects of such protections, such as the appropriate time period for providing such protections. Three options, which are not mutually exclusive, include the following time periods: (1) before young consumers obtain a card; (2) during the time in which they are using their card; or (3) at the time when they default on their card agreement. In addition, policymakers may have divergent thoughts regarding what the goals of additional measures should be. Again, non-mutually exclusive options include: (1) decreasing the number of college-aged cardholders; (2) decreasing the amount of credit card debt young consumers incur; or (3) decreasing the literal and figurative “costs” that young cardholders must pay as a consequence of incurring debt.

Because of these various possibilities, this Article suggests a spectrum of proposals ranging from those that would further restrict young consumers’ access to credit cards and, thereby, reduce the number of college-aged cardholders, to those that would provide protections after young consumers begin to use their cards. Obviously, there are costs and benefits associated with each proposal that would have to be carefully considered before adoption. However, given the possibility that the Credit CARD Act’s current provisions may fail to significantly impact young consumers’ credit card indebtedness, policymakers should earnestly consider these and other measures if they hope to provide meaningful and effective protections for college-aged consumers.

#### A. *Raising the Bar to Borrow*

As evidenced by the enactment of the young consumer provisions included in the Credit CARD Act,<sup>210</sup> lawmakers have been deeply concerned with the growth in the number of young cardholders and the amount of debt they have amassed.<sup>211</sup> Assuming that the Act’s current provisions are not likely to effectively curtail these occurrences<sup>212</sup> and that the growth in young consumer indebtedness warrants curtailment, policymakers should implement new ways by which to restrict non-creditworthy, college-aged consumers’ access to credit

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209. See, e.g., Steven W. Bender, *Rate Regulation at the Crossroads of Usury and Unconscionability: The Case for Regulating Abusive Commercial and Consumer Interest Rates Under the Unconscionability Standard*, 31 HOUS. L. REV. 721, 728-32 (1994) (summarizing views held by proponents and opponents of usury interest rate caps); Elizabeth Warren, *The New Economics of the American Family*, 12 AM. BANKR. INST. L. REV. 1, 38-40 (2004) (advocating for interest rate credit regulation).

210. Credit CARD Act, Pub. L. No. 111-24, §§ 301-305, 123 Stat. 1734, 1747-51 (codified in scattered sections of 15 U.S.C.).

211. See *supra* note 162.

212. See *supra* Part IV.

cards. Such measures could impose stricter underwriting requirements such as an age restriction or employment requirement, or they could require issuers to independently verify the financial resources information included on young consumers' applications. Depending on the goals policymakers sought to accomplish, one or more of these proposals could be effective.

### 1. *Increased Age Restriction*

If policymakers wish to significantly decrease the number of college-aged cardholders, the most effective way to achieve this goal would be to prohibit them from independently obtaining a card until they reach the age of twenty-one.<sup>213</sup> Despite the potential effectiveness of this proposal, it is likely not a feasible proposition for several reasons. First, in most states, the age of majority for entering into contracts is eighteen.<sup>214</sup> Therefore, requiring consumers to be twenty-one to enter into a credit card agreement would contradict this established rule.<sup>215</sup> If Congress felt that young consumers' escalated credit card debt warrants the age restriction, then it could utilize its authority under the Spending Clause to effectuate an age increase.<sup>216</sup> Just as it did to implement an increase in the drinking age, Congress could condition the receipt of federal funds to states' agreement to increase the age for obtaining a credit card to twenty-one.<sup>217</sup> It is doubtful, however, that there would be sufficient political will to invoke this authority.

Many lawmakers would likely oppose requiring young consumers to be twenty-one before obtaining a card because of their concerns that doing so would infringe upon adults' freedom to obtain needed and beneficial credit.<sup>218</sup>

213. See, e.g., Wayne Jekot, Note, *Over the Limit: The Case for Increased Regulation of Credit Cards for College Students*, 5 CONN. PUB. INT. L.J. 109, 125 (2005) (proposing that "credit card issuers should be prohibited from granting credit to those under twenty-one who are full-time college students").

214. See E. ALLAN FARNSWORTH, CONTRACTS § 4.3, at 221-22 (4th ed. 2004).

215. See Johnson, *supra* note 36, at 258-59.

216. See U.S. CONST. art. I, § 8, cl. 1.

217. See *South Dakota v. Dole*, 483 U.S. 203, 206-07, 210-13 (1987) (holding that Congress is permitted to condition states' receipt of federal highway funds to their enactment of minimum drinking age); Scott R. Simpson, Comment, *Report Card: Grading the Country's Response to Columbine*, 53 BUFF. L. REV. 415, 425 (2005) ("Congress could not impose a national drinking age on the States, but it could do indirectly what it could not do directly using its Commerce Clause powers.").

218. See *supra* note 189 and accompanying text (noting Board's concerns of "unnecessarily impinging on [college-aged consumers'] ability to obtain credit"); see also 155 CONG. REC. H5013, H5020 (daily ed. Apr. 30, 2009) (statement of Rep. Spencer Bachus) (expressing concern that some proposed amendments to Credit Cardholders' Bill of Rights Act of 2009 would "result in students not having the use of a credit card"); Hinson, *supra* note 27, at 304, 306 (discussing industry representative's concerns that "the 'creation of barriers to credit access' would impose greater hardships on those who rely on credit for both day-to-day and emergency expenses") (footnote and citation omitted); Jessica Dickler, *Credit Card Debt on Campus*, CNNMONEY.COM (July 14, 2008), [http://money.cnn.com/2008/07/10/pf/credit\\_cards\\_college/?postversion=2008071413](http://money.cnn.com/2008/07/10/pf/credit_cards_college/?postversion=2008071413) (reporting banking industry representative's views that "credit cards are a valuable tool for students" and that lawmakers should therefore "exercise caution" when considering "legislative propos-



As argued by Representative Jeb Hensarling, “[w]e’re talking about folks over 18 who can vote, who can go to war, in most States can marry, own real property. We shouldn’t be paternalistic towards them. We shouldn’t deny them what could be an incredibly valuable tool to get them through college in the first place.”<sup>219</sup>

Indeed, college officials and industry representatives have acknowledged the benefits of credit cards for many students. Such advantages include accessibility to financial resources in the event of an emergency, ability to pay for education related expenses, and the opportunity to establish and build credit history.<sup>220</sup> Those who would oppose an age restriction could argue that prohibiting consumers under the age of twenty-one from obtaining a credit card would prevent them from obtaining these benefits.

It could also be argued that denying or restricting young consumers’ access to credit cards would deprive them of the benefit of learning how to responsibly manage credit.<sup>221</sup> Recent studies show that young consumers make costly financial mistakes (i.e., exceeding their credit limit and paying bills late) due, in part, to their inexperience and lack of financial knowledge.<sup>222</sup> The adverse impact that lack of financial experience has on consumers’ credit card behaviors is confirmed by recent research finding that new cardholders pay a greater number of late payment, over-the-limit, and cash advance fees than do consumers who have had their cards for longer periods of time.<sup>223</sup> These findings suggest that over time and after encountering negative borrowing experiences, consumers

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als that would limit or prevent certain students from obtaining credit cards”).

219. 155 CONG. REC. H5013, H5021 (daily ed. Apr. 30, 2009) (statement of Rep. Jeb Hensarling).

220. See *supra* note 76 and accompanying text; see also GAO REPORT, *supra* note 35, at 8-9; Hinson, *supra* note 27, at 289. Similar arguments have been made to support the claim that low-income consumers should have increased access to credit cards. See Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451, 457-60 (2008).

221. See GAO REPORT, *supra* note 35, at 9 (noting that some student cardholders’ parents view credit cards as “tool for learning financial responsibility”); Barbara Bedway, *Credit Card Issuers’ Last Stab at Hooking Your Kid*, CBS MONEYWATCH.COM (Sept. 10, 2009), <http://moneywatch.bnet.com/saving-money/article/college-kids-and-credit-cards-what-every-parent-needs-to-know/340021/> (stating that some financial experts believe that having credit cards can help “a young adult learn how to manage credit responsibly, build a credit history, and provide peace of mind to his parents in an emergency”); Burnsed, *supra* note 150 (“Credit cards are the simplest way for students to build strong credit before they’re thrust into the real world.”); Connie Prater, *Law May Force Parents, Children to Talk About Credit Cards*, CREDITCARD.COM (July 8, 2009), <http://www.creditcards.com/credit-card-news/credit-card-law-college-students-parents-1282.php> (stating that limiting college students’ access to credit will result in hindering or delaying young adults building credit history in their names).

222. See *supra* notes 93-94 and accompanying text.

223. See Sumit Agarwal et al., *Learning in the Credit Card Market* 3, 6-9 (2008) [hereinafter Agarwal et al., *Learning*], available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1091623&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1091623&download=yes) (finding that “fee payments are fairly common when accounts are initially opened, but that the frequency of fee payments declines rapidly as account tenure increases”). For further discussion of research indicating that the majority of financial penalty fees are paid by inexperienced young consumers or less intelligent older persons, see *supra* note 93 and accompanying text.

learn to avoid making costly mistakes such as going over their limit or making late payments.<sup>224</sup> If learning is “driven by feedback,” as concluded in the study,<sup>225</sup> then restricting young consumers’ ability to obtain cards would arguably deny them opportunities to experience card use and learn from the financial mistakes that can accompany such use. Perhaps the optimal time for consumers to make and learn from these mistakes is during their college-aged years so that they are better equipped to manage credit and debt when they get older.

Imposing an age restriction, however, would not necessarily prevent young consumers from learning how to manage credit and debt or from enjoying any of the other benefits mentioned above. They could do so by obtaining a card with a cosigner or by becoming an authorized user on someone’s account, such as a parent.<sup>226</sup> In addition, it is important to recognize that these financial lessons are extremely costly to young consumers not only in the short term with the payment of fees but also in the long term with the reporting of negative credit history on their credit reports for seven years.<sup>227</sup> Considering the gravity of these costs, policymakers could attempt to prevent college-aged consumers from experiencing them by imposing the age restriction.

As previously discussed, young consumers often experience detrimental consequences as a result of their credit card use, especially when they incur debt without having the financial means by which to repay it.<sup>228</sup> Arguably, a complete proscription to issuing cards to consumers under the age of twenty-one would not be the optimal way to help young consumers avoid these consequences because such a restriction could be viewed as overinclusive. Although policymakers would be attempting to protect those consumers who do not have the financial resources with which to repay their debt, the increased age restriction would give no consideration to a consumer’s ability to pay. Therefore, perhaps a more balanced approach would be to permit issuance of credit cards only to those college-aged consumers who are currently employed and can verify that they have sufficient income to repay their debt.

## 2. *Strengthened Ability to Pay Requirements*

Similar to suggestions consumer advocates offered to the Board during the proposed rulemaking comment period for the Credit CARD Act,<sup>229</sup> legislation intended to protect college-aged consumers could require those consumers and issuers to comply with stricter underwriting requirements.<sup>230</sup> The spectrum of stricter standards could include a prerequisite that college-aged applicants verify that they have *current income*, not “expected assets” as presently permitted by

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224. See Agarwal et al., *Learning*, *supra* note 223, at 3, 6-9.

225. See *id.* at 3.

226. See Hinson, *supra* note 27, at 298 (discussing advantages of young consumers becoming authorized users on their parents’ credit card accounts).

227. See *supra* Part III. For a proposal to reduce the costs associated with the reporting of young consumers’ negative credit card history, see *infra* Part V.B.3.

228. See *supra* Part III; see also GAO REPORT, *supra* note 35, at 9-14.

229. See *supra* notes 188-89 and accompanying text.

230. See *supra* notes 186-87 and accompanying text.

the regulations,<sup>231</sup> if they wish to obtain a credit card without a cosigner. Requiring young consumers to be employed before being eligible to obtain a credit card would ensure that they are generating income and wages with which to pay their debt. Although cardholders could quit their jobs after having their card application approved, one would think they would be disinclined to do so, especially after incurring charges on their card for which they are responsible.

Mandating an employment requirement could be viewed as good public policy because it could teach young consumers (and remind the card industry)<sup>232</sup> that receiving a credit card should not be viewed as a right to which all consumers become entitled merely by turning eighteen years old. Rather, it should be looked upon as a serious financial undertaking reserved for those individuals with sufficient income to pay their debt. Considering that research shows that students' credit card use is affected by their attitudes regarding the normalcy of debt in general and credit card debt in particular,<sup>233</sup> policymakers should attempt to implement proposals such as an employment requirement that can help to foster fiscally responsible attitudes.<sup>234</sup>

While this proposal would succeed in reducing the number of young unemployed cardholders, it may also contribute to increases in young consumers' debt levels once they become cardholders. A recent study examining credit card borrowing by college students found that "a student who is currently employed is 29% more likely to borrow," resulting in, "on average, \$390 more in credit card debt[] than a student not currently working."<sup>235</sup> Therefore, policymakers would have to consider this potential consequence when contemplating the viability of an employment requirement to accomplish their consumer protection goals.

The concerns discussed above regarding the imposition of overinclusive rules that prevent young consumers from enjoying the benefits of credit also apply to this proposal. Implementing an employment requirement would prevent all unemployed consumers from independently obtaining a card, even if they possess adequate financial assets with which to pay their debts. Arguably, this proposal is not as overinclusive as the age restriction because employed consumers under the age of twenty-one would be permitted to obtain cards. However, young consumers' access to credit cards is significantly reduced under this proposal, particularly for those college-aged consumers who may have significant financial assets due to their socioeconomic status. Such consumers would have to secure a cosigner or become an authorized user on someone else's card in order to obtain a card and begin establishing their credit history. Policymakers would have to weigh the potential benefits of prohibiting young

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231. See Truth in Lending (Regulation Z), 75 Fed. Reg. 7658, 7900 (Feb. 22, 2010).

232. For further discussion of the credit card industry's original reluctance to lend to unemployed, young consumers, see *supra* Part I.A.

233. See Arano & Parker, *supra* note 94, at 1-2, 7.

234. Such attitudes could also be developed through financial literacy courses and public service campaigns. See Johnson, *supra* note 36, at 268-76 (recommending mandatory financial education for college-aged consumers).

235. Arano & Parker, *supra* note 94, at 6.

unemployed consumers from obtaining credit cards against this and other possible costs.

Another proposal along the spectrum of heightened eligibility rules would be requiring issuers to base ability to pay determinations on young consumers' ability to repay the entire amount of offered credit rather than their ability to make minimum monthly payments, as currently permitted by the Act and accompanying regulations.<sup>236</sup> As previously discussed, the current rules set forth a very low standard for issuers to independently qualify young consumers.<sup>237</sup> They appear to be premised on the assumption that young consumers will be "borrowers" making minimum monthly payments<sup>238</sup> rather than "convenience users" who pay their balances in full each month.<sup>239</sup> This assumption is correct for the majority of student cardholders; however, young consumers' borrowing causes them to pay significant amounts of interest and contributes to their incurring of costly penalty fees.<sup>240</sup> To prevent college-aged consumers from incurring debt for which they can only afford to make minimum payments, policymakers could require issuers to ensure that young cardholders' income and assets (if one is unwilling to impose an employment requirement) are sufficient to repay an amount equal to the amount of credit that will be extended under the card agreement.

Perhaps the least objectionable approach to strengthening the current ability to pay requirements is to require card issuers to independently verify applicants' income and assets before issuing them a card.<sup>241</sup> Issuers could accomplish this by requiring applicants to provide copies of their current paycheck, pay stub, and financial account statements when submitting their application. While there may be some administrative costs associated with performing such verification, the benefits of ensuring that applicants actually possess the financial resources on which they are relying to obtain a credit card could outweigh those costs. As previously discussed, permitting a "stated" income approach when issuing cards to young consumers is an untenable proposition and invites the very deceptive behaviors that the Act is intended to eliminate.<sup>242</sup> Therefore, policymakers should consider requiring issuers to independently verify college-aged applicants' current income and assets before issuing credit cards to

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236. See Credit CARD Act, Pub. L. No. 111-24, § 109, 123 Stat. 1734, 1743 (codified as 15 U.S.C. § 1665e); Truth in Lending (Regulation Z), 12 C.F.R. § 226.51 (2011).

237. See *supra* notes 169-78 and accompanying text.

238. See SULLIVAN ET AL., FRAGILE MIDDLE CLASS, *supra* note 10, at 130 (asserting that "credit cards make it far easier to incur consumer debt by encouraging a-little-at-a-time borrowing and too-little-at-a-time repayment").

239. See *supra* note 57.

240. For a discussion of the correlation between payment histories, interest rates, and penalty fees, see *supra* notes 61-64 and accompanying text.

241. See *supra* notes 186-87 and accompanying text; see also Representative Slaughter Statement, *supra* note 162, at H5019 (proposing income verification amendment to Credit Cardholders' Bill of Rights Act of 2009 stating that "a creditor shall require adequate proof of income, income history, and credit history, subject to the rules of the Board, before any college student credit card account may be opened by or on behalf of a student").

242. See *supra* notes 183-87 and accompanying text.

them.

### B. *Lowering the “Costs” of Borrowing*

The proposals discussed thus far arguably would provide greater protections for young consumers by restricting their ability to incur debt they cannot afford to repay. If implemented, the proposals would protect young consumers prior to the issuance of a card. One of the other weaknesses of the Act is that it fails to provide adequate protections for young cardholders post-issuance (i.e., once they receive and begin to use their cards).<sup>243</sup> Although the Act includes beneficial provisions that are generally applicable to all cardholders,<sup>244</sup> it misses an important opportunity to provide greater protections for college-aged consumers by reducing the literal and figurative costs that many of them must pay as a consequence of their credit card indebtedness. Three of these costs include: (1) higher debt levels facilitated by unsolicited credit limit increase; (2) high interest rates; and (3) inclusion of negative credit history in credit reports. Policymakers should consider implementing measures to help reduce these costs which would, in turn, provide greater protection for college-aged consumers' personal and financial futures.

#### 1. *Restricting Credit Limit Increases*

One way to better protect young consumers from the pitfalls of credit card debt is to prohibit issuers from increasing young cardholders' credit limits without their request or consent. Currently under the Act, consumers under the age of twenty-one who obtain a card with the assistance of a cosigner are not permitted to have their credit limits increased unless the cosigner provides written approval of the increase.<sup>245</sup> This beneficial provision protects consumers against issuer-initiated credit limit increases and, thereby, helps to reduce the amount of debt young consumers will incur. Unfortunately, this provision does not apply to college-aged cardholders who independently qualify for a card. The approval provision's inapplicability to non-cosigner accounts may reflect Congress's attempt to protect young cardholders' parents, many of whom provide financial assistance to repay their child's credit card debt.<sup>246</sup> However, considering the ease with which card companies will likely be able to independently qualify consumers<sup>247</sup> and young consumers' escalating indebtedness,<sup>248</sup>

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243. See *supra* note 208.

244. See *supra* notes 21-22, 158-60 and accompanying text.

245. See Credit CARD Act, Pub. L. No. 111-24, § 303, 123 Stat. 1734, 1748 (amending 15 U.S.C. § 1637).

246. See Senator Dodd Statement, *supra* note 157, at S5316 (noting that many parents “ultimately” repay credit card debt their children incur); see also 155 CONG. REC. S5488 (daily ed. May 14, 2009) (statement of Sen. Claire McCaskill) (asserting that issuers “send these cards to kids because they know their parents, if they are in college, don’t want them to get into trouble and they will bail them out if they get in too deep”).

247. See *supra* Part IV.

248. See *supra* Part III.A.

lawmakers should pass additional legislation to remedy this discrepancy and extend the protections provided by this provision to all college-aged consumers.

While it is true that cardholders who receive an unsolicited credit limit increase could easily contact the issuer and request that the limit be decreased to the original amount, for several reasons it is unlikely that many young consumers will do this. First, they enjoy the perceived freedom and independence that credit gives them;<sup>249</sup> therefore, they are unlikely to voluntarily seek to curb or restrict this freedom. Also, some enjoy the perceived sense of status that having cards with high credit limits provides.<sup>250</sup> They feel that with a higher limit they can afford to socialize with and be accepted by individuals with higher financial and social stature,<sup>251</sup> even if their reliance on credit and debt masks their true ability to do so.

Also, like many consumers, young cardholders can be affected by “a combination of behavioral biases that results in the underestimation of future borrowing.”<sup>252</sup> As Oren Bar-Gill has recognized, consumers’ use of credit cards can be affected by biases such as underestimation of self-control problems whereby “consumers overestimate their ability to resist the temptation to finance consumption by borrowing”<sup>253</sup> and optimism bias whereby consumers “underestimate the likelihood that they will be forced to resort to credit card borrowing.”<sup>254</sup> These biases could contribute to young consumers’ decision not to request a reduction in their credit limit because they do not anticipate using the additional credit.

And if they do decide to borrow with the additional credit, many young consumers expect that their future financial resources will enable them to repay the debts they incurred during their young adulthood.<sup>255</sup> In fact,

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249. See MANNING, LIVING WITH DEBT, *supra* note 73, at 31 (discussing young consumers’ association of “debt-based behaviors” with “assertions of adulthood/independence, freedom, and market-based self worth/social status”); *id.* at 36 (attributing students’ use of cards to their “psychological need to satisfy cravings for independence, self-esteem, and financial freedom”).

250. See MANNING, CREDIT CARD NATION, *supra* note 10, at 171 (recounting student’s feelings after obtaining credit card: “It made me feel like I had made it . . . people treated me differently when they saw [the Gold card].”) (alteration in original).

251. See *id.* at 171–72 (discussing student’s rationalization that having credit card “befitted his status as a student at an elite, private university” and “alleviated social-status anxiety” because of way his peers treated him when he used his card); *id.* at 175 (discussing student’s use of cards to meet and fit in with “the right people”); see also MANNING, LIVING WITH DEBT, *supra* note 73, at 35 (discussing students’ perceived need to spend in order to “keep up with everyone”).

252. Bar-Gill, *supra* note 46, at 1375. For a detailed discussion of the underestimation of future borrowing behavioral theory and its impact on consumers’ credit card use, see *id.* at 1395–411.

253. *Id.* at 1395, 1395–400.

254. *Id.* at 1400.

255. See MANNING, CREDIT CARD NATION, *supra* note 10, at 171; MANNING, LIVING WITH DEBT, *supra* note 73, at 34; YARROW & O’DONNELL, *supra* note 73, at 67, 73; Christine Dugas, ‘Generation Y’ Faces Some Steep Financial Hurdles, USA TODAY, Apr. 23, 2010, at A1.

[R]esearch suggests that consumers base their borrowing on current estimations of future likely ability to pay, and that consumer estimates of future ability to pay are influenced by the credit limits banks bestow on them. Thus, consumers reason: “If a bank is willing to loan me this much money, there must be good reason to think that my salary will increase in the future sufficiently to permit repayment.”<sup>256</sup>

Therefore, unsolicited credit limit increases assist young cardholders in amassing large amounts of debt—some without awareness of the amount of debt they are accumulating<sup>257</sup> and others without contemplating the future difficulties they may have repaying it.<sup>258</sup>

The credit card industry, which would likely oppose this proposal, could argue that it unduly restricts their ability to build customer loyalty by rewarding those customers who have responsibly maintained their accounts over an established period of time.<sup>259</sup> They could also argue that they are actually improving a consumer’s credit score by increasing their credit limit. While this is true if the consumer can resist the temptation to use the additional extension of credit,<sup>260</sup> the reality for many consumers, including young cardholders, is that the more credit they have the more credit they will use.<sup>261</sup> Arguably, issuers are aware of this behavior and seek to facilitate it by increasing the credit limit for those cardholders who are close to exceeding or have already exceeded their original credit limit.<sup>262</sup>

To avoid this from happening to young consumers, lawmakers should require issuers to receive consent from all college-aged cardholders before raising their credit limits. Similar to proposals recommended by Angela Littwin in the context of low-income cardholders, “consumer-controlled credit limits” could

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256. MANN, CHARGING AHEAD, *supra* note 99, at 48-49.

257. See SALLIE MAE STUDY, *supra* note 5, at 12 (finding that sixty percent of college students surveyed reported being frequently or sometimes surprised at how high their credit card balances had reached).

258. See *id.*; MANNING, CREDIT CARD NATION, *supra* note 10, at 137-40.

259. See Bankrate.com, *How that Huge Credit Limit Can Hurt You*, MSN MONEY (Oct. 27, 2010), <http://moneycentral.msn.com/content/banking/creditcardsmarts/p71448.asp>.

260. See Jessica Dickler, *Credit: Know Your Limits*, CNNMONEY.COM (Sept. 25, 2008), [http://money.cnn.com/2008/09/25/pf/credit\\_limits/index.htm](http://money.cnn.com/2008/09/25/pf/credit_limits/index.htm) (discussing impact of consumers’ “debt-to-limit ratio” on calculation of their credit scores). For further discussion of consumers’ attempts to control their credit usage as well as their underestimation of their own self-control, see *supra* note 253 and accompanying text.

261. See, e.g., MANNING, LIVING WITH DEBT, *supra* note 73, at 36 (reporting that “some students accumulate high levels of credit card debt within weeks and even within days of receiving their line of credit”); Littwin, *supra* note 220, at 487 (discussing findings of two studies indicating that “consumers tend to maintain balances at a consistent percentage of their credit limit”).

262. See SULLIVAN ET AL., FRAGILE MIDDLE CLASS, *supra* note 10, at 115; Donna S. Harkness, “Just Let Me Borrow Your Charge Card, Ma”: *How the Enlightened Borrower Paradigm and the Improvident Extension of Credit Facilitate Exploitation of the Elderly by Those Nearest and Dearest to Them*, 16 GEO. J. ON POVERTY L. & POL’Y 367, 379 (2009).

be very beneficial for reducing young consumers' debt.<sup>263</sup> With regards to credit limit increases, Littwin proposes various ways in which proposals could be implemented, ranging from consumers affirmatively requesting a credit limit increase by completing and returning a form that could be included with the monthly bill to issuers sending "notifications of potential credit-limit raises" to which consumers must affirmatively assent by returning an acceptance form.<sup>264</sup> Obviously, there are implementation costs associated with these and other proposals that must be considered;<sup>265</sup> however, Congress has already shown a willingness to impose such costs by requiring written cosigner approval for limit increases on young consumer accounts.<sup>266</sup> Therefore, such costs should not deter lawmakers from extending those same protections to all college-aged cardholders.

Arguably, requiring all young cardholders to request or consent to a credit limit increase would be consistent with the current credit card issuance rules included in the Truth in Lending Act (TILA) that prohibit card companies from issuing cards "except in response to a request or application therefor."<sup>267</sup> Admittedly, the cardholder agreement may grant the issuer the authority to review the cardholder's credit status and make changes to the account accordingly; however, if the purpose of TILA's issuance rules is to prevent issuers from unilaterally imposing credit and debt upon uninformed, unsuspecting consumers,<sup>268</sup> then this same purpose should be reflected in the Credit CARD Act's provisions concerning credit limit increases for *all* college-aged cardholders, including those who have cosigners and those who do not.<sup>269</sup>

## 2. *Capping Interest Rates*

Another way policymakers could provide greater protection for young con-

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263. See Littwin, *supra* note 220, at 485-87. In the article, Professor Littwin proposes an innovative model for a new credit card system that includes the use of self-directed cards, which are those that "permit consumers to exercise more control over their credit-card usage by precommitting to certain levels and types of credit-card spending and borrowing." *Id.* at 479. For a more detailed discussion of the proposed system, see *id.* at 478-501.

264. *Id.* at 485-86.

265. See *id.* at 486.

266. See Credit CARD Act, Pub. L. No. 111-24, § 303, 123 Stat. 1734, 1748 (amending 15 U.S.C. § 1637).

267. Truth in Lending Act § 132, 15 U.S.C. § 1642 (2006).

268. See 15 U.S.C. § 1601(a) (2006). The relevant portion reads:

It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

*Id.*

269. During the rulemaking comment period, consumer advocates recommended that credit card issuers not be permitted to increase *any* card limit without receiving a direct request to do so. See Truth in Lending (Regulation Z), 75 Fed. Reg. 7658, 7720 (Feb. 22, 2010). However, the Board rejected this suggestion arguing that the Credit CARD Act's ability to pay provision, which applies to issuance and credit limit increases, is sufficient to protect against improper unilateral increases. See *id.*



sumers after they begin to use their cards is to impose interest rate caps on college-aged consumers' accounts.<sup>270</sup> As previously discussed, the vast majority of student cardholders incur interest on their credit card debt, and their interest rates can be higher due to their lack of credit history.<sup>271</sup> Because interest represents a significant cost to young borrowers and increases the amount they have to repay using no or relatively little income,<sup>272</sup> imposing a relatively low interest rate limit on young consumers' accounts would significantly reduce their cost of borrowing. Since the vast majority of undergraduate cardholders (ninety-two percent) report using credit cards for education-related expenses,<sup>273</sup> lawmakers could mandate that issuers of cards to college-aged consumers cap their interest rates at the amount charged for Federal Direct Loans. The interest rates for Direct Loans currently range from 4.5% to 7.9%,<sup>274</sup> which is significantly less than the current average student card rate of 13.31%.<sup>275</sup>

Although lawmakers have been unwilling to establish a federal limit for credit card interest rates, Congress has shown a willingness to provide interest rate protections to certain groups of consumers who lawmakers feel warrant heightened protection. Based, in part, on arguments made by Steven Graves and Christopher Peterson regarding predatory lending and military families,<sup>276</sup> Congress imposed a thirty-six percent annual interest rate cap on certain types of consumer loans offered to military personnel and their families.<sup>277</sup> Policymakers could attempt to make a similar case with regards to college-aged consumers and credit card issuers in efforts to limit the amount of interest charged on young consumer accounts.

Like military service members, college-aged consumers are "young people [who] often lack financial experience and tend to borrow with less regard for the long-term consequences."<sup>278</sup> Issuers engage in aggressive solicitation tactics to target college-aged consumers,<sup>279</sup> and they set and raise credit limits seemingly without regard to young consumers' capacity to repay the debt.<sup>280</sup>

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270. For a discussion of the historical and current debate concerning interest rate caps, see Bender, *supra* note 209 and Vincent D. Rougeau, *Rediscovering Usury: An Argument for Legal Controls on Credit Card Interest Rates*, 67 U. COLO. L. REV. 1 (1996).

271. See *supra* note 60 and accompanying text; see also Hinson, *supra* note 27, at 291.

272. See *supra* note 41 and accompanying text.

273. See SALLIE MAE STUDY, *supra* note 5, at 3, 11-12.

274. See U.S. Dep't of Educ., Direct Loan Information for Students, <http://www.direct.ed.gov/student.html> (last visited Jan. 12, 2011).

275. See Credit Card Rate Report, CREDITCARDS.COM, <http://www.creditcards.com/> (last visited Jan. 12, 2011).

276. See Steven M. Graves & Christopher L. Peterson, *Predatory Lending and the Military: The Law and Geography of "Payday" Loans in Military Towns*, 66 OHIO ST. L.J. 653 (2005).

277. See John Warner National Defense Authorization Act for Fiscal Year 2007 (Talent Amendment), Pub. L. No. 109-364, § 670, 120 Stat. 2083, 2266-69 (amending 10 U.S.C. § 987).

278. Graves & Peterson, *supra* note 276, at 677.

279. See *supra* notes 68-72 and accompanying text.

280. The Credit CARD Act's ability to pay rules and regulations are intended to rectify

As recognized by Representative Louise Slaughter, “If credit card companies applied the same scrutiny to college students as they do to adults when approving them for credit cards, college students would not be able to maintain the balances which they are incapable of paying.”<sup>281</sup> And just as payday and installment lenders target military personnel by “situat[ing] themselves in close proximity to the front gates of military installations,”<sup>282</sup> card companies have historically solicited young consumers on or near college campuses and events.<sup>283</sup> Therefore, the parallels that exist between lending to military personnel and young consumers may warrant capping the amount of interest charged on young cardholders’ accounts.

In considering whether to impose a usury limitation on college-aged consumer credit cards, lawmakers would need to consider the impact such a restriction could have on young consumers’ access to credit cards. As asserted in the context of low-income families, interest rate restrictions could “make it more difficult . . . to obtain credit cards.”<sup>284</sup> This may not be the case for student consumers because card issuers view “college students as long-term investments.”<sup>285</sup> Therefore, issuers may be willing to continue lending to college-aged consumers under an interest rate limit, especially if the limit is only applicable on cardholders’ accounts who are under the age of twenty-one. Arguably, implementing such a proposal would succeed in providing needed protections for young consumers post-issuance.

### 3. *Decreasing Duration of Negative Credit History Reporting*

A final proposal concerns the reporting of adverse credit card history on young consumers’ credit reports. As previously discussed, young cardholders’ financial inexperience often leads to financially detrimental behaviors such as making late payments and exceeding credit limits.<sup>286</sup> Unbeknownst to many of them, these and other financial missteps are chronicled in their credit reports—reports that can detrimentally affect many of their future personal and financial opportunities.<sup>287</sup>

Currently under the Fair Credit Reporting Act (FCRA), adverse items of

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this problem. See Credit CARD Act, Pub. L. No. 111-24, § 109, 123 Stat. 1734, 1743 (codified at 15 U.S.C. § 1665e); Truth in Lending (Regulation Z), 12 C.F.R. § 226.51). However, as discussed in *supra* Part IV, it is doubtful that this will be the case.

281. Representative Slaughter Statement, *supra* note 162, at H5020.

282. U.S. DEP’T OF DEF., REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS 10 (2006); see also Graves & Peterson, *supra* note 276, at 709–821 (detailing concentration of payday lenders in military communities).

283. See MANNING, CREDIT CARD NATION, *supra* note 10, at 167–68; Johnson, *supra* note 36, at 191–93.

284. Littwin, *supra* note 220, at 453.

285. See Gartner & Schiltz, *supra* note 50, at 404 (quoting Lisa Fickenscher, *Lenders Defend Marketing Cards to Students*, AM. BANKER, Apr. 18, 1994, at 17).

286. See *supra* notes 222–24 and accompanying text; Staten & Barron, *supra* note 8, at 12.

287. See *supra* notes 135, 139 and accompanying text.

information<sup>288</sup> concerning a consumer's credit history can generally remain a part of his or her credit report for seven years.<sup>289</sup> In light of the fact that young consumers' financial mistakes are often attributable to their lack of financial knowledge and experience,<sup>290</sup> Congress should consider amending the FCRA to decrease the amount of time adverse credit card information can be included in college-aged consumers' reports. The specific proposal is that any adverse credit card information reported to or obtained by a credit reporting agency while the consumer is under the age of twenty-one must be removed from the consumer's credit report after three years.<sup>291</sup> By reducing the duration of time that negative credit history can be included in young consumers' credit reports,<sup>292</sup> this FCRA amendment could significantly lessen the detrimental impact that financial mistakes can have on young cardholders' future economic and employment opportunities. Such action would provide young cardholders with greater and more long-term protection than that currently provided by the Act.

Presently, if an eighteen-year-old freshman obtains a credit card then fails to make required payments by the due date, the resulting adverse credit history can detrimentally impact that student's financial and personal opportunities until he or she is twenty-five years old. One could argue that no reduction in reporting time is needed because twenty-five is still a fairly young age at which time the negative history will be deleted from the report. This argument, however, fails to consider the fact that young adults experience several significant moments during this time period that can be adversely impacted by a negative credit report. Such moments include: applying for student loans for undergraduate and/or graduate school; applying for a car loan; applying for a mortgage;

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288. Although the FCRA does not define an "adverse item of information," the Federal Trade Commission has issued a staff opinion letter stating: "We believe that the common understanding of these words must be used. The dictionary definition of 'adverse' includes 'unfavorable' or 'opposed to one's interests.' Accordingly, we believe that to be covered by Section 605(a)(6) information must cast the consumer in a negative or unfavorable light." See FTC Staff Opinion Ltr. (Apr. 17, 1998), available at <http://www.ftc.gov/os/statutes/fcra/seham.shtm>.

289. 15 U.S.C. §§ 1681c(a)(2)–(5) (2006). Bankruptcies are allowed to be included in the report for ten years. See *id.* § 1681c(a)(1).

290. See *supra* notes 73, 92, 222–23 and accompanying text.

291. To conform to the language currently included in the FCRA, the proposal could read: No consumer reporting agency may make any consumer report containing any adverse item of information that pertains to a consumer while he/she is under the age of twenty-one which antedates the report by more than three years. See generally 15 U.S.C. § 1681c(a) (2006).

292. Other scholars have advocated for a reduction in reporting periods as a means to protect consumers from various harms caused by the inclusion of adverse information in their credit reports. See, e.g., *Helping Families Save Their Homes: The Role of Bankruptcy Law: Hearing Before the S. Comm. on the Judiciary*, 110th Cong. 147–48 (2008) (statement of Adam Levitin, Prof., Geo. Univ. L. Ctr.) [hereinafter *Levitin Testimony*] (recommending that reporting period for bankruptcies be reduced to same time period as those established for other items of adverse information such as foreclosures); Lior Jacob Strahilevitz, *Reputation Nation: Law in an Era of Ubiquitous Personal Information*, 102 NW. U. L. REV. 1667, 1680 (2008) (suggesting brief reporting period for information related to "someone's involvement in landlord-tenant litigation").

applying to rent an apartment; and applying for a job. These situations are welfare-enhancing not only for the consumer but also for society as a whole. Therefore, it is important to protect young cardholders' future opportunities while also providing relevant and useful credit history information to those individuals requesting reports.<sup>293</sup> Policymakers could argue that a three-year reporting duration accomplishes both of these goals.

Opponents of this proposal could raise the objection that someone under the age of twenty-one who engages in behaviors that result in negative credit history could engage in similar credit-risky behaviors in the future; however, the creditor, employer, or landlord reviewing the credit report would have no notice of this because the pre-twenty-one history has been purged from the report. This could create a reliability issue such that credit report evaluators would no longer trust that the report accurately reflects the credit history of the consumer. Such mistrust could lead to adverse credit decisions for young adults.

While this is a valid concern, it can be somewhat overcome by previously discussed research that shows that many cardholders, including young consumers, learn over time how to reduce their credit card mistakes.<sup>294</sup> This learning results in a decrease in the frequency of behaviors that create certain adverse credit history such as making late payments and exceeding one's credit limit.<sup>295</sup> Although the data did indicate some knowledge depreciation, the researchers concluded that "on net, knowledge accumulation dominates knowledge depreciation. Over time, fee payments drastically fell."<sup>296</sup> Therefore, despite the duration reduction, users of the reports could have some reassurance that they reflect a reliable credit history for consumers who may or may not have incurred negative credit card history during their college-aged years.

Opponents could also argue that because this proposal would absolve young cardholders of their credit card transgressions after only three years, it incentivizes bad financial behavior. This may be true in some cases; however, it is doubtful that it would be a widespread problem due to the negative consequences that one could still encounter during the three-year reporting period. Such consequences include denials of credit or employment and the imposition of unfavorable borrowing terms such as higher default interest rates. Also, engaging in excessive bad behavior could result in the cancellation of the card, which most consumers would presumably want to prevent from happening.

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293. The stated purpose of the FCRA is:

The purpose of the fair credit reporting bill is to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report. . . . Creditors obviously have a right to know if a person has had trouble in paying his bills. At the same time it can be unfair to burden a consumer for life with a bad credit record if he has improved his performance. The Associated Credit Bureaus has recognized this problem and had proposed voluntary guidelines to its members to the effect that adverse information not be reported if it is older than 7 years.

S. REP. NO. 91-517, at 4 (1969).

294. See *supra* notes 93, 223-25 and accompanying text.

295. See Agarwal et al., *Learning*, *supra* note 223, at 6.

296. *Id.* at 17.

Considering that the FCRA already includes reporting differentiations for various adverse items,<sup>297</sup> lawmakers should not oppose including another that affords greater protection for young consumers, especially in light of claims that the credit card industry seeks to exploit college-aged consumers' lack of financial knowledge and experience.<sup>298</sup> By imposing a three-year reporting duration for young consumers' adverse card information, lawmakers could strike the necessary balance between college-aged consumers experiencing consequences for their poor financial choices and receiving a fresh start with which to have access to beneficial economic and employment opportunities. Considering the likelihood that the current Credit CARD Act may prove ineffective in significantly remedying the dilemma of young consumer indebtedness,<sup>299</sup> lawmakers should earnestly consider this and other measures that seek to lessen the long-term consequences caused by young consumers' credit card usage.

#### VI. CONCLUSION

As this Article has demonstrated, the accumulation of credit card debt continues to have significant consequences for many college-aged consumers. To provide some protection for this group of consumers, Congress passed the Credit CARD Act. While lawmakers should be applauded for taking a step in the right direction toward young consumer protection, more should be done to provide greater protection for college-aged consumers both before they receive a credit card and after they begin using it. Such comprehensive measures will help to more effectively preserve their personal and financial futures.

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297. Compare 15 U.S.C. § 1681c(a)(1) (imposing ten year limitation on reporting of bankruptcies), with 15 U.S.C. § 1681c(a)(2)–(5) (imposing seven year limitation on reporting of other adverse items of information). But see *Levitin Testimony*, *supra* note 292 (advocating for equal treatment of bankruptcies and other adverse information on credit reports).

298. See Johnson, *supra* note 36, at 193–94, 194 n.14.

299. See *supra* Part IV.