

YOUNG CONSUMER PROTECTION IN THE “MILLENNIAL” AGE

Eboni S. Nelson*

I. INTRODUCTION

Over the past several years, educators, lawmakers, and consumer advocates have become increasingly concerned about young¹ consumers' escalating levels of indebtedness, especially with respect to college students' accumulation of credit card debt²—debt that many of them cannot afford to repay.³ A recent study

* © 2011 Eboni S. Nelson, Associate Professor of Law, University of South Carolina School of Law. J.D., Harvard Law School; B.A., Wake Forest University. This Article was selected from a Call for Papers issued by the AALS Section on Commercial and Related Consumer Law. I would like to thank the selection committee for the opportunity to be included in this symposium issue. My thanks also to Steve Bender, Josh Eagle, Danielle Holley-Walker, Susan Kuo, Robert Lawless, Amy Milligan, Katherine Porter, Peggie Smith, and Elizabeth Warren for comments, suggestions, and discussion on this Article. Also, my thanks to Karama Bailey, Kesha Berry, Vanessa Byars, Jessica Moore Fisher, Christina Jay, Kayli Maxwell, Stephanie Marshall, and Jasmine Smith for their invaluable research assistance. Most importantly, I thank Scott and Ella Nelson for their love, patience, and support.

¹ For purposes of this Article, the terms “young” and “college-aged” refer to those consumers who are under the age of twenty-one. The terms will be used interchangeably in the Article.

² See 155 CONG. REC. S5316 (daily ed. May 11, 2009) (statement of Sen. Christopher Dodd) (discussing his support of legislation that seeks to end the deceptive card practices aimed at young people and protect them from the “onslaught of credit card offers, often years before they turn 18, usually as soon as they set one foot on a college campus”); 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> (describing the “volatile combination of credit cards and college students”); Ron Matus, *Students Are Still Hooked on Plastic*, ST. PETERSBURG TIMES ONLINE (Aug. 3, 2004), http://www.sptimes.com/2004/08/03/Tampabay/Students_are_still_ho.shtml (noting college students' high credit card debt); 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> (reporting college students' credit card debt).

³ See, e.g., *Examining the Billing, Marketing, and Disclosure Practices of the Credit Card Industry, and Their Impact on Consumers: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 110th Cong. 136 (2007) (noting that 68% of younger cardholders revolve their credit card balances—meaning, they carry a balance on their card from month to month rather than paying it in full each month—as compared to 58% of all cardholders); SALLIE MAE, INC., *HOW UNDERGRADUATE STUDENTS USE CREDIT CARDS: SALLIE MAE'S NATIONAL STUDY OF USAGE RATES AND TRENDS 2009*, at 14 (2009).

measuring undergraduates' credit card use and indebtedness reported that practically every measure indicated an increase in students' credit card usage between 2004 and 2008.⁴ For example, the percentage of undergraduate cardholders increased from 76% to 84%,⁵ and their average amount of credit card debt increased from \$2,169 to \$3,173.⁶

Many people attribute students' growing indebtedness to two disconcerting practices that card companies often employ. The first is their solicitation and marketing efforts,⁷ which have been described as being "aggressive,"⁸ "excessive,"⁹ and, in some cases, "deceptive"¹⁰ and "predatory."¹¹ The second is

[hereinafter SALLIE MAE STUDY] (reporting that in 2008, only 17% of student cardholders indicated that they pay all of their credit card balances in full every month).

⁴ See SALLIE MAE STUDY, *supra* note 3, at 3, 5.

⁵ *Id.* at 5.

⁶ *Id.* The median credit card debt increased from \$946 in 2004 to \$1,645 in 2008. *Id.*

⁷ For a general discussion of the credit card industry's solicitation and marketing strategies, which include on-campus "tabling" and financial partnerships with colleges and alumni groups, see CHERYL HYSTAD, MD. CONSUMER RIGHTS COAL. & BRAD HEAVNER, MD. PUB. INTEREST RESEARCH GRP., GRADUATING INTO DEBT: CREDIT CARD MARKETING ON MARYLAND COLLEGE CAMPUSES 8–10 (2004), available at <http://cdn.publicinterestnetwork.org/assets/bIzK3y7I5ovX-ALVTKnhog/CreditCard04.pdf>; EDMUND MIERZWINSKI ET AL., U.S. PUB. INTEREST RESEARCH GRP. EDUC. FUND, THE CAMPUS CREDIT CARD TRAP: A SURVEY OF COLLEGE STUDENTS AND CREDIT CARD MARKETING 3–4, 7–9 (2008) [hereinafter CREDIT CARD TRAP SURVEY], available at <http://www.calpirg.org/uploads/Ph/gg/PhggFY2n0kk9IcnVQuABYA/CA-Campus-Credit-Card-Trap-Report.pdf>; see also Angela C. Lyons, *A Profile of Financially At-Risk College Students*, 38 J. CONSUMER AFF. 56, 73 (2004) (presenting research suggesting "that aggressive marketing practices by credit card companies to target college students (i.e., mass mailings, retail store discounts, and credit card representatives on campus) have likely contributed to the recent rise in credit card debt on college campuses putting some students at more financial risk than others").

⁸ 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, 408 (2005); see also Lazarony, *supra* note 2 (characterizing marketing efforts as "aggressive").

⁹ 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, 192–93 (2005); see also CREDIT CARD TRAP SURVEY, *supra* note 7, at 4 (noting that students reported receiving nearly five mailed and four phone credit card solicitations per month).

¹⁰ Johnson, *supra* note 9, at 203; see also *Problem Credit Card Practices Affecting Students: Hearing Before the H. Subcomm. on Fin. Insts. and Consumer Credit of the H. Comm. on Fin. Servs.*, 110th Cong. 12–14 (2008) (statement of Brett Thurman, President, Undergraduate Student Government, University of Illinois at Chicago) (describing a card company's practice of using an undercover credit card marketer to distribute coupons for free Subway sandwiches to students on campus without informing them that they must complete a credit card application at the restaurant in order to receive the "free" sandwich).

their extension of credit to college-aged consumers, often without consideration of students' ability to repay their debt.¹² Growing concerns regarding these practices prompted Congress to include specific provisions related to young consumers in the recently enacted Credit Card Accountability Responsibility and Disclosure Act of 2009 (the CARD Act).¹³

Considered by some to be "the most significant piece of credit card legislation in a generation,"¹⁴ the CARD Act is intended to improve transparency in the credit card market and ban unfair industry practices.¹⁵ The Act's young consumer provisions seek to protect consumers under the age of twenty-one by requiring

¹¹ *Sen. Schumer Reveals: With Graduation Around Corner, New York City College Students Burdened with over \$1.2 Billion in Credit Card Debt*, U.S. FED. NEWS, Apr. 23, 2009, at 2; *see also* 155 CONG. REC. S5474 (daily ed. May 14, 2009) (statement of Sen. Sherrod Brown) (describing credit card marketers as "credit card predators"); Merzer, *supra* note 2 (criticizing credit card issuers for engaging in "predatory tactics to trap students in pools of debt").

¹² *See Problem Credit Card Practices Affecting Students*, *supra* note 10, at 12 (statement of Christine Lindstrom, Director, Higher Education Project, U.S. PIRG) (noting that credit card companies generally waive underwriting standards for student consumers such that students are not required to have an established income or credit history to qualify for credit); S. REP. NO. 111-16, at 8 (2009) (statement of Sen. Dodd) (discussing the credit card industry's common practice of encouraging students "to obtain and use credit cards without verifying the student's ability to repay the resultant debt"); TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* 137 (discussing credit card companies' failure to consider credit-worthiness factors, such as income and employment, when soliciting prospective cardholders).

¹³ Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (to be codified in scattered sections of 15 U.S.C.). The young consumer provisions are found in Title III of the CARD Act entitled "Protection of Young Consumers." *See id.* §§ 301–305.

¹⁴ Adam J. Levitin, *The Credit C.A.R.D. Act: Opportunities and Challenges for Credit Unions* 1 (Georgetown Law & Econ. Research, Paper No. 10-09, 2009), *available at* <http://ssrn.com/abstract=1544885>; *see also* Michael Bartlett, *Card Issuers Scrambling to Comply with Sweeping Changes of the New CARD Act*, CREDIT UNION J., Aug. 31, 2009, at 16, 16 (reporting that the CEO of a credit card consulting firm described the Act as "[t]he most significant regulatory change since the adoption of Regulation Z"); Adam Levitin, *Credit Card Legislation*, CREDIT SLIPS BLOG (Mar. 31, 2011, 1:19 PM), <http://www.creditslips.org/creditslips/2009/05/credit-card-legislation.html> (describing the CARD Act as "the most significant credit card reform legislation" since the Truth in Lending Act).

¹⁵ *See* Press Release, The White House Office of the Press Sec'y, 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/ (summarizing the goals and key provisions of the CARD Act).

them to meet certain prerequisites before obtaining a card¹⁶ and by prohibiting card companies from using certain solicitation methods when marketing to college-aged consumers.¹⁷ In attempting to address issues related to young consumer credit card indebtedness and the negative consequences that can often result from such debt, lawmakers apparently failed to fully consider college-aged consumers' traits and experiences that may also contribute to their incurrence of debt and credit card problems.¹⁸ Because of this oversight, this Article questions whether the CARD Act is sufficiently tailored to protect young consumers from the pitfalls of credit card debt.

Social science research indicates that many young consumers possess certain characteristics that may negatively influence their thoughts and decisions regarding credit card usage and debt.¹⁹ For example, college-aged consumers who lack financial knowledge and have tolerant attitudes regarding credit and debt may be at risk for making detrimental financial decisions,²⁰ such as incurring more debt than they can afford to repay and failing to make timely bill payments.²¹

¹⁶ CARD Act § 301.

¹⁷ See *id.* §§ 302, 304.

¹⁸ This contention is based on the author's review of the CARD Act's legislative record, which included congressional hearings, testimony, reports, and statements. See, e.g., *Problem Credit Card Practices Affecting Students*, *supra* note 10. Aside from young consumers' general lack of financial knowledge and some parents' practice of paying their children's credit card bills, the record lacks discussion of many of the financially risk-producing traits and experiences discussed in this article. For a discussion of lawmaker's consideration of college-aged consumers' lack of financial literacy, see *infra* Part IV.B. The author acknowledges the possibility that although not reflected in the legislative record, Congress may have been aware of some of the young consumer behaviors and attitudes discussed in this Article, and that the Act's young consumer provisions could be due to political compromise rather than lack of awareness or consideration of such qualities.

¹⁹ See, e.g., Jill M. Norvilitis et al., *Personality Factors, Money Attitudes, Financial Knowledge, and Credit-Card Debt in College Students*, 36 J. APPLIED SOC. PSYCHOL. 1395, 1397–98 (2006) (discussing prior research that found that college students who lack financial knowledge and have “more liberal attitudes toward credit use are more likely to be in debt”); Kay M. Palan et al., *Compulsive Buying Behavior in College Students: The Mediating Role of Credit Card Misuse*, 19 J. MARKETING THEORY & PRAC. 81, 82–84 (2011) (asserting that college students' credit card misuse is attributable, in part, to traits such as high self-esteem, power-prestige, risk taking, and compulsivity). See also *infra* Part II for a detailed discussion of traits that may affect college-aged consumers' credit card behaviors.

²⁰ See Norvilitis et al., *supra* note 19, at 1397–98; see *infra* Part II.

²¹ See *Problem Credit Card Practices Affecting Students*, *supra* note 10, at 66 (statement of Benjamin Lawsky, Deputy Counselor and Special Assistant to New York State Att'y Gen.) (discussing the impact of students' lack of financial education on their credit card use and debt); CREDIT CARD TRAP SURVEY, *supra* note 7, at 6 (reporting that the

Moreover, some researchers contend that certain aspects of the “Millennial”²² age during which current young consumers have been raised may also contribute to their risk of developing credit card problems.²³ For example, technological advances, such as the Internet, that facilitate instant gratification may affect some young consumers’ ability to delay gratification, which can result in impulsive spending.²⁴ In addition, some argue that marketers have more aggressively targeted this generation of college-aged consumers because of the increased spending power that they possess.²⁵ This aggressive marketing, according to some, has

percentage of student cardholders who reported having paid at least one late fee or over-limit fee was 25% and 15%, respectively); LEWIS MANDELL, JUMPSTART COAL. FOR FIN. LITERACY, THE FINANCIAL LITERACY OF YOUNG AMERICAN ADULTS 33 (2008), *available at* <http://www.jumpstart.org/assets/files/2008SurveyBook.pdf> (reporting research findings “that more financially literate students are more successful in avoiding late payment fees on their credit cards”).

²² The young consumers who are currently living in the “Millennial” age are also commonly referred to as “Generation Y,” among other names. *See* NEIL HOWE & WILLIAM STRAUSS, *MILLENNIALS RISING: THE NEXT GREAT GENERATION* 6–7, 10–12 (2000); Bob Nelson, *Tips and Techniques to Bridge the Generation Gaps*, 16 HEALTHCARE REG. 3, 5 (2007); Kristen Peters, Note, *Protecting the Millennial College Student*, 16 S. CAL. REV. L. & SOC. JUST. 431, 459–60 (2007); Benedict Carey, *A Snapshot of a Generation May Come Out Blurry*, N.Y. TIMES, Aug. 3, 2010, at D5. This Article will use the term “Millennial” to refer to both individual college-aged members of this particular generation of consumers (“Millennials”) as well as to the generation itself and the time in which this generation has come of age.

²³ *See* REBECCA HUNTLEY, *THE WORLD ACCORDING TO Y: INSIDE THE NEW ADULT GENERATION* 146–58 (2006); LINDA NAZARETH, *THE LEISURE ECONOMY: HOW CHANGING DEMOGRAPHICS, ECONOMICS, AND GENERATIONAL ATTITUDES WILL RESHAPE OUR LIVES AND OUR INDUSTRIES* 108–13 (2007); KIT YARROW & JAYNE O’DONNELL, *GEN BUY: HOW TWEENS, TEENS, AND TWENTY-SOMETHINGS ARE REVOLUTIONIZING RETAIL* 66–75 (2009); Stephanie M. Noble et al., *What Drives College-Age Generation Y Consumers?*, 62 J. BUS. RES. 617, 617 (2009); James A. Roberts & Eli Jones, *Money Attitudes, Credit Card Use, and Compulsive Buying among American College Students*, 35 J. CONSUMER AFF. 213, 214 (2001).

²⁴ *See* YARROW & O’DONNELL, *supra* note 23, at 23 (discussing the potential impact of inability to delay gratification on Millennials’ spending behaviors); Norvilitis et al., *supra* note 19, at 1406 (concluding that inability to delay gratification is a predictor of young consumers’ credit card debt). *See generally* Jeff Feiertag & Zane L. Berge, *Training Generation N: How Educators Should Approach the Net Generation*, 50 EDUC. & TRAINING 457, 460 (2008) (discussing the importance of instant gratification to current young consumers).

²⁵ *See* YARROW & O’DONNELL, *supra* note 23, at xvii (discussing the great amount of spending power that Millennials have); *see also* HOWE & STRAUSS, *supra* note 22, at 268–69 (discussing young consumers’ ability to influence family spending).

produced a “consumer culture”²⁶ whose members could be more susceptible to engaging in detrimental credit card behaviors.

This Article does not definitively claim that these contentions are true. Instead, it suggests that as lawmakers endeavored to craft the CARD Act’s young consumer protections, it could have been informative and useful for lawmakers to have considered qualities that may place young consumers financially at risk, as well as the possible implications of their coming of age in the Millennial generation. By taking into account the detrimental effects that certain traits and experiences may have on college-aged consumers’ credit card usage, lawmakers could have developed provisions that are specifically tailored to lessen the negative consequences of such effects. In so doing, this Article argues that Congress could have included additional provisions that would have likely been more effective in protecting young consumers than those currently included in the Act.

Part II of the Article discusses qualities that are thought to place some college-aged consumers at risk for developing credit card indebtedness problems. Traits such as lack of financial knowledge and overestimation of one’s ability to repay debt can contribute to young consumers making financial decisions that can result in costly and detrimental consequences.

Part III discusses the possible credit and debt implications of young consumers coming of age in a Millennial generation. While cognizant of criticisms related to reliance on qualities that some could characterize as generational stereotypes, this Part asserts that lawmakers could have benefited from considering the potential influence of certain societal features that may impact college-aged consumers’ credit card behavior.

Part IV analyzes the CARD Act’s current approach to young consumer protection. It details lawmakers’ concerns regarding college-aged consumers’ escalating indebtedness and the specific provisions they enacted to address these concerns. It then argues that these provisions may be ineffective due, in part, to lawmakers’ apparent failure to fully consider and account for traits and experiences that may place young consumers at risk for incurring credit card indebtedness problems. This Part argues that had lawmakers considered such factors, they could have included additional provisions in the Act that would provide greater protections for college-aged consumers.

II. THE YOUNG AND THE INDEBTEDNESS

Over the past twenty-five years, young consumers, especially college students, have become an attractive and lucrative market for the credit card

²⁶ Cathy Bakewell & Vincent-Wayne Mitchell, *Generation Y Female Consumer Decision-Making Styles*, 31 INT’L J. RETAIL & DISTRIBUTION MGMT. 95, 97 (2003); see also Noble et al., *supra* note 23, at 617 (discussing the consumerist society in which young consumers have come of age).

industry.²⁷ Card companies' targeted solicitation campaigns have succeeded in significantly increasing not only the percentage of student cardholders,²⁸ but also the number of cards²⁹ and amount of debt that they carry.³⁰

Lawmakers' recent efforts to address young consumers' escalating indebtedness have drawn sharp criticism from those who argue that the CARD Act's young consumer provisions are paternalistic.³¹ One could also question the need for new protections in light of an emerging trend that suggests that debit, rather than credit, cards are becoming the card of choice for many college-aged consumers.³² Since it is currently unknown if this trend represents a permanent

²⁷ See ROBERT D. MANNING, CREDIT CARD NATION 167 (2000) (noting that credit card companies started marketing to students in the late 1980s); SULLIVAN ET AL., *supra* note 12, at 137 (discussing card companies' "aggressive solicitation campaigns aimed at young people, especially the college students likely to occupy a future position in the middle class"); Jacquelyn Warwick & Phylis Mansfield, *Credit Card Consumers: College Students' Knowledge and Attitude*, 17 J. CONSUMER MARKETING 617, 618 (2000) (discussing card issuers' heightened efforts to market to college students).

²⁸ SALLIE MAE STUDY, *supra* note 3, at 5 (reporting that from 1998 to 2008, the percentage of student cardholders increased from 67% to 84%).

²⁹ See *id.* (reporting that the average number of credit cards carried by students increased from 3.50 in 1998 to 4.60 in 2008).

³⁰ See *id.* (reporting that from 1998 to 2008, students' average amount of credit card debt increased from \$1,879 to \$3,173).

³¹ See e.g., *Problem Credit Card Practices Affecting Students*, *supra* note 10, at 54–55 (statement of Kenneth J. Clayton, Managing Director & General Counsel, American Bankers Association Card Policy Counsel) (cautioning that the proposed legislation may be overreaching and noting that college students are still adults who can "contract, work, marry, serve in the armed forces and vote"); 155 CONG. REC. H5021 (daily ed. Apr. 30, 2009) (statement of Rep. Jeb Hensarling) ("We'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."); *id.* at H5020 (statement of Rep. Spencer Bachus) ("You're really making decisions for every family and every student. . . . What if their parents won't sign? But what if they need a credit card to go to school and they need to charge over \$500? You're really beginning to micromanage.").

³² See Sandra Block, *Consumers Stash Credit Cards; Use Keeps Falling Amid Economic Uncertainty*, USA TODAY, Sept. 10, 2010, at B1 (discussing consumers' preferences for debit cards rather than credit cards); Kimberly Palmer, *The Rise of the Debit Card: Credit Balances Dip, but Loan Debt is Growing*, U.S. NEWS & WORLD REP., Jan. 28, 2008, available at 2008 WLNR 1048321 (suggesting that debit cards may be replacing credit cards on campuses); Brian Burnsed, *New Rules Place Barriers between Students, Credit Card Issuers*, U.S. NEWS & WORLD REP. (Feb. 19, 2010), <http://www.usnews.com/education/articles/2010/02/19/new-rules-place-barriers-between-students-credit-card-issuers> ("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]."); Ronald J. Mann, *What is Changing? Age, Economic Crisis, and*

shift away from credit cards and towards debit cards,³³ there remains the possibility that a significant number of young consumers will continue to be at risk for developing credit card indebtedness problems. This possibility arguably justifies congressional action to protect future cardholders. The need for legislative intervention may also become apparent when one considers college-aged consumers' characteristics and traits that contribute to their thoughts and behaviors regarding credit card use and debt. Unfortunately, these thoughts and behaviors often bring about detrimental consequences for many young consumers—consequences that lawmakers hope the Act will curtail.³⁴

For several years, social science researchers have examined young consumers', particularly college students', thoughts and behaviors regarding credit card use and debt.³⁵ They have identified several traits, such as lack of financial knowledge and self-control, which contribute to college-aged consumers' credit

Shifting Patterns of Card Use, PYMNTS.COM, <http://www.pymnts.com/what-is-changing-age-economic-crises-and-shifting-patterns-of-card-use/> (last visited May 16, 2011) (reporting data indicating that more consumers under the age of thirty-five are debit card users rather than credit card holders). *But see generally* Katherine Porter, *The Debt Dilemma*, 106 MICH. L. REV. 1167, 1171 (2008) (noting that “[d]ebit cards . . . are growing, but have not yet eclipsed the popularity of the credit card in America”).

³³ See Block, *supra* note 32; Mann, *supra* note 32.

³⁴ See *Problem Credit Card Practices Affecting Students*, *supra* note 10, at 3 (statement of Rep. Judy Biggert) (“Unfortunately, starting off on the wrong foot seems to be a trend among some college students, who first look at the free apparel, a tee shirt or a coupon for free food, before looking at the interest rate or payment terms of a credit card. And that is a problem.”); 155 CONG. REC. S5493 (daily ed. May 14, 2009) (statement of Sen. Dianne Feinstein) (noting that the “bill provides much-needed safeguards for young consumers, who too often do not have the financial knowledge and experience to manage their credit wisely”); 155 CONG. REC. H5020 (daily ed. Apr. 30, 2009) (statement of Rep. Louise Slaughter) (discussing her support of measures “to protect college students from the hardship of excessive credit card debt and bankruptcy”).

³⁵ See, e.g., Celia Ray Hayhoe et al., *Differences in Spending Habits and Credit Use of College Students*, 34 J. CONSUMER AFF. 113 (2000); Jeff Joireman et al., *Concern with Immediate Consequences Magnifies the Impact of Compulsive Buying Tendencies on College Students' Credit Card Debt*, 44 J. CONSUMER AFF. 155 (2010); So-hyun Joo et al., *Credit Card Attitudes and Behaviors of College Students*, 37 C. STUDENT J. 405 (2003); Lyons, *supra* note 7; Norvilitis et al., *supra* note 19; Jill M. Norvilitis & Phillip Santa Maria, *Credit Card Debt on College Campuses: Causes, Consequences, and Solutions*, 36 C. STUDENT J. 356 (2002); Jill M. Norvilitis & Michael G. MacLean, *The Role of Parents in College Students' Financial Behaviors and Attitudes*, 31 J. ECON. PSYCHOL. 55 (2010); Cliff A. Robb & Deanna L. Sharpe, *Effect of Personal Financial Knowledge on College Students' Credit Card Behavior*, 20 J. FIN. COUNSELING & PLAN. 25 (2009); Roberts & Jones, *supra* note 23; Jeff Wang & Jing J. Xiao, *Buying Behavior, Social Support, and Credit Card Indebtedness of College Students*, 33 INT'L J. CONSUMER STUD. 2 (2009); Jing J. Xiao et al., *College Students' Attitudes towards Credit Cards*, 19 J. CONSUMER STUD. & HOME ECON. 155 (1995).

card behaviors.³⁶ Such traits also place young consumers at risk for mismanaging or misusing credit.³⁷ Obviously, not all students possess these traits.³⁸ And even among those who do, not all are negatively affected by them to the same degree, if at all.³⁹ Nevertheless, considering those characteristics that may place young consumers at risk for credit card indebtedness problems could prove to be informative when contemplating the likely effectiveness of current and future consumer protection provisions.⁴⁰

A. Lack of Financial Knowledge and Experience

Many researchers agree that young consumers generally lack financial experience and knowledge.⁴¹ Studies have measured college students' knowledge of general financial information as well as their knowledge about specific aspects of their credit cards.⁴² For example, in 2008, the Jump\$tart Coalition for Personal

³⁶ See *infra* Parts II.A. and II.B.

³⁷ See Troy Adams & Monique Moore, *High-Risk Health and Credit Behavior among 18- to 25-Year-Old College Students*, 56 J. AM. C. HEALTH 101 (2007); Lyons, *supra* note 7; Cliff A. Robb & Mary Beth Pinto, *College Students and Credit Card Use: An Analysis of Financially At-Risk Students*, 44 C. STUDENT J. 823 (2010); Sheri Lokken Worthy et al., *Sensation-Seeking, Risk-Taking, and Problematic Financial Behaviors of College Students*, 31 J. FAM. ECON. ISSUES 161 (2010).

³⁸ See Robb & Pinto, *supra* note 37, at 827 (discussing prior research findings that 37% of 835 undergraduate and graduate participants and 14% of 1441 undergraduate participants were found to meet the “financially-at-risk profile” for the respective studies).

³⁹ See *id.* at 824 (noting the importance of “acknowledge[ing] that not all college students carry high levels of debt or mismanage credit”).

⁴⁰ See generally Lyons, *supra* note 7, at 59 (“In knowing which students are financially at risk, campus administrators and financial professionals can better allocate their resources and develop materials to specifically target those students who need them most.”); Roberts & Jones, *supra* note 23, at 215 (“An improved understanding of the relationship between money attitudes, credit card use, and compulsive buying in a college student population will provide direction from which to formulate policy as it relates to credit cards on college campuses.”).

⁴¹ See generally Haiyang Chen & Ronald P. Volpe, *An Analysis of Personal Financial Literacy among College Students*, 7 FIN. SERVICES REV. 107, 109, 112 (1998); Norvilitis et al., *supra* note 19, at 1397–1398, 1407–1408; Norvilitis & Santa Maria, *supra* note 35, at 358–359; Robb & Sharpe, *supra* note 35, at 27–28; Warwick & Mansfield, *supra* note 27, at 619, 621–622; Annamaria Lusardi et al., *Financial Literacy among the Young: Evidence and Implications for Consumer Policy* 4–5, 11 (Pension Research Council Working Paper, Paper No. 9, 2009), available at <http://ssrn.com/abstract=1459141>; see also Johnson, *supra* note 99, at 225–30.

⁴² See, e.g., Chen & Volpe, *supra* note 41, at 109–112; Norvilitis et al., *supra* note 19, at 1405; Robb & Sharpe, *supra* note 35, at 27; Warwick & Mansfield, *supra* note 27, at 621.

Financial Literacy conducted a survey of 1,030 college students to assess their financial knowledge.⁴³ Although the study found that participants' average score was 62%, 43% of freshmen respondents failed the exam.⁴⁴ This figure is particularly disconcerting considering that 75% of student cardholders obtain their first card either before or during their freshmen year in college.⁴⁵ Another study found that, of the students, 71% "did not know the interest rate on their card," 43% did not know "their credit limit," and 48% were unaware of "their current balance amounts."⁴⁶ Studies such as these have led researchers to conclude that "regardless of how financial knowledge is operationalized, college students do not possess a high degree of financial knowledge."⁴⁷

Many have suggested that young consumers' lack of financial knowledge impedes their ability to fully understand and consider the costs and consequences associated with credit card usage.⁴⁸ University officials have expressed concerns that students' financial inexperience places them at greater risk for accumulating debt that they cannot afford to repay.⁴⁹

There have been conflicting findings regarding the impact of financial knowledge (or the lack thereof) on young consumers' financial behaviors and credit card usage.⁵⁰ Whereas some researchers have concluded that lack of knowledge serves as "one of the strongest predictors of debt,"⁵¹ others have not found that increased financial knowledge is associated with more beneficial credit

⁴³ See MANDELL, *supra* note 21, at 10.

⁴⁴ *Id.* at 29–30. College student participants in a similar personal finance survey answered an average of 53% of the questions correctly. See Chen & Volpe, *supra* note 41, at 122.

⁴⁵ See SALLIE MAE STUDY, *supra* note 3, at 6.

⁴⁶ Warwick & Mansfield, *supra* note 27, at 624.

⁴⁷ Robb & Sharpe, *supra* note 35, at 27.

⁴⁸ See 155 CONG. REC. H5009 (daily ed. Apr. 30, 2009) (statement of Rep. Sheila Jackson-Lee); U.S. GEN. ACCOUNTING OFFICE, CONSUMER FINANCE: COLLEGE STUDENTS AND CREDIT CARDS 9 (2001) [hereinafter GAO REPORT], available at <http://www.gao.gov/new.items/d01773.pdf>; Chen & Volpe, *supra* note 41, at 122; Johnson, *supra* note 9, at 206–07, 229–30; Phillip M. Sidoti & Raj Devasagayam, *Credit Cards and College Students: Effect of Materialism and Risk Attitude on Misuse*, 20 MARKETING MGMT. J. 64, 67 (2010); Michelle Singletary, *Colleges Are in Cahoots with Credit Card Companies on Campus*, BOS. GLOBE, Nov. 30, 2007, at C4.

⁴⁹ See GAO REPORT, *supra* note 48, at 3, 42–43; see also Lyons, *supra* note 7, at 57.

⁵⁰ Compare Chen & Volpe, *supra* note 41, at 121–22 (concluding that college students' level of financial literacy affects their thoughts and decisions about credit card use), with Robb & Sharpe, *supra* note 35, at 28 (discussing studies that failed to find a significant relationship between students' financial knowledge and their credit card behavior).

⁵¹ Norvilitis et al., *supra* note 19, at 1407–08.

card behavior.⁵² Take, for instance, findings from the recent Jump\$tart Coalition survey:

Two thirds of college students use a credit card and, for the most part, those with more credit cards tend to be more financially literate, up to four cards. Another anomaly is that students who generally pay only the minimum balance on their cards are just as financially literate as those who pay off their bills monthly. These findings seem to fly in the face of traditional belief, which is that more financially literate consumers tend to have better *credit card behavior*.⁵³

This conclusion is also supported by a recent study's findings that "[h]igher levels of financial knowledge were not significantly related to the decision to revolve a balance,"⁵⁴ and "[c]ontrary to expectations, those with higher levels of financial knowledge had significantly higher credit card balances."⁵⁵ The Jump\$tart survey did find, however, that students with greater financial literacy had less incidents of incurring late payment fees,⁵⁶ which may suggest some relationship between students' financial literacy and credit card behavior.⁵⁷

B. Behavioral Biases

In addition to their lack of financial knowledge, young consumers' thoughts and behaviors regarding credit card indebtedness may also be affected by certain behavioral biases. Professors Cass Sunstein and Oren Bar-Gill have examined the likely influence of psychological biases on consumer borrowing.⁵⁸ One such bias is unrealistic optimism, which refers to borrowers' belief in their ability to repay their debt even though their actual ability to do so is not likely.⁵⁹ Another bias that may affect consumer borrowing is imperfect self-control, which refers to consumers' overestimation of "their ability to resist the temptation to finance consumption by borrowing."⁶⁰ Sunstein and Bar-Gill contend that the operation of these and other psychological traits can cause consumers to both underestimate their future

⁵² See Robb & Sharpe, *supra* note 35, at 35–36.

⁵³ See MANDELL, *supra* note 21, at 33.

⁵⁴ Robb & Sharpe, *supra* note 35, at 35.

⁵⁵ *Id.* at 37.

⁵⁶ See MANDELL, *supra* note 21, at 33–34.

⁵⁷ See Robb & Sharpe, *supra* note 35, at 37 (concluding that a significant relationship does appear to exist between student cardholders' financial knowledge and credit card behavior).

⁵⁸ See Cass R. Sunstein, *Boundedly Rational Borrowing*, 73 U. CHI. L. REV. 249 (2006); Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373 (2004).

⁵⁹ See Sunstein, *supra* note 58, at 252.

⁶⁰ See Bar-Gill, *supra* note 58, at 1395; Sunstein, *supra* note 58, at 252.

borrowing⁶¹ and engage in excessive borrowing.⁶² Although this contention relates generally to consumers' borrowing behaviors, it may help to explain college-aged consumers' credit card usage.

Researchers have found that many student consumers possess high levels of optimism regarding their future ability to earn money.⁶³ For some, their optimistic views may be unrealistic since they appear to be unrelated to the students' current academic performance, which is often a factor in obtaining employment.⁶⁴ Many college-aged consumers also expect that their future financial resources will enable them to repay the debts that they incur during their young adulthood.⁶⁵ For example, a recent study found that 73% of college students surveyed "believed that it would take them less time than the average student to get out of [credit card] debt."⁶⁶ Only a combined 27% thought that they would repay their debt in the same or greater amount of time than the average student.⁶⁷ Similar to concerns raised by Sunstein with respect to consumers in general, such excessive and unrealistic

⁶¹ See Bar-Gill, *supra* note 58, at 1395.

⁶² See Sunstein, *supra* note 58, at 252; see also Richard M. Hynes, *Overoptimism and Overborrowing*, 2004 BYU L. REV. 127, 147–154 (2004) (discussing how overoptimism can lead to both underborrowing and overborrowing).

⁶³ See Jill M. Norvilitis et al., *Factors Influencing Levels of Credit-Card Debt in College Students*, 33 J. APPLIED SOC. PSYCHOL. 935, 936 (2006) (reporting research findings that "undergraduates are very optimistic about their future earning potential"); see also Emma Davies & Stephen E. G. Lea, *Student Attitudes to Student Debt*, 16 J. ECON. PSYCHOL. 663, 676 (1995) (asserting that some United Kingdom college students accumulate debt because they believe that their current financial situation is temporary and that short-term debt will be easily repaid following graduation); *Most Plan to Learn, Then Leave: Graduates of Big State Colleges Won't Stick Around, Poll Shows*, DETROIT FREE PRESS, Apr. 29, 2007, at A1 (reporting that 41% of undergraduates polled expected to earn more than \$50,000 per year in their first job following graduation, as compared to the national median salary of approximately \$44,000 for bachelor's degree holders over the age of 25).

⁶⁴ See Norvilitis et al., *supra* note 63, at 936.

⁶⁵ E.g. MANNING, *supra* note 27, at 171; see GAO REPORT, *supra* note 48, at 10; ROBERT MANNING, LIVING WITH DEBT: A LIFE STAGE ANALYSIS OF CHANGING ATTITUDES AND BEHAVIORS 34 (2005) [hereinafter MANNING, LIVING WITH DEBT], available at http://www.lendingtree.com/livingwithdebt/collateral/full_report.pdf; YARROW & O'DONNELL, *supra* note 23, at 67, 72–73; Adams & Moore, *supra* note 37, at 101; Norvilitis et al., *supra* note 63, at 936; Michelle Singletary, *Don't Major in Debt*, WASH. POST, Aug. 17, 2003, at F1; Christine Dugas, *Generation Y's Steep Financial Hurdles: Huge Debt, No Savings*, USA TODAY (Apr. 22, 2010, 6:25 PM), http://www.usatoday.com/money/economy/2010-04-23-1Agency23_CV_N.htm; Jessica Silver-Greenberg, *Majoring in Credit-Card Debt*, BLOOMBERG BUSINESSWEEK (Sept. 4, 2007, 12:01 AM) http://www.businessweek.com/bwdaily/dnflash/content/sep2007/db2007093_443488.htm.

⁶⁶ Norvilitis et al., *supra* note 19, at 1405.

⁶⁷ *Id.*

optimism may cause some young consumers to “overestimate their ability to pay off debt before they choose to assume debt,”⁶⁸ which could lead to increased borrowing.

Researchers have also identified low self-control as a factor contributing to young consumers’ credit card indebtedness.⁶⁹ In fact, some have concluded that “[b]ased on the limited data, low self-control seems to be the most supportable factor for high-risk credit behavior.”⁷⁰ For some young consumers, their lack of self-control manifests itself in the purposes for which they use their card. For instance, although many young consumers may initially intend to use a credit card only in the case of emergencies, only 13% of students reported limiting their card use to this purpose.⁷¹ On the other hand, 79% of student cardholders reported using their cards for other various purposes, including campus expenses and shopping.⁷²

College-aged consumers’ underestimation of future borrowing⁷³ is also evidenced by a recent study’s finding that 60% of student cardholders reported being “frequently” or “sometimes” surprised by the amount of debt they had amassed on their cards.⁷⁴ Incurring “surprising” amounts of credit card debt suggests that many young consumers may have difficulty exercising self-restraint with respect to their credit card purchases.

Young consumers’ incurrence of unexpected amounts of debt may also be related to their “tendency to buy out of compulsivity”⁷⁵ and make impulsive

⁶⁸ Norvilitis et al., *supra* note 63, at 936; *see also* GAO REPORT, *supra* note 48, at 10 (“There was also general agreement that students may find credit card debt and other debts harder to repay upon graduation than they had anticipated.”).

⁶⁹ *See* Carla J. Berg et al., *Health-Related Characteristics and Incurring Credit Card Debt as Problem Behaviors among College Students*, 6 INTERNET J. MENTAL HEALTH (2010), available at http://www.ispub.com/journal/the_internet_journal_of_mental_health/volume_6_number_2_43/article/health-related-characteristics-and-incurring-credit-card-debt-as-problem-behaviors-among-college-students.html#h1-0; Phylis M. Mansfield et al., *Self-Control and Credit-Card Use among College Students*, 92 PSYCHOL. REP. 1067, 1075–77 (2003). *See generally* Sandra Block, *Self-Control Key to Managing Credit Card Debt in College*, USA TODAY, Aug. 12, 2003, at B3.

⁷⁰ Adams & Moore, *supra* note 37, at 101.

⁷¹ *The Campus Credit Card Trap: Key Findings*, PUB. INT. RES. GROUPS, <http://www.pirg.org/student/consumer/credit98/page2.htm> (last visited May 16, 2011); *see also* CREDIT CARD TRAP SURVEY, *supra* note 7, at 5 (reporting that “very few” survey respondents limited their credit card use to emergencies).

⁷² *The Campus Credit Card Trap: Key Findings*, *supra* note 71.

⁷³ Although this article primarily focuses on American college student credit behavior, young students in other countries exhibit similar traits, such as underestimation of future borrowing. *See, e.g.*, Davies & Lea, *supra* note 63, at 678 (noting that several United Kingdom college students “reported that they remembered thinking before arriving at university that they would never go into debt, but events overrode their resolve”).

⁷⁴ *See* SALLIE MAE STUDY, *supra* note 3, at 11.

⁷⁵ Wang & Xiao, *supra* note 35, at 3.

purchases.⁷⁶ While few student consumers are considered to be compulsive buyers,⁷⁷ many more are thought to turn to credit cards to finance purchases and activities to “obtain desired peer approval and group affiliation.”⁷⁸ For some students, credit cards serve as a convenient yet, oftentimes, costly mechanism by which to engage in such socialization. Such efforts to “belong” may often result in increased spending and debt for many college-aged consumers.⁷⁹ In light of this possibility, the underestimation of one’s future borrowing coupled with an overestimation of one’s ability to repay the debt could detrimentally affect the borrowing behavior of many young consumers, especially those at risk for experiencing credit card problems.

C. Favorable Credit Attitudes

College-aged consumers’ credit card usage is also thought to be related to their attitudes regarding credit and debt.⁸⁰ Due, in part, to the increased accessibility of credit, researchers have found that a majority of young student consumers have favorable feelings about credit cards.⁸¹ According to some

⁷⁶ See *id.* at 3–4.

⁷⁷ See *id.* at 3; see also Roberts & Jones, *supra* note 23, at 227 (reporting that in a study sample consisting of 406 college students, only 9% of respondents were classified as being compulsive buyers).

⁷⁸ Wang & Xiao, *supra* note 35, at 3; see also *id.* at 6–7 (discussing the impact of impulsive and compulsive buying on students’ credit card usage).

⁷⁹ See MANNING, *supra* note 27, at 170–77 (discussing a student’s use of credit cards to finance efforts to meet and fit in with “the right people”); Wang & Xiao, *supra* note 35, at 7 (discussing a student’s accumulation of \$3,500 in credit card debt due, in part, to her efforts to be accepted by her peers); see also *infra* Part III.D.

⁸⁰ See Adams & Moore, *supra* note 37, at 101 (“Attitudes toward money, debt, and credit also may play a factor in credit behavior.”); Davies & Lea, *supra* note 63, at 674, 677–78 (finding that “a more pro-debt attitude” was one of four predictive factors for U.K. college students’ level of indebtedness); Lyons, *supra* note 7, at 57–59 (summarizing previous empirical studies that found, among other things, that students with favorable thoughts about credit cards were more likely to have credit cards and to use them more frequently); Xiao et al., *supra* note 35, at 155 (“The attitude towards credit cards was found to be an important factor in behaviour of credit card use.”).

⁸¹ See Hayhoe et al., *Discriminating the Number of Credit Cards Held by College Students Using Credit and Money Attitudes*, 20 J. ECON. PSYCHOL. 643, 647 (1999) (asserting that students may have more favorable affective attitudes about credit and debt because they “were raised in a time of easy credit and living beyond one’s means”); Hayhoe et al., *supra* note 35, at 117 (reporting research findings indicating that 82% of students surveyed possessed favorable affective attitudes about credit cards); Roberts & Jones, *supra* note 23, at 214 (discussing the impact that being “raised in a credit card society” has had on young consumers’ financial attitudes); Xiao et al., *supra* note 35, at

research findings, student cardholders possess more favorable affective or emotional attitudes toward credit cards than students who do not have a card.⁸² In addition, students with four or more cards report having more positive feelings toward credit cards than those cardholders with fewer cards.⁸³ Studies also show that students' favorable attitudes "positively influence the number of credit cards with a balance,"⁸⁴ such that the more positively one views credit cards, the more likely one may be to use and carry a balance on a credit card.⁸⁵

These findings suggest that there likely exists some relationship between students' attitudes about credit cards and their behaviors.⁸⁶ Students' favorable attitudes towards credit may cause an increase in their credit card usage, or the frequency of their credit card use may cause an increase in their positive attitudes.⁸⁷ Although the exact nature of the association between attitudes and behaviors has yet to be determined,⁸⁸ many researchers agree that examining young consumers' attitudinal traits could be beneficial when developing policies and programs that seek to address the negative consequences⁸⁹ that can often result from young consumers' credit card indebtedness.⁹⁰

The benefits of such an examination are also applicable to other young consumer traits, such as those previously discussed, that may place college-aged consumers at risk for developing indebtedness problems. Part III examines the possibility that young consumers' risk-producing factors may also stem from their coming of age in the Millennial generation.

161 (reporting research findings that college respondents "generally had favourable attitudes towards credit cards").

⁸² See Hayhoe et al., *supra* note 81, at 650; Xiao et al., *supra* note 35, at 167–68.

⁸³ Hayhoe et al., *supra* note 81, at 652.

⁸⁴ Hayhoe et al., *supra* note 35, at 129.

⁸⁵ *Id.* at 130; see also Xiao et al., *supra* note 35, at 170 (noting that students who own and use credit cards more frequently have exhibited positive thoughts about credit cards).

⁸⁶ See Hayhoe et al., *supra* note 35, at 130.

⁸⁷ Hayhoe et al., *supra* note 81, at 652–53; Xiao et al., *supra* note 35, at 170.

⁸⁸ See Hayhoe et al., *supra* note 81, at 652–53; Xiao et al., *supra* note 35, at 170. See generally Davies & Lea, *supra* note 63, at 666 (discussing the various possible causal relationships between attitudes and behaviors related to credit and debt).

⁸⁹ For a detailed discussion of the detrimental consequences, such as delinquent credit card behavior, poor academic performance, and negative psychological repercussions, that can result from student cardholders' indebtedness, see Johnson, *supra* note 9, at 206–219. See also Eboni S. Nelson, *From the Schoolhouse to the Poorhouse: The Credit CARD Act's Failure to Adequately Protect Young Consumers*, 56 VILL. L. REV. 1, 20–23 (2011).

⁹⁰ See Joo et al., *supra* note 35, at 418 ("Based on the assumption that one's attitudes affect behavior, obtaining information on the factors affecting college students' credit behavior offers a solid first step to improving college students' credit card behaviors."); see also *supra* notes 35–40 and accompanying text (discussing students' likelihood of being at risk of financial trouble).

III. THE MILLENNIAL EFFECT?

Generally defined as those individuals born between 1977 and 2003,⁹¹ Millennials are often referred to by various names, including Generation Y,⁹² Echo Boomers,⁹³ and the Boomerang Generation.⁹⁴ Despite this variance, the approximately eighty-four million individuals⁹⁵ who make up the “Millennial”⁹⁶ generation are thought by some to share certain distinguishing social and

⁹¹ See YARROW & O'DONNELL, *supra* note 23, at xi; Yanli Cui et al., *Cause-Related Marketing: How Generation Y Responds*, 31 INT'L J. RETAIL & DISTRIBUTION MGMT. 310, 310 (2003) (defining generation Y as those born between 1977 and 1994); Shaw & Fairhurst, *supra* note 97, at 367. Although this Article examines Millennials living in the United States, researchers have studied various characteristics and behaviors of young people who were born in this same generation who live in other countries. See, e.g., Thomas Foscht et al., *Assessing the Outcomes of Generation-Y Customers' Loyalty*, 27 INT'L. J. BANK MARKETING 218 (2009) (Austria); Eun Young Kim et al., *Modeling Brand Equity of a U.S. Apparel Brand as Perceived by Generation Y Consumers in the Emerging Korean Market*, 27 CLOTHING & TEXTILES RES. J. 247 (2009) (Korea); Robert L. Moore, *Generation Ku: Individualism and China's Millennial Youth*, 44 ETHNOLOGY 357 (2005) (China). Future comparative research could examine thoughts and behaviors regarding credit and debt among Millennials from different countries and cultures.

⁹² HOWE & STRAUSS, *supra* note 22, at 6–7; TWENGE, *supra* note 23, at 5–6.

⁹³ Rebecca Leung, *The Echo Boomers*, 60 MINUTES (Feb. 11, 2009, 7:50 PM), <http://www.cbsnews.com/stories/2004/10/01/60minutes/main646890.shtml> (explaining that the title “echo boomers” refers to the “generation of young people” who are “the genetic offspring and demographic echo of their parents, the baby boomers”).

⁹⁴ Tracy Nicole Rank, *Independence and Work Ethic in the Transition to Adulthood: A Comparison of Two Cohorts*, UNDERGRADUATE RES. J. FOR HUM. SCI. (2007), <http://www.kon.org/urc/v6/rank.html> (discussing Echo Baby Boomers' trend of returning home to live with their parents following college graduation); see also Ira S. Wolfe, *Helicopter Parents and Boomerang Kids*, SUCCESS PERFORMANCE SOLUTIONS (Sept. 2006), http://www.super-solutions.com/helicopterparents_boomerangkids.asp (“According to the National Survey of Households and Families, Ten percent of all children over the age of 25 now live with their parents. Even more surprising is that one third of all American men between the ages of 22 and 34 still live with their parents, an increase of 100 percent in the last two decades, according to the Census Bureau.”).

⁹⁵ The number of individuals considered to be included in the Millennial generation varies by source, ranging from seventy-one million to eighty-four million. See YARROW & O'DONNELL, *supra* note 23, at 2; Cui et al., *supra* note 91, at 310; Jayne O'Donnell, *Gen Y Sits on Top of Consumer Food Chain*, USA TODAY (Oct. 11, 2006, 2:55 AM EST), http://www.usatoday.com/money/advertising/2006-10-11-retail-teens-usat_x.htm. Eventually, the number of Millennials is expected to reach one-hundred million. HOWE & STRAUSS, *supra* note 22, at 15.

⁹⁶ See sources cited *supra* note 23 (describing certain characteristics of those in the Millennial age group).

psychological characteristics.⁹⁷ Certain traits may impact some Millennial consumers' thoughts and behaviors regarding credit and debt, which could have implications for their development of credit card indebtedness problems. In light of this possibility, this part asserts that examining these potential implications is a worthwhile endeavor when considering the likely effectiveness of current and future young consumer protections.

A. Why Ask "Y"?—An Explanatory and Cautionary Note

Some could contend that this part employs a "generational perspective"⁹⁸ in examining the possibility that the Millennial age during which young consumers have been raised may have implications for their credit card behavior. "Supporters of this school of thought argue that people who grow up in different time periods have very different sets of beliefs, values, attitudes and expectations which in turn impact their behaviour generally"⁹⁹ Although subject to some disagreement,¹⁰⁰ certain researchers contend that many members of this particular cohort of consumers share several traits.¹⁰¹ Such traits include a decreased sense of personal responsibility and accountability, as well as an increased need for immediate gratification.¹⁰²

⁹⁷ See sources cited *supra* note 23; see also HOWE & STRAUSS, *supra* note 22, at 43–44 (asserting that Millennials are distinguished by the following seven traits: special, sheltered, confident, team-oriented, achieving, pressured, and conventional); Sue Shaw & David Fairhurst, *Engaging a New Generation of Graduates*, 50 EDUC. & TRAINING 366, 368 (2008) (noting that "many writers have asserted that Generation Y possesses different characteristics and different expectations from the generations which have preceded it" and acknowledging that although there is broad agreement as to what Millennials' characteristics are, some of the characteristics seem to be contradictory). *But see* Eric Hoover, *The Millennial Muddle: How Stereotyping Students Became a Thriving Industry and a Bundle of Contradictions*, CHRON. HIGHER EDUC. (Oct. 11, 2009), <http://chronicle.com/article/The-Millennial-Muddle-How/48772/> (discussing varying opinions regarding whether Millennials actually share common generational traits and if so, what those traits are); *id.* (discussing one researcher's skepticism that Millennial traits are commonly shared between racial and socioeconomic groups).

⁹⁸ Shaw & Fairhurst, *supra* note 97, at 367.

⁹⁹ *Id.*

¹⁰⁰ See sources cited *supra* note 97 (describing the variety of traits shared by this generation).

¹⁰¹ See sources cited *supra* note 97.

¹⁰² See TWENGE, *supra* note 23, at 5 (noting Millennials' tendency to "blame other people for [their] problems"); Shaw & Fairhurst, *supra* note 97, at 368, 374 (discussing Millennials' increasing tendency to attribute negative outcomes to external forces rather than factors within their control); see also *infra* Parts III.B–D for a more detailed discussion of these and other traits that are commonly associated with Millennial consumers.

Not everyone agrees with this contention, however. “[C]ritics of the generational perspective challeng[e] both the definition of generation and the idea of a generation gap or intergenerational difference.”¹⁰³ This critique is due, in part, to the fact that many of the conclusions drawn about generational cohorts are reported in “popular,” as opposed to academic, literature and are often based on the authors’ experiences, observations, interviews, and group discussions, rather than empirical research.¹⁰⁴ As some have noted, “‘popular’ research may lack the necessary rigour on which to base future . . . policy.”¹⁰⁵ In addition, employing a generational perspective approach presents the possibility of stereotyping a group of individuals merely based on the year in which they were born.¹⁰⁶

Although these criticisms raise important concerns, many researchers and scholars have found that considering generational traits can prove to be informative and useful when examining many different issues.¹⁰⁷ For example, in the contexts of legal education and the practice of law, scholars and attorneys have explored Millennials’ traits and their implications for legal pedagogy,¹⁰⁸ participation in clinical legal education¹⁰⁹ and externships,¹¹⁰ joining the legal

¹⁰³ Shaw & Fairhurst, *supra* note 97, at 367.

¹⁰⁴ Bradley Jorgensen, *Baby Boomers, Generation X and Generation Y? Policy Implications for Defence Forces in the Modern Era*, 5 *FORESIGHT* 41, 43–44 (2003); Shaw & Fairhurst, *supra* note 97, at 368.

¹⁰⁵ Jorgensen, *supra* note 104, at 44.

¹⁰⁶ See Hoover, *supra* note 97 (“Generational images are stereotypes There are some differences that stand out, but there are more similarities between students of the past and the present.”).

¹⁰⁷ See, e.g., Eric A. Henon, *Why and How Generation Y Saves and Spends*, 43 *BENEFITS & COMPENSATION DIG.* 30–32 (2006) (discussing implications of study findings for developing retirement benefits and education programs for Generation Y employees); Tracy L. McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day?*, 9 *J. LEGAL WRITING INST.* 119 (2003) (recommending teaching methods for legal writing professors who are educating Generation X students); Elizabeth A. Rowe, *A Sociological Approach to Misappropriation*, 58 *U. KAN. L. REV.* 1 (2009) (using sociological analysis of Generation X and Generation Y employees to examine implications for trade secret law); Jane Z. Sojka & Mark S. B. Fish, *Brief In-Class Role Plays: An Experiential Teaching Tool Targeted to Generation Y Students*, 18 *MARKETING EDUC. REV.* 25, 26 (2008) (suggesting pedagogical tools “to increase student engagement and learning” for Generation Y business education students).

¹⁰⁸ See, e.g., Diana R. Donahoe, *An Autobiography of a Digital Idea: From Waging War against Laptops to Engaging Students with Laptops*, 59 *J. LEGAL EDUC.* 485 (2010).

¹⁰⁹ See, e.g., Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the “MTV/Google” Generation*, 54 *LOY. L. REV.* 775 (2008); Leslie Larkin Cooney, *Giving Millennials a Leg-Up: How to Avoid the “If I Knew Then What I Know Now” Syndrome*, 96 *KY. L.J.* 505 (2008); Karla Mari McKanders, *Clinical Legal Education at a Generational Crossroads: Shades of Gray*, 17 *CLINICAL L. REV.* 223 (2010).

profession,¹¹¹ and serving on juries.¹¹² The next section examines potential young consumer characteristics that may stem from their coming of age in the Millennial generation and potential implications of such on their credit card indebtedness.

Before turning to this examination, however, it is important to note that the characteristics discussed are those that researchers have identified as *generally* associated with individuals who make up this generation. This Article does not suggest that all Millennials possess these traits or that those who do manifest such characteristics to the same degree. Nor does it assert that being included in a certain generation absolutely dictates young Millennial consumers' thoughts and behaviors related to credit card use and debt. Instead, it suggests that if lawmakers' had fully considered the young consumer traits discussed in Part II, as well as traits related to college-aged consumers coming of age in the Millennial generation, they may have been able to develop more effective provisions to address problems related to young consumer indebtedness.

B. The Parent Trap

Several of the Millennials' characteristics are thought to be associated with the manner in which their parents have raised them.¹¹³ As children of the Baby Boomer generation, three words that have been used to describe Millennials are: "Wanted. Protected. Worthy."¹¹⁴ Many assert that, more so than earlier generations, "[Millennials] keep[] close ties to mom and dad who . . . are now labeled 'helicopter parents' for their tendency to hover or be hyper-involved in the

¹¹⁰ See, e.g., Leslie Larkin Cooney, *Heart and Soul: A New Rhythm for Clinical Externships*, 17 ST. THOMAS L. REV. 407 (2005); Susan K. McClellan, *Externships for Millennial Generation Law Students: Bridging the Generation Gap*, 15 CLINICAL L. REV. 255 (2009).

¹¹¹ See, e.g., Melody Finnemore, *Meet the Millennials*, 66 OR. ST. B. BULL. 9 (2005); Ashley Hacker, *Taming the Dragon of Golden Age Standards: A Lyotardian Analysis of Professionalism in the Era of Generation Y Lawyers*, 11 T.M. COOLEY J. PRAC. & CLINICAL L. 199 (2009); Marcia Pennington Shannon, *Making Room for Dreams at Work*, LAW PRAC., Jul.–Aug. 2004, at 54.

¹¹² See, e.g., LaDonna Carlton, *Our Youngest Jurors—The Internet Generation*, ASS'N TRIAL LAW. AM. CLE MATERIALS, Winter 2002, at 25.

¹¹³ See Shaw & Fairhurst, *supra* note 97, at 368–70 (noting that Millennials' need for structure and assistance with managing conflict and accepting constructive criticism is attributable to the way in which they have been raised by their parents); Rachael Rettner, *'Helicopter' Parents Have Neurotic Kids*, MSNBC.COM (June 3, 2010, 2:42 PM ET), <http://www.msnbc.msn.com/id/37493795> (detailing a recent study's findings associating overparenting with negative personality traits, such as dependency and neuroticism).

¹¹⁴ HOWE & STRAUSS, *supra* note 22, at 32; see also *id.* at 31–33 (discussing the social and cultural influences that precipitated a new Millennial generation); YARROW & O'DONNELL, *supra* note 23, at 6 (describing Millennials as "the most wanted children of all time").

lives of their college-aged children.”¹¹⁵ From intervening in college admissions processes to raising challenges to their children’s poor grades,¹¹⁶ some researchers assert that such overinvolvement has produced a sheltered generation of individuals,¹¹⁷ some of whom are less equipped to make independent decisions¹¹⁸ and have a decreased sense of personal responsibility and accountability.¹¹⁹ In light of the possible implications for their financial attitudes and behaviors, possessing these traits could prove to be detrimental for some college-aged Millennials.

As many researchers have noted, parents and other older family members play crucial and influential roles in shaping young consumers’ financial attitudes, especially those related to debt and credit.¹²⁰ While some Millennials’ parents have actively instilled sound and beneficial financial values in their children,¹²¹ others have employed the overly-protective parent approach in their attempts to “cocoon[]”¹²² and shield their children from financial stresses and consequences.¹²³

¹¹⁵ Peters, *supra* note 21, at 459; *see also* NAZARETH, *supra* note 23, at 82–83 (2007); YARROW & O’DONNELL, *supra* note 23, at 6–7.

¹¹⁶ *See* Ginny Barnes, *Guess Who’s Coming to Work: Generation Y. Are You Ready for Them?*, 28 PUB. LIBR. Q. 58, 60–61 (2009); Rettner, *supra* note 113; Wolfe, *supra* note 94.

¹¹⁷ *See* Peters, *supra* note 21, at 459–60.

¹¹⁸ *See* Barnes, *supra* note 116, at 60–61 (attributing Millennials’ “weak problem-solving skills” and “disturbing lack of critical thinking and problem-solving skills” to their parents’ overinvolvement in their decision making); Kathryn Tyler, *The Tethered Generation*, HR MAG., May 2007, at 41 (discussing researchers’ findings that the close connectivity between Millennials’ and their parents “can prohibit creative problem-solving and decision-making” (quoting Stephen P. Seaward, Director of Career Development for Saint Joseph College in West Hartford, Connecticut)).

¹¹⁹ *See* TWENGE, *supra* note 24, at 5 (noting Millennials’ tendency to “blame other people for [their] problems”); Shaw & Fairhurst, *supra* note 97, at 368, 374 (discussing Millennials’ increasing tendency to attribute negative outcomes to external forces rather than factors within their control).

¹²⁰ *See* MANNING, LIVING WITH DEBT, *supra* note 65, at 29–35; YARROW & O’DONNELL, *supra* note 23, at 67; Bryce L. Jorgensen & Jyoti Savla, *Financial Literacy of Young Adults: The Importance of Parental Socialization*, 59 FAM. REL. 465 (2010) (finding, in a study of 420 college students, that perceived parental influence had a direct moderately significant effect on financial attitude and an indirect moderately significant effect on behavior); Norvilitis & MacLean, *supra* note 35 (finding, in a study, that parents who engage in hands-on mentoring, such as teaching their kids how to manage an allowance or checking account, typically have students with lower levels of credit card debt).

¹²¹ *See, e.g.*, MANNING, LIVING WITH DEBT, *supra* note 65, at 29 (discussing the positive impact parents’ emphases on saving and frugality had on their college-aged children); MANNING, CREDIT CARD NATION, *supra* note 27, at 170 (noting one father’s attempts to instill “midwestern values of frugality and debt avoidance” in his college-aged son).

¹²² HOWE & STRAUSS, *supra* note 22, at 36.

Examples of this approach include not discussing financial matters with their children¹²⁴ and not requiring them to take personal responsibility for the charges they incur.

Consider, for example, some parents' practice of paying their college-aged children's cell phone and credit card bills.¹²⁵ Studies show that when parents routinely pay for such expenses without discussing them with their children or requiring some financial contribution from them, they teach and reinforce a detrimental message regarding consumer responsibility—namely, that young consumers do not have to be responsible for the consequences of their financial decisions and behaviors.¹²⁶ Despite their good intentions, college-aged consumers' parents who avoid teaching their children vital financial lessons "often fail to adequately prepare them for the economic realities of adulthood."¹²⁷ Consequently, some young Millennials may fail to appreciate the importance of fiscal responsibility¹²⁸ and may lack the financial knowledge necessary to make the most

¹²³ See MANNING, LIVING WITH DEBT, *supra* note 65, at 30–31.

¹²⁴ See Emma Johnson, *Why Generation Y is Broke*, MSN MONEY (Apr. 22, 2008), <http://articles.moneycentral.msn.com/Investing/HomeMortgageSavings/WhyGenerationYIsBroke.aspx?page=all> (asserting that some Millennials are shielded from financial responsibility because parents do not talk about money with their children); Elaine S. Silver, *Explaining Money's Mysteries to Your Children*, BUSINESSWEEK ONLINE (Sept. 25, 2000), http://www.businessweek.com/2000/00_39/b3700148.htm (discussing how many parents are hesitant to talk with their children about financial issues).

¹²⁵ See Susan Hely, *Are You Teaching Your Kids about Money?*, MONEY MAG. (June 6, 2008), <http://finance.ninemsn.com.au/pfinancingmoney/saving/8124993/are-you-teaching-your-kids-about-money> (stating that the norm of parents paying all their children's bills and covering financial mistakes should be replaced with children taking on more financial responsibility). *But see* GAO REPORT, *supra* note 48, at 10 ("Some parents may . . . choose not to provide financial assistance with debt because they want their college student to learn a difficult lesson about financial responsibility.").

¹²⁶ See Todd Starr Palmer et. al., *College Students' Credit Card Debt and the Role of Parental Involvement: Implications for Public Policy*, 20 J. PUB. POL'Y & MARKETING 105, 109–11 (2001) (finding that children whose parents pay their credit card balances for them are more likely to have more credit cards and higher debt than those whose parents make them take responsibility for paying their own bills); *see also* MANNING, *supra* note 27, at 160–61 (recounting parents' questioning of their prior decision to pay some of their son's credit card bills: "In retrospect, however, they believed that their assistance had actually been a 'disservice' by not 'holding him responsible for his debts'"); Barnes, *supra* note 116, at 60 ("Basically, the strong parent connection has been largely responsible for producing young adults who have been sheltered from consequences . . .").

¹²⁷ MANNING, LIVING WITH DEBT, *supra* note 65, at 30; *see also* SALLIE MAE STUDY, *supra* note 3, at 17 (noting the positive impact that conversations between parents and their children can have on their children's credit card spending choices).

¹²⁸ See HUNTLEY, *supra* note 23, at 146 (describing Millennials as "spenders rather than savers"); NAZARETH, *supra* note 23, at 111–12 (discussing the decline in savings by

beneficial financial decisions.¹²⁹ Unfortunately, both can contribute to Millennials' credit card indebtedness,¹³⁰ which can result in negative consequences for many young consumers.¹³¹

Some researchers also argue that due, in part, to some parents' overindulgence in terms of spending on their children,¹³² some Millennials have a strong sense of entitlement.¹³³ As asserted by Dr. Robert Manning, "The traditional or 'Old School' emphasis of saving, living on a budget, and self-denial is being successfully challenged by a 'social entitlement' ethos or 'New School' values where you can have it all—without personal sacrifice"¹³⁴ When coupled with ready access to credit cards¹³⁵ and, as discussed below, myriad opportunities for immediate online spending, it is possible that some young Millennial consumers may be acting upon these feelings of entitlement, which could contribute to their incurrence of high levels of credit card debt.¹³⁶

young adults as evidenced by a 10% decrease in the number of twenty-five to thirty-four-year olds with some sort of savings instrument from 1985 to 2005); MANNING, LIVING WITH DEBT, *supra* note 65, at 31 (noting the detrimental financial effects resulting from college students' "cognitive denial of long-term consequences").

¹²⁹ See YARROW & O'DONNELL, *supra* note 23, at 67; Johnson, *supra* note 9, at 225–30; *see also supra* Part II.A.

¹³⁰ See YARROW & O'DONNELL, *supra* note 23, at 72 (attributing young consumers' problems with debt management to their tendency to use credit rather than savings to make short-term purchases); *see also* SALLIE MAE STUDY, *supra* note 3, at 5 (documenting the ten-year growth in college students' credit card use and debt).

¹³¹ See GAO REPORT, *supra* note 48, at 9–14 (discussing the detrimental consequences, such as damage to credit ratings and, in extreme cases, bankruptcy, that can result from college students' credit card use); *see also* sources cited *supra* note 89.

¹³² See HOWE & STRAUSS, *supra* note 22, at 266; YARROW & O'DONNELL, *supra* note 23, at 66–68; Barnes, *supra* note 116, at 59.

¹³³ See YARROW & O'DONNELL, *supra* note 23, at 68–69; Barnes, *supra* note 116, at 59–60; Peters, *supra* note 21, at 460.

¹³⁴ MANNING, LIVING WITH DEBT, *supra* note 65, at 31.

¹³⁵ See Bakewell & Mitchell, *supra* note 26, at 98 (attributing young Millennials' ability to buy more expensive items in part to the "steady increase in the availability of credit cards marketed to young adults"); Jean Braucher, *Theories of Overindebtedness: Interaction of Structure and Culture*, 7 THEORETICAL INQUIRIES L. 323, 331–32 (2006) (noting that students have access to credit cards as early as high school); A. Mechele Dickerson, *Consumer Over-Indebtedness: A U.S. Perspective*, 43 TEX. INT'L L.J. 135, 139 (2008) (noting that college students have increased access to credit cards because credit card companies increase their direct mail credit card offers to subprime customers to increase their profits); Roberts & Jones, *supra* note 23, at 220 ("Credit card use stimulates spending, and, when compared to cash, credit cards lead to greater imprudence.").

¹³⁶ See YARROW & O'DONNELL, *supra* note 23, at 68–70; SALLIE MAE STUDY, *supra* note 3, at 5.

C. The Fingertip Phenomenon

The Millennial generation is often thought to consist of a tech-savvy group of consumers¹³⁷ who have come of age in, and been greatly influenced by, an era that has seen unprecedented developments in modern conveniences. Having “never experienced life without a microwave, computer, ATM card or television remote control,”¹³⁸ many of these young consumers are arguably accustomed to getting what they want when they want it, without having to wait for it.¹³⁹ As noted by Professors Jeff Feiertag and Zane L. Berge:

Google provides immediate results. Text messaging links persons immediately to their friends in the wireless world. While the ATM and credit card came to be before Gen N [Network] came of age, this generation is the first that could exist solely in a cashless society and use plastic as a sole means of economic mobility. In terms of ease and method, paying the electric company is no different from shopping at Amazon.com or picking up breakfast at the local coffee shop. If Gen N is about anything it is about *instant gratification*¹⁴⁰

According to some researchers, this culture of instantaneous gratification may result in negative consequences for many young Millennial consumers as this “*why wait?*” mentality permeates their financial attitudes and behaviors.¹⁴¹

¹³⁷ See Shaw & Fairhurst, *supra* note 97, at 368 (describing Millennials as “at ease with the wired world”); *The “Millennials” Are Coming*, 60 MINUTES (Feb. 11, 2009, 3:54 PM), <http://www.cbsnews.com/stories/2007/11/08/60minutes/main3475200.shtml> (describing Millennials as “tech savvy, with every gadget imaginable almost becoming an extension of their bodies”).

¹³⁸ Tyler, *supra* note 118, at 43 (quoting Stephen P. Seaward, Director of Career Development for Saint Joseph College in West Hartford, Connecticut); see also YARROW & O’DONNELL, *supra* note 23, at 7–8.

¹³⁹ See YARROW & O’DONNELL, *supra* note 23, at 8; Feiertag & Berge, *supra* note 24, at 460; Nelson, *supra* note 22, at 5; Shaw & Fairhurst, *supra* note 97, at 373.

¹⁴⁰ Feiertag & Berge, *supra* note 24, at 460 (emphasis added); see also NAZARETH, *supra* note 23, at 82 (describing how technological advances, such as cell phones and instant messaging, have created an instant gratification generation that is reluctant to wait for anything); YARROW & O’DONNELL, *supra* note 23, at 9 (describing Millennials as needing immediate gratification); Andrea Hanratty, ‘Y’ Becomes ‘Me’ for Youth Generation, TEMPLE NEWS ONLINE (Jan. 19, 2010), <http://temple-news.com/tag/generation-y/> (reporting a clinical psychologist’s conclusions that “[b]ecause of the mere technological advances that make everything so immediately available, young people are not able to wait. They are being trained to be impatient.”).

¹⁴¹ See YARROW & O’DONNELL, *supra* note 23, at 22 (“Their . . . desire to have it all now [has] had a notable impact on the way they shop—and on their credit card balances.”); Norvilitis et al., *supra* note 19, at 1406 (finding that young consumers’ inability to delay

Commonly viewed as a confident generation,¹⁴² Millennials are generally very optimistic about their financial futures, even when confronted with difficult economic times and realities.¹⁴³ This confidence and optimism can certainly lead to positive attributes, such as Millennials' fortitude and sense of empowerment.¹⁴⁴ However, such confidence and optimism can also result in harmful behaviors and consequences when young consumers ignore their existing financial limitations and, instead, turn to credit and debt to finance purchases based merely on hopes of greater financial resources in the future.¹⁴⁵

Some young Millennials' escalating use of credit is particularly troublesome considering the exponential number of opportunities they now have to spend and consume. Gone are the days when young consumers simply visited shopping malls and department stores to purchase clothes and shoes.¹⁴⁶ With the availability of the Internet, all kinds of imaginable purchases (and some unimaginable) are now available at their fingertips.¹⁴⁷

gratification was a significant factor in predicting debt); MANNING, LIVING WITH DEBT, *supra* note 65, at 31 (noting that college students' "focus on instant gratification" has shifted their "view of responsible spending from living within a budget to more quickly acquiring the material accoutrements associated with professional success"); Adams & Moore, *supra* note 37, at 101 ("Credit is a mechanism that allows one to gratify wants and needs without having to consider eventual consequences.").

¹⁴² See HUNTLEY, *supra* note 23, at 14–15, 178–79; PEW RESEARCH CTR., MILLENNIALS: CONFIDENT. CONNECTED. OPEN TO CHANGE. 1 (2010) [hereinafter PEW, MILLENNIALS], available at <http://pewsocialtrends.org/files/2010/10/millennials-confident-connected-open-to-change.pdf>; YARROW & O'DONNELL, *supra* note 23, at 11–14; Dugas, *supra* note 65.

¹⁴³ See PEW, MILLENNIALS, *supra* note 142, at 20; YARROW & O'DONNELL, *supra* note 23, at 72–73; 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 a study's findings that while 55% of eighteen to twenty-four-year-olds were pessimistic about the country's economic future in the next ten years, 89% were optimistic about their own future over the same time period); see also *supra* notes 58–62 and accompanying text.

¹⁴⁴ YARROW & O'DONNELL, *supra* note 23, at 12, 73.

¹⁴⁵ See GAO REPORT, *supra* note 48, at 9; MANNING, LIVING WITH DEBT, *supra* note 65, at 34; YARROW & O'DONNELL, *supra* note 23, at 67; Dugas, *supra* note 65; see also *supra* Part II.B. Many Americans, regardless of age or generation, engage in this practice of basing their consumption behaviors on predictions of future financial conditions rather than current economic realities. See MANNING, *supra* note 27, at 127.

¹⁴⁶ See MANNING, *supra* note 27, at 114.

¹⁴⁷ See generally HOWE & STRAUSS, *supra* note 22, at 273 (estimating that by 2002, online purchases by Millennial consumers "will produce \$1.3 billion in revenues"); 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, 466 (2004) (observing that college students are spending an increasing amount

Perhaps more so than any other medium, the Internet has been extremely influential in shaping and dictating some Millennials' buying habits and behaviors.¹⁴⁸ As advertisers move toward Web alternatives to reach consumers,¹⁴⁹ the variety, immediacy, and convenience that online shopping offers serve as strong enticements for those Millennials looking for immediate gratification.¹⁵⁰ Credit and debit cards can now be used to make impulsive purchases twenty-four-hours a day, which could impact some young Millennials' spending.¹⁵¹

Social networking sites such as Facebook may also contribute to some young Millennials' thoughts about spending and consumption.¹⁵² While social media and other technological advances have helped to establish and maintain a sense of community among Millennials, they also have the potential to amplify their perceived need to have the right "stuff" to be accepted by their peers.¹⁵³ As noted by authors Cathy Bakewell and Vincent-Wayne Mitchell, "[Millennials] have been acculturated into a materialistic and consumer culture more so than other generations as a result of technological innovations."¹⁵⁴ When coupled with a lack of financial knowledge,¹⁵⁵ overly optimistic financial expectations,¹⁵⁶ and a potential unwillingness to delay gratification,¹⁵⁷ some Millennials' efforts to conform could fuel not only their increased consumption habits, but also their increased use of credit cards.¹⁵⁸

of their discretionary time shopping online and surfing the Internet); Sharon Dunn, *Has Web Surfing Become the New Window-Shopping?*, GREELEY TRIB. (Jan. 16, 2005), <http://www.greeleytribune.com/apps/pbcs.dll/article?AID=/20050116/BUSINESS/101160050> (reporting that in 2003, Internet retail sales increased to \$114 billion, marking a 51% increase from previous years, and that by 2007, an estimated 77% of consumers over the age of thirteen would be shopping online).

¹⁴⁸ See Bakewell & Mitchell, *supra* note 26, at 97–98; Wolburg & Pokrywcznski, *supra* note 143, at 38.

¹⁴⁹ See YARROW & O'DONNELL, *supra* note 23, at 24.

¹⁵⁰ See *id.* at 8 ("As the first generation raised from day one under the influence of the Internet, the world, as they know it, means speed . . ."); Shaw & Fairhurst, *supra* note 97, at 373 ("Millennials seems hard-wired to demand instant gratification and instant rewards.").

¹⁵¹ See generally Junghyun Kim & Robert LaRose, *Interactive E-Commerce: Promoting Consumer Efficiency or Impulsivity?*, 10 J. COMPUTER-MEDIATED COMM. art. 9 (2004), http://jcmc.indiana.edu/vol10/issue1/kim_larose.html (examining the relationship between "24 hour retailing" and consumers' shopping behaviors).

¹⁵² See YARROW & O'DONNELL, *supra* note 23, at 24–27.

¹⁵³ See *id.* at 49, 61, 67, 108–09.

¹⁵⁴ Bakewell & Mitchell, *supra* note 26, at 97.

¹⁵⁵ See *supra* Part II.A.

¹⁵⁶ See *supra* Part II.B; see also *supra* notes 142–145 and accompanying text.

¹⁵⁷ See *supra* notes 139–141 and accompanying text.

¹⁵⁸ See YARROW & O'DONNELL, *supra* note 23, at 72 (noting that "young consumers are more likely to use credit than to save for short-term purchases, which results in an

D. Clash of the Three Cs: Conformity, Consumption, and Credit

Similar to previous generations, many Millennials are thought to have a need to belong.¹⁵⁹ Although Millennials are often individualistic and independent,¹⁶⁰ they also seek and value shared support from, and close connections with, their peers¹⁶¹—which social media such as Facebook and Twitter help to facilitate.¹⁶² In furtherance of their need to belong, many young consumers make purchasing decisions based, in part, on their desire to join and connect with peer groups.¹⁶³ Considered by some to be “[s]ocially motivated consumers [who] are driven by the opinion of others” and are image-conscious,¹⁶⁴ many younger Millennial consumers may think that what they have or wear determines and expresses who they are.¹⁶⁵ Therefore, some can succumb to pressure to acquire the best, most popular clothing and possessions, even if doing so amounts to living beyond their means.¹⁶⁶

This can be especially prevalent on college campuses where young cardholders use credit cards to finance their perceived socially acceptable lifestyles.¹⁶⁷ As some students abandon their “adherence to the cognitive connect

ongoing struggle with debt management” (quoting research conducted by Fidelity Investments)).

¹⁵⁹ See Shaw & Fairhurst, *supra* note 97, at 373–74.

¹⁶⁰ *Id.* at 368.

¹⁶¹ See *id.* at 373; YARROW & O’DONNELL, *supra* note 23, at 14–16.

¹⁶² See YARROW & O’DONNELL, *supra* note 23, at 10, 24 (discussing Millennials’ use of technology to create and sustain group connections).

¹⁶³ See *id.* at 51, 108–13.

¹⁶⁴ Martin & Turley, *supra* note 147, at 470–71. As Millennial consumers get older, many become more objectively motivated consumers in that they consume to seek tangible benefits from the items they purchase rather than social acceptance. See *id.*

¹⁶⁵ See YARROW & O’DONNELL, *supra* note 23, at 52; see also HUNTLEY, *supra* note 23, at 149–51 (discussing the relationship between identity and consumption).

¹⁶⁶ See HUNTLEY, *supra* note 23, at 146–48; YARROW & O’DONNELL, *supra* note 23, at 69–70; see also SALLIE MAE STUDY, *supra* note 3, at 3 (“Many college students seem to use credit cards to live beyond their means”); Carrie La Ferle et al., *An Overview of Teenagers and Television Advertising in the United States*, 63 INT’L COMM. GAZETTE 7, 20 (2001) (discussing “the role of advertising in convincing teens of the importance of consumer goods as a means to happiness” thereby creating a “consumption at any cost” mentality); *Spending Habits: Raised in Consumerism, Generation Y is an Appealing Market for Financial Institutions*, TMCNET.COM (Oct. 29, 2006), <http://www.tmcnet.com/usubmit/2006/10/29/2024247.htm> (noting that Millennials’ “culture is so focused on spending, spending, spending,” and that “often cashstrapped [Millennials] become victims of their own spending” (quoting Sharla Reinhart of New Mexico Educators Federal Credit Union)).

¹⁶⁷ See *supra* note 79 and accompanying text.

(income and other resources dictate level of consumption)”¹⁶⁸ and succumb to “peer consumption pressures,”¹⁶⁹ the use of credit and debt can become difficult to resist.

Millennials’ spending power has likely facilitated their consumption behaviors. As “the first genuine consumer generation,”¹⁷⁰ college-aged Millennials spend in excess of \$200 billion per year and are expected to spend approximately \$10 trillion in their lifetime.¹⁷¹ As teens, they spend more than five times the amount of money that their parents spent when they were the same age.¹⁷²

As the lines between Millennials’ wants and needs and luxuries and necessities blur,¹⁷³ more seem willing to use credit cards and debt to finance their spending and consumption.¹⁷⁴ As observed by authors Kit Yarrow and Jayne O’Donnell, “Credit cards create a detachment from money that often makes spending precious funds seem less relevant than the gratification of buying something tangible. That, coupled with the speedy, often impulsive nature of this

¹⁶⁸ MANNING, *supra* note 27, at 170.

¹⁶⁹ *Id.* at 177.

¹⁷⁰ HUNTLEY, *supra* note 23, at 144; *see also* HOWE & STRAUSS, *supra* note 22, at 280 (noting that Millennial children become part of a “consumer culture . . . almost from the moment of birth”); La Ferle, *supra* note 166, at 8 (describing Millennials as “consumers since birth”); Noble et al., *supra* note 23, at 617 (asserting that Millennials have been “reared in a consumption-driven society”).

¹⁷¹ *See* YARROW & O’DONNELL, *supra* note 23, at xvii (citation omitted); *see also* HOWE & STRAUSS, *supra* note 22, at 265–66, 269; Martin & Turley, *supra* note 147, at 464–66; Noble et al., *supra* note 23, at 617.

¹⁷² *See* YARROW & O’DONNELL, *supra* note 23, at 22; *see also* Noble et al., *supra* note 23, at 617 (asserting that Millennial teens have “more money at their disposal than any teen group in history”).

¹⁷³ *See* HUNTLEY, *supra* note 23, at 146, 148–49 (“[T]eens and young adults now ‘need’ luxury products . . . rather than simply want them.”); YARROW & O’DONNELL, *supra* note 23, at 69 (noting a high school teacher’s observations that his seventeen and eighteen-year-old students “confuse wants and needs”); Stephen Simoni, ‘Generation Credit’ Consumers, THEAGE.COM.AU (Nov. 6, 2004), <http://www.theage.com.au/news/Business/Generation-credit-consumers/2004/11/05/1099547381760.html?oneclick=true> (observing that some Millennials’ indebtedness “begins with peer pressure to buy something, transforming ‘wants’ into ‘needs’ that, in turn, establishes a growing appetite for spending, satisfied only by more credit”).

¹⁷⁴ *See* HUNTLEY, *supra* note 23, at 146 (discussing Millennials’ comfortableness with credit card debt); NAZARETH, *supra* note 23, at 110 (reporting that in 2004, approximately 30% of eighteen to twenty-four-year-olds’ income was spent on credit payments); *see also* DÉMOS, GENERATION DEBT: STUDENT LOANS, CREDIT CARDS, AND THEIR CONSEQUENCES 3 (2007), available at http://www.demos.org/pubs/yaes_web_debt.pdf (“Young adults between the ages of 18 and 24 have 11 percent higher credit card debt than those who were that age in 1989.”); YARROW & O’DONNELL, *supra* note 23, at 67, 71 (discussing Millennials’ reliance on credit and debt).

generation, can cause problems.”¹⁷⁵ Such problems include the incurrence of debt that they cannot afford to repay, and detrimental financial behaviors, such as exceeding their credit limit and paying bills late.¹⁷⁶ These problems can result in negative academic, personal, and financial consequences.¹⁷⁷ Considering the potential credit and debt implications that are associated with college-aged consumers’ traits and their coming of age in the Millennial generation, Part IV examines whether the CARD Act’s young consumer provisions are adequately tailored to effectively address these problems and consequences.

IV. THE CARD ACT MISSES THE MARK

In examining legislative efforts to address issues related to young consumer credit card indebtedness, it is important to acknowledge that several researchers and commentators have concluded that most students manage their debt well.¹⁷⁸ However, a significant number of college-aged cardholders *are* experiencing

¹⁷⁵ YARROW & O’DONNELL, *supra* note 23, at 72.

¹⁷⁶ See CREDIT CARD TRAP SURVEY, *supra* note 7, at 6 (reporting that 25% of student cardholders reported that they had paid at least one late fee and 15% reported that they had paid at least one over-the-limit fee); SALLIE MAE STUDY, *supra* note 3, at 3 (reporting that only 17% of student cardholders reported paying all of their balances in full each month; 82% carried balances).

¹⁷⁷ See *supra* note 131 and accompanying text.

¹⁷⁸ See, e.g., *Problem Credit Card Practices Affecting Students*, *supra* note 10, at 15 (statement of Kenneth J. Clayton, Managing Director & General Counsel, American Bankers Association Card Policy Counsel) (citing to a 2008 Student Monitor survey that found that “65 percent of student card users pay their balances back in full, monthly,” while “for the 35 percent who carry balances, those balances average out at a mere \$452”); John M. Barron & Michael E. Staten, *Usage of Credit Cards Received through College Student-Marketing Programs*, 34 J. STUDENT FIN. AID 7, 25 (2004) (concluding that their research did not find that student cardholders “are misusing cards so frequently as to warrant singling them out as a group for special protections from marketing solicitations”); Lyons, *supra* note 7, at 56–57 (predicting that “growing concerns over rising credit card debt levels of college students are likely to be unwarranted”); Norvilitis & Santa Maria, *supra* note 35, at 357 (“Studies indicate that most students manage credit wisely.”); Robb & Sharpe, *supra* note 35, at 25 (discussing research findings suggesting that student cardholders use credit cards responsibly and do not amass excessive amounts of debt); Michael McNamara, *Conventional Wisdom on Student Debt Inaccurate*, AM. BANKER, Jan. 27, 2003, at 5 (reporting findings from a student credit card study and concluding “that the overwhelming majority of college students are responsible users of credit cards”). *But see* Johnson, *supra* note 9, at 222 n.135 (discussing and critiquing the credit card industry’s research related to student’s debt management); Robert D. Manning & Ray Kirshak, *Credit Cards on Campus: Academic Inquiry, Objective Empiricism, or Advocacy Research?*, 35 J. STUDENT FIN. AID 39 (2005) (critiquing Staten & Barron’s conclusions and the objectivity of their research).

detrimental consequences due to their accumulation of credit card debt,¹⁷⁹ which was of great concern to many lawmakers.¹⁸⁰ Therefore, Congress felt it was necessary to include young consumer protections in the recently enacted CARD Act.¹⁸¹ Unfortunately, due to lawmakers' failure to fully consider the traits and experiences that may place young consumers at risk for developing problems with debt, it is unlikely that these provisions will provide meaningful protection for the majority of college-aged consumers.

A. A Look Back: Lawmakers' Concerns and Solutions

A review of the Act's legislative history indicates that lawmakers had two primary concerns regarding young consumers' escalating credit card indebtedness. The first related to card companies' solicitation and marketing efforts targeting college-aged consumers.¹⁸² Lawmakers were particularly troubled by issuers' practice of sending young consumers unsolicited preapproved credit card offers.¹⁸³ As noted by Senator Robert Menendez:

¹⁷⁹ See Lyons, *supra* note 7, at 57 (acknowledging that some students are financially at risk due to their incurrence of excessive amounts of debt); Norvilitis, *supra* note 19, at 1407 (noting that college students' credit card debt is an issue "that requires research and intervention" even though not all students have problems with credit card indebtedness); Norvilitis & Santa Maria, *supra* note 35, at 357 (discussing the detrimental effects credit card debt has had on a significant portion of student cardholders); see also Reasie A. Henry et al., *Money Management Practices of College Students*, 35 COLLEGE STUDENT J. 244 (2001) (asserting that "[m]any college students are living on the edge of financial crisis," due, in part, to their accumulation of credit card debt).

¹⁸⁰ See 155 CONG. REC. S5314, S5316 (daily ed. May 11, 2009) (statement of Sen. Christopher Dodd) (supporting the inclusion of young consumer provisions based, in part, on the detrimental impact credit card debt has had on some students); see also *supra* note 34 and accompanying text.

¹⁸¹ See Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009, Pub. L. No. 111-24, § 301-05, 123 Stat. 1734, 1747-51 (to be codified in scattered sections of 15 U.S.C.).

¹⁸² See 155 CONG. REC. S5493 (daily ed. May 14, 2009) (statement of Sen. Dianne Feinstein) (discussing concerns regarding card companies' on-campus solicitation practices); 155 CONG. REC. S5474 (daily ed. May 14, 2009) (statement of Sen. Sherrod Brown) (questioning the marketing and solicitation practices of card companies that market to college students); 155 CONG. REC. S5468 (daily ed. May 14, 2009) (statement of Sen. Byron Dorgan) (discussing card companies' marketing to younger markets); 155 CONG. REC. H5009 (daily ed. Apr. 30, 2009) (statement of Rep. Sheila Jackson-Lee) (stating that card companies "don't have any mercy when they go after our children on college campuses").

¹⁸³ See 155 CONG. REC. S5411 (daily ed. May 13, 2009) (statement of Sen. Christopher Dodd); 155 CONG. REC. S5409-10 (daily ed. May 13, 2009) (statement of Sen.

I am convinced, having seen my own children, when they were in college and studying but not working, get an incredible number of preapproved credit cards, I could stack them this high, or my State director's 2-year-old who got a preapproved credit card, if you have a Social Security number and a pulse that, in fact, you can get a credit card.¹⁸⁴

In addition, Congress felt that card companies were routinely engaged in other troubling solicitation practices, such as on-campus "tabling" during which they distributed "free" items, such as shirts, hats, and trinkets, to entice young consumers to apply for credit cards.¹⁸⁵ As noted by Senator Dianne Feinstein, "Too often, students sign up for credit cards to receive a free gift, and then have difficulty canceling the card, or may face hidden fees and charges."¹⁸⁶

Lawmakers' second concern related to issuers' common practice of extending credit to college-aged consumers without ensuring that they possess the financial resources with which to repay their obligations.¹⁸⁷ Lawmakers observed that card companies often issue cards to young, student consumers who are unemployed and have no income with which to pay their bills.¹⁸⁸ Issuers also increase students' credit limits seemingly without consideration of their ability to repay higher amounts of debt. As observed by Representative Louise Slaughter, "If credit card companies applied the same scrutiny to college students as they do to adults when

Robert Menendez); 155 CONG. REC. H5008 (daily ed. Apr. 30, 2009) (statement of Rep. Jim Moran).

¹⁸⁴ 155 CONG. REC. S5410 (statement of Sen. Robert Menendez); *see also* 155 CONG. REC. S5411 (statement of Sen. Christopher Dodd) (noting that he shares Senator Menendez's "concerns about young people and the proliferation of credit cards arriving at their homes unsolicited, and in some cases being preapproved").

¹⁸⁵ *See* 155 CONG. REC. S5493 (statement of Sen. Dianne Feinstein) ("Credit card companies lure cash-strapped students with all kinds of offers. Free food. T-shirts—the most-common inducement. Frisbees. Candy. Even iPods. All for filling out a credit card application.").

¹⁸⁶ *Id.*

¹⁸⁷ *See* 155 CONG. REC. S5316 (daily ed. May 11, 2009) (statement of Sen. 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."); 155 CONG. REC. S5409 (statement of Sen. Robert Menendez) ("Credit card companies are pushing cards on college students who can't afford them and teenagers are winding up with a lifetime of debt."); *id.* at S5410 (expressing his support of provisions that require young consumers to "prove that they . . . can actually make the payments on that debt before they get that card").

¹⁸⁸ *See* 155 CONG. REC. S5469 (daily ed. May 14, 2009) (statement of Sen. Byron Dorgan); 155 CONG. REC. H5009 (daily ed. Apr. 30, 2009) (statement of Rep. Sheila Jackson-Lee).

approving them for credit cards, college students would not be able to maintain the balances which they are incapable of paying.”¹⁸⁹

Related to young consumers’ inability to repay their debt was lawmakers’ additional worry that, in many cases, young consumers’ parents are ultimately bearing the cost of their children’s indebtedness.¹⁹⁰ To address this concern as well as those previously discussed, Congress enacted young consumer provisions that are intended to protect college-aged consumers and those, such as parents, who cosign applications on their behalf.

To address their first concern regarding card companies’ marketing practices, lawmakers included two provisions in the CARD Act. The first seeks to protect consumers under the age of twenty-one by restricting their receipt of prescreened credit card offers. The Act amends the Fair Credit Reporting Act (FCRA)¹⁹¹ to make it unlawful for a consumer reporting agency to provide card companies with information related to young consumers without the consumers’ prior consent.¹⁹² The second provision restricts card companies’ solicitation practices on or near college campuses by prohibiting issuers from offering “tangible items” to induce students to apply for credit cards.¹⁹³ The restriction also applies to solicitations at college-sponsored events.¹⁹⁴

In an attempt to prevent card companies from extending credit to young consumers who do not have financial means by which to repay the debt, the CARD Act requires college-aged consumers to meet certain eligibility requirements before obtaining a card. Consumers under the age of twenty-one are not permitted to obtain a credit card unless 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.¹⁹⁵ The CARD Act also includes a general provision requiring card companies to consider

¹⁸⁹ 155 CONG. REC. H5020 (daily ed. Apr. 30, 2009) (statement of Rep. Louise Slaughter).

¹⁹⁰ See 155 CONG. REC. S5316 (statement of Sen. Christopher Dodd); see also 155 CONG. REC. S5411 (daily ed. May 13, 2009) (statement of Sen. Christopher Dodd) (referring to the young consumer provisions as protections for college-aged consumers and “their families”); 155 CONG. REC. H5020 (statement of Rep. Louise Slaughter) (suggesting that most students have parents that assist them in paying off their credit card debt).

¹⁹¹ Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 (2006).

¹⁹² Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009, Pub. L. No. 111-24, § 302, 123 Stat. 1734, 1748 (to be codified in scattered sections of 15 U.S.C.).

¹⁹³ *Id.* § 304.

¹⁹⁴ *Id.* Congress also expressed its “sense” that colleges and universities should consider adopting policies monitoring and limiting companies’ on campus marketing practices. *Id.*

¹⁹⁵ *Id.* § 301.

all applicants', including young consumers', ability to pay before extending them credit.¹⁹⁶

Some lawmakers apparently intended that in order to obtain a card, "the young person has to demonstrate the ability to pay their debts. For the most part it means have a job, have a source of income to pay their debts."¹⁹⁷ However, as evidenced by the Federal Reserve Board's (Board) regulations interpreting the Act's ability to pay and young consumer eligibility requirements, the Board did not share or codify this intention.¹⁹⁸

For those young consumers who obtain a card with the assistance of a cosigner, both they and the cosigner are afforded an additional protection under the Act. Card companies are not permitted to increase their credit limit without obtaining the cosigner's written approval for the increase and agreement to be jointly liable for any ensuing debt.¹⁹⁹ Unfortunately, this beneficial protection, which helps to reduce the amount of debt young consumers will incur, is not provided to all college-aged consumers. This oversight is one of many that will contribute to the likely ineffectiveness of the Act.

B. Hope Meets Reality: The Need for Tailored Solutions

Despite lawmakers' desire to protect young consumers from the detrimental consequences of credit card debt, there are several reasons why the abovementioned efforts are not likely to significantly impact young consumers' credit card indebtedness.²⁰⁰ The following analysis centers on those reasons related to lawmakers' failure to fully consider young consumers' traits and experiences that may negatively affect their thoughts and behaviors regarding credit card use

¹⁹⁶ *Id.* § 109.

¹⁹⁷ 155 CONG. REC. S5470 (daily ed. May 14, 2009) (statement of Sen. Thomas Carper); *see also* 155 CONG. REC. S5493 (daily ed. May 14, 2009) (statement of Sen. Dianne Feinstein) ("Under this bill, issuers are required to obtain a cosigner or income verification for anyone under age 21 that applies for a credit card."); 155 CONG. REC. H5019 (daily ed. Apr. 30, 2009) (statement of Rep. Louise Slaughter) (proposing an income verification amendment to the 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").

¹⁹⁸ *See* Truth in Lending Unfair or Deceptive Practices, 75 Fed. Reg. 7658, 7660, 7658, 7722, 7658, 7818, 7658, 7900 (Feb. 22, 2010) (to be codified in 12 C.F.R. pt. 226) (interpreting the Act's ability to pay and young consumer eligibility requirements and declining to include stricter requirements for college-aged consumers).

¹⁹⁹ CARD Act § 303.

²⁰⁰ For a general critique of the CARD Act's young consumer provisions, *see* Nelson, *supra* note 89, at 26–32; Regina L. Hinson, Note, *Credit Card Reform Goes to College*, 14 N.C. BANKING INST. 287 (2010).

and debt. Consideration of such potentially risk-producing factors could have facilitated lawmakers' crafting of additional protections that are tailored to provide more meaningful protection for young consumers.

In enacting the CARD Act, lawmakers primarily employed a preissuance approach to young consumer protection. By imposing eligibility requirements, restricting prescreened credit offers, and prohibiting certain solicitation practices,²⁰¹ they attempted to restrict college-aged consumers' access to cards. Although their goals were to curb marketing directed towards college-aged consumers and to prevent young consumers who do not have financial means by which to repay their debt from obtaining a card, it is doubtful that these provisions will have a significant impact in achieving these goals.²⁰²

Take, for instance, the Act's restrictions on college-aged consumers' receipt of prescreened credit card offers. Lawmakers hoped that "limiting prescreened offers to young consumers" would protect them "from taking on more debt than they can handle."²⁰³ While it is true that 38% of student cardholders currently report obtaining their first card through direct mail solicitations,²⁰⁴ lawmakers failed to account for the growing percentage of young consumers who are obtaining their first card online (16%) and through email solicitations (3%).²⁰⁵ Both of these figures represent an increase since 2004 when 11% and 1% of students reported obtaining their first card online and through email solicitations, respectively.²⁰⁶ Considering that, as previously discussed, today's young consumers have come of age during a time that has been dominated by technological advances such as the Internet and e-mail,²⁰⁷ it is not surprising that card companies are successfully using these mediums to solicit new cardholders.

Presumably, the CARD Act seeks to protect young consumers by prohibiting companies from sending preapproved offers via any method of communication, including e-mail. However, the long term effectiveness of this provision in decreasing the number of young cardholders is doubtful, considering that many young consumers acquire their first card through a variety of sources, such as referrals from parents (19%), in-store retail solicitations (11%), and referrals from friends (7%).²⁰⁸ In addition, the Act does not appear to prohibit card companies

²⁰¹ See CARD Act §§ 301–302, 304.

²⁰² See Michelle Singletary, *New Law Hasn't Stopped Young Adults from Being Assimilated into Credit Card Masses*, WASH. POST, Jan. 13, 2011, at A18 (discussing Professor Jim Hawkins' preliminary research findings regarding the ineffectiveness of the Act's marketing restrictions); see also Nelson, *supra* note 89, at 32; Hinson, *supra* note 200.

²⁰³ 155 CONG. REC. S5412 (daily ed. May 13, 2009) (statement of Sen. Jack Reed).

²⁰⁴ SALLIE MAE STUDY, *supra* note 3, at 7.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ See *supra* Part III.C.

²⁰⁸ SALLIE MAE STUDY, *supra* note 3, at 7.

from mailing solicitations to college-aged consumers if the issuer obtains the consumers' information from an entity other than a consumer reporting agency, as defined in the FCRA.²⁰⁹ Therefore, despite lawmakers' efforts, many young consumers will continue to receive and respond to credit card offers.²¹⁰

The likely ineffectiveness of Congress's efforts to protect college-aged consumers may also be due to lawmakers' failure to consider how behavioral biases affect young consumers' assessment of how much debt they *think* they can actually handle.²¹¹ Even without prescreened offers, some college-aged consumers may still be inclined to apply for and use credit cards if they underestimate their future borrowing and overestimate their ability to repay debt.²¹²

Young consumers' continued card use may also be attributable to their favorable attitudes toward credit and debt—attitudes that may have been shaped in part by their coming of age during a time in which credit cards have been readily available to them.²¹³ For more than twenty years, card companies have routinely customized or waived underwriting standards for young consumers, especially students, in attempts to increase the number of cardholders.²¹⁴ Considering the likelihood that young consumers will have little trouble meeting the CARD Act's eligibility requirements as interpreted by the Federal Reserve Board,²¹⁵ the door remains open for college-aged consumers to continue amassing significant amounts of debt. In light of this reality, lawmakers could have required young

²⁰⁹ See Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009, Pub. L. No. 111-24, § 302, 123 Stat. 1734, 1748 (to be codified in scattered sections of 15 U.S.C.); Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681b(c)(1) (2006); see also *id.* § 1681a(f) (defining “consumer reporting agency”).

²¹⁰ See Connie Prater, *CARD Act Didn't Stop Flow of Credit Card Offers Mailed to Young Adults*, CREDITCARDS.COM, <http://www.creditcards.com/credit-card-news/credit-card-mail-offers-teens-1279.php> (last updated July 29, 2010) (discussing card companies' direct mail solicitation practices to young consumers following the enactment of the CARD Act).

²¹¹ See *supra* Part II.B.

²¹² See *supra* Part II.B.

²¹³ See *supra* note 81 and accompanying text.

²¹⁴ See GAO REPORT, *supra* note 48, at 34 (reporting that, for one issuer, where students attend college is more important to approving an application than whether or not they are employed); Hinson, *supra* note 200, at 290 (“Student applicants on college campuses are generally not required to meet income standards and background checks that would otherwise be required.”); 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 issuers' tendency to “waive the normal underwriting criteria for students” in attempts to establish brand loyalty by being one of the first cards that students obtain (internal quotation marks omitted)).

²¹⁵ See Nelson, *supra* note 89, at 26–32; see also Singletary, *supra* note 202 (discussing some students' reported use of student loan proceeds to qualify for credit cards).

consumers to meet stricter eligibility requirements, such as an employment prerequisite, before receiving a card.²¹⁶ Such provisions could be more effective than those currently included in the Act in decreasing the number of young cardholders.

Unfortunately, in adopting a preissuance consumer protection approach that narrowly focuses on limiting the number of young consumers who can obtain cards, lawmakers failed to provide protections for young consumers postissuance once they obtain and begin to use their cards. Because lawmakers neglected to fully consider traits and experiences that may place young consumers at risk for incurring debt problems, they failed to afford college-aged consumers more comprehensive protections, which are needed if they hope to protect young consumers from the detrimental consequences that can result from credit card indebtedness.

For instance, had lawmakers considered that some young consumers' engage in impulsive spending in order to be accepted by peer groups²¹⁷ or because of their unwillingness to delay gratification,²¹⁸ they could have imposed reasonably low credit limits on their cards, such as \$500 or \$1000. In addition, lawmakers could have limited the number of cards issued to young consumers based on the total amount of credit extended under the cards. Such provisions would obviously lessen the availability of credit to young consumers and, arguably, prevent them from experiencing the benefits of credit.²¹⁹ However, if lawmakers' goal was to curtail the indebtedness levels of those young consumers who do not possess the financial means by which to repay their debt, such limitations likely would have been more effective in achieving this goal than those provisions currently included in the Act.²²⁰

²¹⁶ For a more detailed discussion of this and other preissuance proposals, including the potential adverse consequences associated with them, see Nelson, *supra* note 89, at 34–39.

²¹⁷ See *supra* notes 76–79 and accompanying text.

²¹⁸ See *supra* notes 24, 139–141 and accompanying text.

²¹⁹ See *Problem Credit Card Practices Affecting Students*, *supra* note 10, at 6 (statement of Rep. Jeb Hensarling) (“I think we must remember that every restriction, every limit, every regulation has a high probability of making credit less accessible, less affordable, and more costly, ultimately helping rob people of their educational opportunities.”); *id.* at 14–15 (statement of Kenneth J. Clayton, Managing Director & General Counsel, American Bankers Association Card Policy Counsel) (urging lawmakers not to restrict young consumers' access to credit cards because they “provide invaluable benefits to the adult student population”). Such benefits 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 a credit history. See GAO REPORT, *supra* note 48, at 8–9; Hinson, *supra* note 200, at 289.

²²⁰ Although an earlier version of the legislation included stricter underwriting requirements for full-time college students under the age of twenty-one, they were not

Lawmakers could have also prohibited card companies from increasing young consumers' credit limits without receiving a request or written approval from the consumer.²²¹ Considering that some young consumers may be overly and unrealistically optimistic concerning their ability to resist the urge to use the additional extension of credit, as well as to repay the additional debt they incur,²²² such limitations on credit limit increases could prove to be very beneficial in reducing young consumers' debt levels.²²³

In drafting the Act, lawmakers did consider the contention that lack of financial knowledge may impede college-aged consumers' ability to fully consider the responsibilities and consequences associated with card usage and debt.²²⁴ The testimony of several congressional hearing witnesses noted the importance of financial literacy for helping to protect young consumers from the negative consequences that can occur from credit card indebtedness.²²⁵ While research has not conclusively shown that financial literacy will positively impact young consumers' credit card decisions and behaviors, some financially at-risk college-aged consumers may benefit from greater financial knowledge.²²⁶ Although an earlier version of the Act included the completion of a certified financial literacy course as one of three possible ways for young consumers to qualify for a card,²²⁷ lawmakers did not include financial literacy eligibility requirements in the Act.²²⁸

included in the final bill. See 155 CONG. REC. H5019–20 (daily ed. Apr. 30, 2009) (statement of Rep. Louise Slaughter); Hinson, *supra* note 200, at 303.

²²¹ For a more detailed discussion of this proposal, see Nelson, *supra* note 89, at 40–43.

²²² See *supra* Part II.B. and notes 143–145 and accompanying text.

²²³ Lawmakers also could have included other postissuance protections such as caps on young consumers' interest rates and a decrease in the amount of time that negative credit card history is reported on young consumers' credit reports. For a more detailed discussion of these proposals, see Nelson, *supra* note 89, at 44–48.

²²⁴ See *Problem Credit Card Practices Affecting Students*, *supra* note 10, at 3–4 (statement of Rep. Judy Biggert); *id.* at 4–5 (statement of Rep. Emanuel Cleaver); *id.* at 5–6 (statement of Rep. Jeb Hensarling); *id.* at 6–7 (statement of Rep. David Scott); *id.* at 7–8 (statement of Rep. Michael Castle); see also *supra* Part II.A and notes 48–49 and accompanying text.

²²⁵ See *Problem Credit Card Practices Affecting Students*, *supra* note 10, at 15 (statement of Kenneth J. Clayton, Managing Director & General Counsel, American Bankers Association Card Policy Counsel); *id.* at 66 (statement of Benjamin Lawsky, Deputy Counselor and Special Assistant to New York State Att'y Gen.); *id.* at 10–11, 79 (statement of Christine Lindstrom, Director, Higher Education Project, U.S. PIRG); *id.* at 17–19, 81–85 (statement of Brent A. Neiser, Director of Strategic Programs and Alliances, National Endowment for Financial Education).

²²⁶ See *supra* notes 50–57 and accompanying text.

²²⁷ See S. 414, 111th Cong. (2009).

²²⁸ Lawmakers' decision not to include financial literacy eligibility requirements in the CARD Act could have been due, in part, to the difficulties of determining “who is

They did, however, commission a report on federal financial and economic literacy education programs and a strategic plan “to improve, expand, and support financial and economic literacy education.”²²⁹ Had lawmakers considered and accounted for other factors, in addition to lack of financial knowledge, that may contribute to some young consumers’ indebtedness, the CARD Act could have afforded more effective protections for young consumers.

V. CONCLUSION

While many college-aged consumers may not be experiencing the detrimental consequences that can be associated with credit card debt, a significant number of them are. Several psychological and social factors may influence the thoughts and behaviors of those young consumers who find themselves at risk of experiencing indebtedness problems. Lawmakers did not fully consider and account for the possible influence of such factors when crafting the Act’s young consumer provisions. As the current CARD Act is not likely to significantly decrease the number of financially at risk college-aged cardholders or the amount of debt they incur, lawmakers should endeavor to provide greater and more beneficial protections for young consumers.

going to do it, and who is going to be responsible for it.” *Problem Credit Card Practices Affecting Students*, *supra* note 10, at 23 (statement of Brett Thurman, President, Undergraduate Student Government, University of Illinois at Chicago).

²²⁹ Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009, Pub. L. No. 111-24, § 510(b)(2), 123 Stat. 1734, 1763 (to be codified in scattered sections of 15 U.S.C.); *see* ANGELA A. HUNG ET AL., FEDERAL FINANCIAL AND ECONOMIC LITERACY EDUCATION PROGRAMS (2009), *available at* http://www.rand.org/pubs/technical_reports/2010/RAND_TR857.pdf.