From the Schoolhouse to the Poorhouse: The Credit CARD Act's Failure to Adequately Protect Gen Y Consumers

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PROTECT GEN Y CONSUMERS

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ABSTRACT

Whether through personal experiences or through the experiences of our friends and family, most, if not all, of us are all too familiar with the credit card industry’s unrelenting attempts to saddle young, naïve college students with debt that they cannot afford to repay. Students thoughtlessly apply for and use credit cards without considering the negative effects credit card debt can have on their academic, personal, and financial wellbeing. In May 2009, Congress attempted to address the pervasive problem of young consumer indebtedness by passing the Credit Card Accountability Responsibility and Disclosure Act of 2009. While this Article recognizes and applauds Congress’s attempt to protect college-aged consumers, it questions whether the current legislation, which narrowly focuses on restricting young consumers’ access to credit cards, is the most effective way to provide this protection.

Drawing upon the psychological and sociological traits that characterize this generation of student consumers and the long-term negative consequences that befall many of them as a result of their credit card usage, this Article asserts that the current legislation misses an important opportunity to provide greater and more effective protection for this vulnerable class of consumers. By narrowly focusing on the availability of credit cards to college-aged consumers, the Credit CARD Act fails to include provisions that provide protection for young consumers once they obtain and begin to use credit cards. Therefore, this Article argues that more comprehensive measures are needed to help protect the financial futures of young, college-aged consumers.

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INTRODUCTION

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

In recent years, credit card usage by college students has hit an all time high.\(^5\) On college campuses throughout the country young, financially naïve and impressionable students are applying for and receiving credit cards at

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

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

4 See infra Part II.B. for a discussion of these and other negative consequences associated with student credit card debt.

astonishing rates. 6 Colleges and universities are partnering with credit card companies to receive financial compensation for allowing companies on campus to solicit and market to this vulnerable group of consumers. 7 While it may appear that the majority of student cardholders are managing their debt in a responsible manner, 8 a more thorough examination of the realities that characterize the management or, rather, mismanagement of student credit card debt reveals the gravity of this ever-expanding crisis. 9

Students’ increased credit card usage is symptomatic of our society’s escalating dependence on credit cards. 10 In 2006, 173 million cardholders amassed $886 billion in outstanding credit card debt. 11 These numbers represent a 14 million person increase in the number of cardholders since 2000 and a $206 billion increase in the amount of outstanding debt since that time. 12 Both figures are projected to increase in 2010. 13

The credit card industry has taken advantage of this increased usage by implementing policies and procedures that, while profitable to the companies, have proven to be costly and detrimental to consumers. From the

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6 Id. (reporting that from 1998 to 2008, the percentage of undergraduate college students with credit cards increased from 67 percent to 84 percent).


8 A 1998 survey concluded that “a vast majority of students are managing their debt well” based on indicators such as paying off their balances every month, paying more than the minimum amount due, and carrying relatively low balances. THE EDUCATION RESOURCES INSTITUTE, INC. (TERI), CREDIT RISK OR CREDIT WORTHY? COLLEGE STUDENTS AND CREDIT CARDS 11 (1998), http://www.ihep.org/assets/files/publications/A-F/CreditRiskWorthy.pdf [hereinafter TERI STUDY]. In 2008, “only 7 percent [of college students] admit[ted] to paying less than the minimum required some of the time when their credit card bill comes due.” SALLIE MAE STUDY, supra note 5, at 14.

9 For instance, “only 17 percent of college students say they regularly pay off all cards each month. . . . Thus, while they are making at least the required payments each month, more than three-quarters of college students are incurring finance charges by carrying over credit card debt month to month.” Id. See also infra Part II.A. for a discussion of college students’ mismanagement of credit card debt.

10 For a detailed discussion of “the ascendance of the consumer credit society,” see ROBERT D. MANNING, CREDIT CARD NATION 2, 12–13 (2000) [hereinafter MANNING, CREDIT CARD NATION].


12 Id.

13 In 2010, the number of cardholders is projected to be 181 million, and the total amount of outstanding debt is projected to be over a trillion dollars. Id.
imposition of exorbitant late and over-the-limit fees\textsuperscript{14} to the practice of universal default,\textsuperscript{15} the industry has made it very difficult, and in some cases impossible, for cash-strapped consumers to end the cycle of debt in which many find themselves. These and other unfair and deceptive practices prompted Congress to pass the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “Credit CARD Act” or the “Act”).\textsuperscript{16}

In passing the Credit CARD Act, Congress prohibited the practice of universal default\textsuperscript{17} and established consumer “opt in” procedures that must be followed before a creditor can assess over-the-limit fees for extensions of credit that exceed consumers’ credit limits.\textsuperscript{18} Congress’s enactment of these and other consumer friendly provisions of the Act should be and have been applauded.\textsuperscript{19}

\begin{thebibliography}{9}
\bibitem{14} Industry consultants estimate that in 2009 credit card issuers will have generated over $20 billion from late fees and over-limit penalties. See Andrew Martin, Credit Card Industry Aims to Profit From Sterling Payers, N.Y. TIMES, May 18, 2009, http://www.nytimes.com/2009/05/19/business/19credit.html. This amount represents an approximate $5 billion increase in the amount collected by credit card companies in 2004. See Seana Valentine Shiffrin, Are Credit Card Late Fees Unconstitutional?, 15 WM & MARY BILL RTS. J. 457, 460 n. 12 (2006); see also MANNING, CREDIT CARD NATION, supra note 10, at 94; Kathleen Day & Caroline E. Mayer, Credit Card Penalties, Fees Bury Debtors, WASH. POST, Mar. 6, 2005, at A01.
\bibitem{15} Universal default permits credit card companies to raise a cardholder’s interest rate if the cardholder defaults on any credit obligation, including those owed to creditors other than the credit card issuer. Usually without warning or prior notification, a credit card company can increase a cardholder’s interest rate if the cardholder is late paying his mortgage, another credit card bill, or even a utility bill. Events other than late payments, such as exceeding one’s credit limit on any card, having too much available credit, or obtaining a new mortgage or car loan, can also trigger universal default interest rate increases. See Ben Woolsey, Universal Default: What It Is, and How to Avoid It, CREDITCARDS.COM, May 1, 2006, http://www.creditcards.com/credit-card-news/universal-default-could-raise-your-interest-rates-1270.php.
\bibitem{17} Id. § 101(b).
\bibitem{18} Id. § 102(a). The Credit CARD Act also mandates that over-the-limit charges as well as other penalty charges, such as late payment fees, “be reasonable and proportional to [the] omission or violation” that precipitated the imposition of the fee. See id § 102(b).
\end{thebibliography}
take action against the credit card industry to end unfair practices and improve consumer disclosures,\textsuperscript{20} both of which the Credit CARD Act purports to do.\textsuperscript{21} Congress’s good deed, however, is not without criticism,\textsuperscript{22} especially as it concerns protection for college-aged “adults” drowning in credit card debt.\textsuperscript{23}


\textsuperscript{22} See Block, \textit{supra} note 19 (noting one consumer advocate’s view that “‘the Fed missed an opportunity to require a rollback of all the outrageous interest rate hikes consumers have been slammed with in recent years’”); Sandra Block, \textit{What You Need to Know About the New Credit Card Reforms}, USA TODAY, Feb. 26, 2010, http://www.usatoday.com/money/perfi/credit/2010-02-22-cardreforms22_ST_N.htm?csp=hf&loc=interstitialskip (detailing potentially harmful practices employed by the credit card industry that remain permissible under the Credit CARD Act); Furman & McAuliff, \textit{supra} note 19 (detailing consumer advocates‘ opinions that the final legislation was “watered down” and did not provide for beneficial consumer protections such as caps on interest rates); Kimberly Palmer, \textit{Credit Card Bill Already Affects Consumers}, U.S. NEWS & WORLD REP., July 28, 2009, http://money.usnews.com/money/blogs/alpha-consumer/2009/7/28/credit-card-bill-already-affects-consumers (discussing the Credit CARD Act’s negative short-term effect on consumers as evidenced by the credit card industry’s interest rate increases and balance transfer offer changes); Diana Ransom, \textit{Card Sharp Where the Credit CARD Act is Falling Short}, SMARTMONEY, June 1, 2010, http://www.smartmoney.com/personal-finance/debt/where-the-card-act-is-falling-short/ (reporting consumer advocates’ concerns that the Credit CARD Act did not adequately address consumer protection issues such as the lowering and closing of credit lines and accounts and payment allocation toward cardholders’ debt); \textit{Credit Card Reform Is Mixed Blessing}, WASH. TIMES, Feb. 22, 2010, http://www.washingtontimes.com/news/2010/feb/22/credit-card-reform-mixed-blessing/print/ (asserting that the Credit CARD Act is less effective than anticipated due to the card industry’s nine-month window within which to increase interest rates, create new fees and cut credit lines).

\textsuperscript{23} See Regina L. Hinson, \textit{Credit Card Reform Goes to College}, 14 N.C. BANKING INST. 287 (2010) (discussing the strengths and weaknesses of the Credit CARD Act as it relates to young consumers).
The Credit CARD Act primarily seeks to protect college-aged consumers by attempting to limit their accessibility to credit cards. By prohibiting consumers under the age of twenty-one from receiving pre-screened credit offers and by requiring them to satisfy certain prerequisites before obtaining a card, Congress hopes to prevent the negative consequences that many young cardholders have experienced due to their accumulation of credit card debt. This Article questions whether the Credit CARD Act’s narrow approach to young consumer protection will achieve this goal.

Drawing upon the psychological and sociological traits that characterize this generation of college-aged consumers and the long-term negative consequences that befall many of them as a result of their credit card usage, this Article asserts that the current legislation misses an important opportunity to provide greater and more effective protection for this vulnerable class of consumers. By narrowly focusing on the availability of credit cards to college-aged consumers, the Credit CARD Act fails to include provisions that provide protection for young consumers once they obtain and begin to use credit cards. Therefore, this Article argues that more comprehensive measures are needed to help protect the financial and personal futures of young consumers.

Part I of this Article details the psychological and sociological characteristics that typify current college-aged consumers. Due in large part to the way they have been raised by their parents, this particular cohort of consumers, commonly referred to as “Generation Y,” possess certain traits that lay the groundwork for their credit card indebtedness. Part II demonstrates how these traits have resulted in increased credit card usage by vulnerable, young consumers and the negative consequences that are often associated with such usage.

Part III of this Article critiques Congress’s recent efforts to address the pervasive problem of credit card debt among young consumers through the

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24 For purposes of this article, the term “college-aged consumers” refers to those consumers who are under the age of twenty-one.
26 Id. § 302.
27 Id. § 301.
28 While the Credit CARD Act does include a provision requiring cosigner approval for limit increases on cards for which he/she is jointly liable, which arguably protects young consumers from amassing high balances, this provision is not applicable to consumers under the age of twenty-one who obtain a card without a cosigner. See id. § 303. Subject to the Credit CARD Act’s rules regarding consideration of ability to repay, card issuers are free to increase their credit limits without their express approval, thereby paving the way for them to sink deeper into debt. For a proposal to rectify this oversight, see infra Part IV-A.
passing of the Credit CARD Act. Although the Act attempts to limit college-aged consumers’ access to credit cards, this Part argues that such attempts will likely prove to be futile due to the provisions included in the Act itself as well as the lenient regulations promulgated by the Federal Reserve Board—both of which pave the way for card companies to continue issuing cards to young consumers who are unable to repay the debt they incur.

In light of this probability, Part IV of this Article argues for more comprehensive consumer protection laws that are aimed at lessening the negative financial consequences that many young consumers suffer as a result of their credit card usage. Based upon the argument that college-aged consumers should be viewed as a “protected class” deserving of heightened protection, this Article specifically advocates for restrictions on card issuers’ ability to unilaterally raise young consumers’ credit limits and amendments to the Fair Credit Reporting Act regarding the length of time negative credit history can remain on young consumers’ credit reports.\(^29\) While these laws would not keep credit cards out of the hands of college-aged consumers, they would provide more broad and effective protection for their financial and personal futures.

I. GENERATION “Y” NOT?

Although often referred to by various names including Millennials,\(^30\) Echo Boomers,\(^31\) and the Boomerang Generation,\(^32\) the approximate 84

\(^{29}\) In most cases, adverse account information must be removed from a consumer’s credit report after seven years. See 15 U.S.C. §§ 1681c(a)(2)–(5) (2000).


\(^{31}\) See Rebecca Leung, The Echo Boomers, CBS NEWS.COM, Sept. 4, 2005, 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”).


According to the National Survey of Households and Families, Ten [sic] 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.
million individuals who make up Generation Y share common social and psychological characteristics that should be considered when developing consumer protection laws that are designed to help secure their financial futures. Against a backdrop of “coddled upbringing[s]” by “overindulgent parents,” instant access to just about everything, and increased rates of consumerism, this particular cohort of consumers has been socialized to embrace the “buy now, pay later” mentality—a mentality that has been successfully exploited by the credit card industry. Legislatures and policymakers should consider the realities associated with the formation and manifestation of this mentality as they attempt to craft more beneficial consumer protection laws for college-aged consumers.

A. The Parent Trap

Generally defined as those individuals born between 1977 and 1994, many of Generation Y’s social and psychological traits are thought to be

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34 The Generation Y characteristics discussed in this Article are those generally associated with individuals who make up this generation. While this Article does not mean to suggest that all members of Generation Y possess these traits, many researchers have identified several characteristics that are common to this generation. See Howe & Strauss, supra note 30, at 43–44 (identifying seven characteristics common to Millennials); Sue Shaw & David Fairhurst, Engaging a New Generation of Graduates. 50 Educ. + Training 366, 368 (2008) (acknowledging that “whilst there is not total agreement, there is broad consensus of what [Generation Y’s] characteristics are”).


37 See 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 “Because 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.”).


39 See Cui et al., supra note 33. Different sources state Generation Y’s birth year range to be anywhere from 1977 to 2003. See Yarrow & O’Donnell, supra note 33, at xi; Shaw & Fairhurst, supra note 34, at 367.
associated with the manner in which they have been reared by their parents.\textsuperscript{40} As children of the Baby Boomer generation, three words that aptly describe Generation Y are: “Wanted. Protected. Worthy.”\textsuperscript{41} More so than earlier generations, “Generation Y keeps close ties to mom and dad who... are now labeled ‘helicopter parents’ for their tendency to hover or be hyper-involved in the lives of their college-aged children.”\textsuperscript{42} From intervening in college admissions processes to raising challenges to their children’s poor grades,\textsuperscript{43} such over-involvement is thought to have produced a coddled and sheltered generation\textsuperscript{44} who, according to some researchers, is less equipped to make independent decisions\textsuperscript{45} and has a decreased sense of personal responsibility and accountability.\textsuperscript{46} Possessing these traits have proven to be detrimental for many college-aged members of Generation Y, particularly when one considers their attitudes regarding financial decisions and behaviors.

As noted by renowned researcher Robert Manning, parents and other older family members play crucial and influential roles in shaping young

\textsuperscript{40} See Rachael Rettner, ‘Helicopter’ Parents Have Neurotic Kids, MSNBC.COM, June 3, 2010, http://www.msnbc.msn.com/id/37493795 (detailing a recent study’s findings associating over-parenting with negative personality traits such as dependency and neuroticism); Shaw & Fairhurst, supra note 34, at 368–370 (noting that Generation Y’s 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).

\textsuperscript{41} HOWE & STRAUSS, supra note 30, 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 33, at 6 (describing Generation Y as “the most wanted children of all time”).

\textsuperscript{42} Peters, supra note 30, at 459; see also LINDA NAZARETH, THE LEISURE ECONOMY: HOW CHANGING DEMOGRAPHICS, ECONOMICS, AND GENERATIONAL ATTITUDES WILL RESHAPE OUR LIVES AND OUR INDUSTRIES 82–83 (2007); YARROW & O’DONNELL, supra note 33, at 6–7.

\textsuperscript{43} See Ginny Barnes, Guess Who’s Coming to Work: Generation Y. Are You Ready for Them?, 28 PUB. LIBR. Q. 58, 60 (2009); Rettner, supra note 40; Wolfe, supra note 32.

\textsuperscript{44} See Peters, supra note 30, at 460.

\textsuperscript{45} See id. at 459 (noting that Generation Y students are “accustomed to constant familial guidance and protection”); Barnes, supra note 43, at 60–61 (attributing Generation Y’s “weak problem-solving skills” and “disturbing lack of critical thinking skills” to their parents’ over-involvement in their decision-making); Kathryn Tyler, The Tethered Generation, 52 HR MAGAZINE 5, May 1, 2007, available at http://www.shrm.org/Publications/hrmagazine/EditorialContent/Pages/0507cover.aspx (discussing researchers’ findings that the close connectivity between Generation Y and their parents “can prohibit creative problem-solving and decision-making”); Call Them Gen Y or Millennials: They Deserve Our Attention, http://www.merrillassociates.com/topic/2005/05/call-them-gen-y-or-millennials-they-deserve-our-attention/ [hereinafter Call Them Gen Y or Millennials] (noting that “Young people today look to their parents for assistance with scheduling their lives and often report wanting their parents to be a part of their decision making process.”).

\textsuperscript{46} See Shaw & Fairhurst, supra note 34, at 368, 374 (discussing Generation Y’s increasing tendency to attribute negative outcomes to external forces rather than factors within their control); JEAN M. TWENGE, GENERATION ME WHY TODAY’S YOUNG AMERICANS ARE MORE CONFIDENT, ASSERTIVE, ENTITLED – AND MORE MISERABLE THAN EVER BEFORE 5 (2006) (noting Generation Y’s tendency to “blame other people for [their] problems”).
consumers’ financial attitudes, especially those related to debt and credit.\textsuperscript{47} While some parents of Generation Y consumers have actively instilled sound and beneficial financial values in their children,\textsuperscript{48} others have employed the overly-protective parent approach in their attempts to “cocoon[ ]”\textsuperscript{49} and shield their children from financial stresses and consequences.\textsuperscript{50} Examples of this approach range from not discussing any financial matters with their children\textsuperscript{51} to not requiring them to take personal responsibility for the charges they incur.

Consider, for example, the common practice of Generation Y’s parents paying for their college-aged children’s cell phone and credit card bills.\textsuperscript{52} 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 detrimental messages regarding consumer responsibility—namely, that young consumers do not have to be responsible for the consequences that result from their financial decisions and behaviors.\textsuperscript{53} Despite their good intentions of not wanting their children


\textsuperscript{48} See e.g., id. at 29 (discussing the positive impact parents’ emphases on saving and frugality had on their college-aged children); MANNING, CREDIT CARD NATION, supra note 10, at 170 (noting one father’s attempts to instill “midwestern values of frugality and debt avoidance” in his college-aged son).

\textsuperscript{49} HOWE & STRAUSS, supra note 30, at 36.

\textsuperscript{50} See MANNING, LIVING WITH DEBT, supra note 47, at 30–31.

\textsuperscript{51} See Emma Johnson, Why Generation Y is Broke, MSN MONEY, Apr. 22, 2008, http://articles.moneycentral.msn.com/Investing/HomeMortgageSavings/WhyGenerationYisBroke.aspx?page=all (discussing the fact that Generation Y is shielded from financial responsibility because parents do not talk about money with their children); Elaine S. Silver, Explaining Money’s Mysteries, BUSINESSWEEK, Sept. 25, 2000, at 3 (discussing how parents dread talking about money with their kids).

\textsuperscript{52} See Susan Hely, The Value of Teaching, MONEY, June 2008, at 34 (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); Pamela M. Prah, Teen Spending, CONG. Q. RESEARCHER, May 26, 2006, at 459 (noting that teenagers get money for cell phones, credit card payments, shopping, etc. by simply asking their parents for it).

\textsuperscript{53} See Todd Starr Palmer, Mary Beth Pinto & Diane H. Parente, College Students’ Credit Card Debt and the Role of Parental Involvement: Implications for Public Policy, 20 J. PUB. POL’Y & MARKETING 105, 109-111 (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, CREDIT CARD NATION, supra note 10, 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 43, at 60.
to experience financial worries or pressures, Generation Y’s parents who avoid teaching their children vital financial lessons “often fail to adequately prepare them for the economic realities of adulthood.” Consequently, many Millennial consumers fail to understand the importance of fiscal responsibility and lack the financial sophistication and education necessary to make the most beneficial financial decisions. Unfortunately, both of these deficiencies have contributed to Generation Y’s credit card indebtedness, which has wreaked havoc on the financial and personal futures of many young consumers.

Generation Y’s sense of financial responsibility has also been negatively affected by their parents’ tendency to overindulge them in terms of spending. As noted by researchers Neil Howe and William Strauss:

The fact is, everyone is spending more on kids—kids on themselves, parents on their own kids, and nonparents on their young friends and relatives. Many Americans worry that all this spending is spoiling today’s youth. But no one can deny that adults are trying to favor this new generation by steering money toward its wants and less

(assuming that, “Basically, the strong parent connection has been largely responsible for producing young adults who have been sheltered from consequences. . . .”)

MANNING, LIVING WITH DEBT, supra note 47, at 30; see also SALLIE MAE STUDY, supra note 5, at 17 (noting the positive impact that conversations between parents and their children can have on their children’s credit card spending choices).

See id. at 31 (noting the detrimental financial effects resulting from college students’ “cognitive denial of long-term consequences”); REBECCA HUNTLEY, THE WORLD ACCORDING TO Y: INSIDE THE NEW ADULT GENERATION 146 (2006) (describing Generation Y as “spenders rather than savers”); NAZARETH, supra note 42, at 111–12 (discussing the decline in savings by young adults as evidenced by a 10 percent decrease in the number of 25- to 34-year olds with some sort of savings instrument from 1985-2005); YARROW & O’DONNELL, supra note 33, at 72 (attributing young consumers’ problems with debt management to their tendency to use credit rather than saving to make short-term purchases).


See supra note 5 and accompanying text; see also infra Part II.A.

See infra Part II.B.

See YARROW & O’DONNELL, supra note 33, at 67–71 (discussing the negative consequences of parental overindulgence on Generation Y’s financial beliefs and behaviors); Barnes, supra note 43, at 59 (attributing parents’ ability to give “lots of things” to their millennial children to the positive economic times in which Generation Y has been raised).
toward their own—or, some might say, by identifying its wants with their own.\textsuperscript{60}

Many argue that this overindulgence, which is based, in part, on parents’ views of their Millennial children as special and worthy,\textsuperscript{61} has produced a generation of consumers with strong feelings of entitlement.\textsuperscript{62} As recognized by Dr. 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 . . .\textsuperscript{63}” When coupled with ready access to credit cards\textsuperscript{64} and, as discussed below, myriad opportunities for immediate online spending, it is not surprising that Generation Y consumers, acting upon these feelings of entitlement, have amassed record-high levels of credit card debt,\textsuperscript{65} and they will likely continue to do so unless additional legislation is passed to afford them greater protections than those presently included in the Credit CARD Act.

\textbf{B. The Fingertip Phenomenon}

Generation Y consists of a tech-savvy group of consumers\textsuperscript{66} who have come of age in and been greatly influenced by an era that has seen unprecedented developments in modern conveniences. Having “never

\textsuperscript{60} HOWE & STRAUSS, supra note 30, at 266; see also YARROW & O’DONNELL, supra note 33, at 66 (referring to the amount of Millennials’ allowances and the number of TVs in their rooms as evidence of their parents’ pampering).

\textsuperscript{61} See supra note 41 and accompanying text; see also HOWE & STRAUSS, supra note 30, at 13 (claiming that “Millennials have been regarded as special since birth and have been more obsessed-over at every age than [Generation] Xers”); TWENGE, supra note 46, at 102 (“This is where self-esteem crosses over into entitlement: the idea that we deserve more. And why shouldn’t we? We’ve been told all of our lives that we are special.”); YARROW & O’DONNELL, supra note 33, at 12:

In addition to being wanted and doted on by parents, they’ve [Generation Yers] have been told they were special by everyone from Mr. Rogers to their grade school tutors. Kate Perry, twenty-eight...remembers how her mother convinced her to wear a helmet when bicycling: “She told me that the government required it because my brain was so special it should be protected.”

\textsuperscript{62} See MANNING, LIVING WITH DEBT, supra note 47, at 30; YARROW & O’DONNELL, supra note 33, at 68–69; Barnes, supra note 43, at 59–60; Peters, supra note 30, at 460.

\textsuperscript{63} MANNING, LIVING WITH DEBT, supra note 47, at 31.

\textsuperscript{64} See Bakewell & Mitchell, supra note 38, at 98.

\textsuperscript{65} See supra note 5 and accompanying text; see also infra Part II.A.

\textsuperscript{66} See Shaw & Fairhurst, supra note 34, at 368 (describing Millennials as “at ease with the wired world”); The “Millennials” are Coming, May 23, 2008, http://www.cbsnews.com/stories/2007/11/08/60minutes/main3475200.shtml (describing Generation Y as “tech savvy, with every gadget imaginable almost becoming an extension of their bodies”).
experienced life without a microwave, computer, ATM card or television remote control,“67 these young consumers are accustomed to getting what they want when they want it without having to wait for it.68 As noted by researchers 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...69

According to some researchers, this culture of instantaneous gratification has led many Generation Y consumers to set unrealistic goals and expectations with regard to planning for their futures.70 Unfortunately, this has resulted in serious negative consequences for many young consumers as this “why wait?” mentality has permeated their financial attitudes and behaviors.71

Commonly viewed as a confident generation,72 Millennials are generally very optimistic about their financial futures, even when confronted with difficult economic times and realities.73 This confidence and optimism can

67 Tyler, supra note 45; see also YARROW & O’DONNELL, supra note 33, at 7–8.
68 See id. at 8; Jeff Feiertag & Zane L. Berge, Training Generation N: How Educators Should Approach the Net Generation, 50 EDUC. + TRAINING 457, 460 (2008); Nelson, supra note 30, at 5; Shaw & Fairhurst, supra note 34, at 373; Call Them Gen Y or Millennials, supra note 45.
69 Feiertag & Berge, supra note 68, at 460 (emphasis added); see also NAZARETH, supra note 42, at 82 (describing how technological advances such as cell phones and instant messaging have created an instant gratification generation who is reluctant to wait); YARROW & O’DONNELL, supra note 33, at 9 (describing Generation Y as needing immediate gratification).
70 See id. at 67, 70–71; MANNING, LIVING WITH DEBT, supra note 47, at 34; Tyler, supra note 45.
71 See MANNING, LIVING WITH DEBT, supra note 47, 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”); YARROW & O’DONNELL, supra note 33, 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.”).
73 For example, a 1996 study reported that while 55 percent of 18 to 24-year-olds were pessimistic about the country’s economic future in the next 10 years, 89 percent were optimistic
certainly lead to positive attributes such as Generation Y’s fortitude and sense of empowerment. However, they can also result in harmful behaviors 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.

Generation Y’s growing reliance on credit and debt is particularly troublesome considering the exponential number of opportunities it now has to spend and consume. Gone are the days when young consumers simply visited shopping malls and department stores to purchase clothes and shoes.

Thanks to the Internet, every purchase imaginable (and some unimaginable) is now available at their fingertips.

Perhaps more so than any other media, the Internet has been extremely influential in shaping and dictating Generation Y’s buying habits and behaviors. As advertisers move toward Web alternatives to reach consumers, the variety, immediacy, and convenience that online shopping offers serve as strong enticements for Millennials looking for immediate gratification.

Impulsive purchases can now be made 24-hours a day.

about their own over the same time period. See Joyce M. Wolburg & James Pokrywcznski, *A Psychographic Analysis of Generation Y College Students*, Sept.–Oct., J. ADVERTISING RES. 33, 36 (2001). More currently, in January 2009, 65 percent of 18 to 29-year-olds were optimistic or very optimistic about there being a strong economy in the first six months of January 2009, whereas only 23 percent of those surveyed over the age of thirty felt the same way. See YARROW & O’DONNELL, supra note 33, at 73. See also PEW, MILLENNIALS, supra note 72, at 20.

See MANNING, CREDIT CARD NATION, supra note 10, at 127.

See generally HOWE & STRAUSS, supra note 30, at 273 (estimating that by 2002, on-line purchases by millennial children “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 more of their discretionary time shopping online and surfing the Internet); Sharon Dunn, *Has Web Surfing Become the New Window-Shopping?*, GREELEY TRIBUNE (Colorado) (Jan. 15, 2005), available at 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 percent increase from previous years and that by 2007, an estimated 77 percent of consumers over the age of 13 would be shopping online).

See Bakewell & Mitchell, supra note 38, at 97–98; Wolburg & Pokrywcznski, supra note 73, at 38.

See YARROW & O’DONNELL, supra note 33, at 24–25.

See id. at 8 (noting that “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 34, at 373 (observing that “Millennials seems hard-wired to demand instant gratification and instant rewards”).
addition, young consumers are drawn to Internet social networking sites such as Facebook on which they can post and discuss pictures of their impending and recent purchases.\(^\text{82}\)

While social media and other technological advances have helped to establish and maintain a sense of community amongst members of Generation Y, it has also amplified their perceived need to have the right “stuff” to be accepted by their peers.\(^\text{83}\) As noted by researchers Cathy Bakewell and Vincent-Wayne Mitchell, “Generation Ys have been acculturated into a more materialistic and consumer culture more so than other generations as a result of technological innovations.”\(^\text{84}\) When coupled with their often unrealistic economic expectations, financial naïveté, and unwillingness to delay gratification, Generation Y’s efforts to conform have fueled not only their increased consumption habits but also their escalating reliance on credit cards.\(^\text{85}\)

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

As previously discussed, Generation Y’s parents have taken a more active role in all aspects of their children’s personal, social, and academic lives than did parents of previous generations. This over-involved upbringing has produced a generation of young consumers who are “emotionally needy and, consequently, constantly seeking approval and praise.”\(^\text{86}\) With the availability of credit cards (both their own and their parents’) with which to consume, it is not surprising that this current generation of consumers has sought to obtain such approval and praise, in part, through spending and consumption.

Similar to previous generations, Generation Y has a need to belong.\(^\text{87}\) Although Millennials are often individualistic and independent,\(^\text{88}\) they also

\(^{81}\) Junghyun Kim & Robert LaRose, Interactive E-Commerce: Promoting Consumer Efficiency or Impulsivity, J. COMPUTER-MEDIATED COMM., Nov. 2004 (noting how the Internet provides opportunities for 24-hour shopping); See Prah, supra note 52, at 460 (“Teenagers often don’t have to wait until they have the money or their parents take them to the mall—They buy online with credit cards.”).

\(^{82}\) See YARROW & O’DONNELL, supra note 33, at 24–27.

\(^{83}\) See id. at 49, 61, 67, 69–70, 108–09.

\(^{84}\) Bakewell & Mitchell, supra note 38, at 97.

\(^{85}\) See YARROW & O’DONNELL, supra note 33, at 72 (noting that “‘young consumers are more likely to use credit than to save for short-term purchases, which results in an ongoing struggle with debt management’”).

\(^{86}\) Shaw & Fairhurst, supra note 34, at 368.

\(^{87}\) See id. at 373.

\(^{88}\) See id. at 368.
seek and value shared support from and close connections with their peers,\textsuperscript{89} which helps to explain the overwhelming popularity of social media such as Facebook and Twitter.\textsuperscript{90} Young consumers’ search for peer approval and group connectedness is especially evident in their shopping and consumption behaviors.\textsuperscript{91} Compared to just 44 percent of older consumers, “[s]ixty-eight percent of teens and twenty-somethings shop with other people at least half of the time” in hopes of receiving “that all-important approval from their friends before they buy.”\textsuperscript{92} In furtherance of their need to belong, many young consumers make purchasing decisions based, in large part, on their desire to join and connect with peer groups.\textsuperscript{93} As socially motivated consumers who are more image-conscious and driven by opinions of others,\textsuperscript{94} many younger Generation Y consumers think that what they have or wear determines and expresses who they are.\textsuperscript{95} Therefore, they feel and often succumb to pressure to acquire the best, most popular clothing and possessions, even if doing so amounts to living above their means.\textsuperscript{96}

This is particularly evident on college campuses throughout the country where young cardholders rely on credit to finance their perceived socially acceptable lifestyles.\textsuperscript{97} As students abandon their “adherence to the cognitive connect (income and other resources dictate level of consumption)”\textsuperscript{98} and succumb to “peer consumption pressures,”\textsuperscript{99} their reliance on credit and debt becomes difficult to resist, which helps to explain their increased rates of credit card debt.\textsuperscript{100}

\textsuperscript{89} See id. at 373; YARROW & O’DONNELL, supra note 33, at 14–16.
\textsuperscript{90} See YARROW & O’DONNELL, supra note 33, at 10 (discussing Generation’s Y use of technology to create and sustain group connections), id. at 24 (reporting that Facebook is ranked by college students as their favorite website and, as of April 2009, had over two hundred million users).
\textsuperscript{91} See id. at 36–37, 45.
\textsuperscript{92} Id. at 37.
\textsuperscript{93} See id. at 51, 108–13.
\textsuperscript{94} See Martin & Turley, supra note 77, at 470–71. As Generation Y 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.
\textsuperscript{95} See YARROW & O’DONNELL, supra note 33, at 52; see also HUNTLEY, supra note 55, at 149–60 (discussing the relationship between identity and consumption).
\textsuperscript{96} See YARROW & O’DONNELL, supra note 33, at 69–70.
\textsuperscript{97} MANNING, CREDIT CARD NATION, supra note 10, at 170–77 (recounting one college consumer’s credit card experiences to exemplify the strong influence peer pressure and the need to belong have on students’ accumulation of debt).
\textsuperscript{98} Id. at 170.
\textsuperscript{99} Id. at 177.
\textsuperscript{100} For a discussion of college cardholders’ credit card usage, see infra Part II.A.
Young consumers are also persuaded to spend and consume by clever marketing ploys touting how much they “deserve” the purchases they are making. In an attempt to appeal to Generation Y’s perceived sense of arrogance and superiority, marketers successfully convince young consumers that they deserve to buy “the best” regardless of whether they can actually afford it, which contributes to their indoctrination into a culture of consumption.

Generation Y’s ability to spend and consume more than previous generations has been facilitated by the enormous spending power and influence that it possesses. As “the first genuine consumer generation,” Millennials spend in excess of $200 billion per year and are expected to spend approximately $10 trillion in their lifetime. As teens, they outspend their parents when they were the same age by five times.

Generation Y influences not only each other’s spending but also that of their parents. Due to the adoring nature of many of their parents and their tendency to place more value on being friends with their children rather than authority figures, Millennial consumers wield significant influence on parents’ household purchases ranging from cars to vacations. Generation Y’s “kidfluence,” which is considered to be a “Millennial Generation phenomenon,” is responsible for $300-$400 billion in annual family purchasing.

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101 See YARROW & O’DONNELL, supra note 33, at 70; see also Carrie La Ferle et al., An Overview of Teenagers and Television Advertising in the United States, 63 INT’L COMM. GAZETTE 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).

102 See id.; see also HUNTLEY, supra note 55, at 147–48.

103 Id. at 144; see also HOWE & STRAUSS, supra note 30, at 280 (noting that Generation Y children become part of a “consumer culture . . . almost from the moment of birth”); La Ferle, supra note 101, at 7–8 (describing Generation Y individuals as “consumers since birth”).

104 See YARROW & O’DONNELL, supra note 33, at xvii; see also HOWE & STRAUSS, supra note 30, at 265–66, 269; Martin & Turley, supra note 77, at 464–66.

105 See YARROW & O’DONNELL, supra note 33, at 22.

106 See HUNTLEY, supra note 55, at 154–55 (discussing Millennials’ influence on the shopping and consumption behaviors of their friendship groups).

107 See YARROW & O’DONNELL, supra note 33, at 6–7.


109 See HUNTLEY, supra note 55, at 145; YARROW & O’DONNELL, supra note 33, at 147–48, 150–51.

110 HOWE & STRAUSS, supra note 30, at 269; see also id. at 268–69.

111 See Martin & Turley, supra note 77, at 464.
close relationships with their parents in order to meet their inflated consumerism “needs.”

As the lines between Generation Y’s wants and needs and luxuries and necessities continue to blur, its sense of fiscal responsibility continues to fade. More so than ever, Millennials are willing to use credit cards and debt to finance their spending and consumption. As observed by researchers 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 generation, can cause problems.” As the next part of this Article will demonstrate, credit card debt has indeed caused serious problems for many young consumers, especially those enrolled in college. Therefore, additional legislation is needed to lessen the negative consequences that many college-aged consumers must endure as a result of their imprudent credit card usage.

II. DEBT BECOMES THEM

Now, more than ever, young consumers are turning to credit cards to finance everything from clothes to college educations. Generation Y is “more in debt than any previous generation,” and in light of the psychological and social characteristics discussed above, this trend is likely to continue. As noted by researcher Rebecca Huntley, “This is a generation that keeps on spending but doesn’t have the wealth (either at the moment or

114 See HUNTLEY, supra note 55, at 146 (discussing Generation Y’s comfortability with credit card debt); see also supra note 81 and accompanying text.
115 YARROW & O’DONNELL, supra note 33, at 72.
116 In 2008, 92 percent of undergraduate cardholders reported using their cards for college expenses. SALLIE MAE STUDY, supra note 5, at 11.
117 YARROW & O’DONNELL, supra note 33, at 66. See also Heather Brewer, Snap Judgments, 14-APR. BUS. L. TODAY 6 (2005) (noting that “Generation Y earned itself the nickname Generation Broke after a recent report found the under-25-ers wallowing in debt”).
in the near future) to support the habit.\footnote{\textsuperscript{118} \textit{Huntley}, supra note 55, at 146; \textit{see also Spending Habits}, supra note 108 (noting that Generation Y’s ‘culture is so focused on spending, spending, spending’ and that “often cashstrapped Gen Ys become victims of their own spending”).} Because it is difficult for consumers to adjust to a lower standard of living once they have become accustomed to living at a higher one, many young consumers use credit cards to finance their unrealistic lifestyles.\footnote{\textit{Naazareth}, supra note 42, at 110 (reporting that in 2004, approximately 30 percent of 18- to 24-year-olds’ income was spent on credit payments); \textit{Yarrow & O’Donnell}, supra note 33, at 67, 70–71 (discussing Generation Y’s reliance on credit and debt); \textsuperscript{119} \textit{Sallie Mae Study}, supra note 5, at 3 (concluding that “[m]any college students seem to use credit cards to live beyond their means”); \textit{see also Yarrow & O’Donnell}, supra note 33, at xii, 66, 72 (reporting that during the current economic downturn, spending by and for Generation Y has decreased less than other generations); \textsuperscript{120} \textsuperscript{Dugas}, supra note 35 (noting that 25 percent of Generation Y consumers report spending more in 2010 than in 2009, “compared with 18% of all adults”).} This is particularly true for college students.\footnote{\textit{See generally Manning, Living with Debt}, supra note 47, at 35–36.}

Although many college-aged consumers receive their first credit card before entering college,\footnote{\textsuperscript{121} According to a recent survey conducted by Sallie Mae, 39 percent of students had obtained a credit card before beginning their freshmen year. This 2008 figure marked a 16 percent increase since 2004. \textit{Sallie Mae Study}, supra note 5, at 6. \textit{See also Wolburg & Pokrywcznski}, supra note 73, at 36 (reporting that many 18- to 24-year-olds received a credit card cosigned by a parent during high school).} university campuses across the country serve as breeding grounds for student consumer indebtedness. Whether fueled by skyrocketing tuition and fees coupled with diminishing federal student aid\footnote{\textsuperscript{122} For a discussion of increasing educational costs and its impact on student debt, see \textit{Manning, Credit Card Nation}, supra note 10, at 163–66; \textit{Naazareth}, supra note 42, at 109–10; \textit{see also Sallie Mae Study}, supra note 5, at 11–12 (reporting that in 2008, 30 percent of undergraduate cardholders used their credit cards to pay for college tuition and fees).} or by students’ efforts to conform to perceived peer expectations, the prevalence of credit card usage by college students and the long-term negative academic, personal, and financial consequences that many experience as a result of such usage necessitate credit card reforms in addition to those currently included in the Credit CARD Act.

\textbf{A. Credit Card Usage by College Students}

Several scholars and researchers have detailed college students’ financial naivete,\footnote{\textsuperscript{123} \textit{See supra note 56; \textit{see also Manning, Credit Card Nation}, supra note 10, at 184; \textit{Manning, Living with Debt}, supra note 47, at 37–39.}} which helps to explain why so many young consumers thoughtlessly apply for and use credit cards without contemplating the
negative consequences that can result from such usage. In 2004, 76 percent of college undergraduate students had credit cards. By 2008, this number had increased to 84 percent. Not surprisingly, the amount of debt amassed by college students during this time also increased. In 2004, college students had an average of $2169 in credit card debt. By 2008, students’ average credit card debt had increased to $3173.

Generation Y students are not only accumulating more credit card debt but they are also acquiring debt at earlier ages. In 2004, 56 percent of students reported obtaining their first card at the age of eighteen. From fall 2004 to spring 2008, the percentage of freshmen with credit cards increased 60 percent from 42 percent to 67 percent. Of this 67 percent, only 15 percent had a zero balance, compared to 69 percent in 2004. The percentage of freshmen carrying four or more cards also increased during this period from 15 percent to 23 percent.

Perhaps more troubling than these figures are those illustrating students’ credit card indebtedness as they progress through their college careers. By the time students reach their senior year, 88 percent of them have at least one credit card and 62 percent have four or more cards. While freshmen carry an average of $2038 in credit card debt, seniors’ average outstanding debt more than doubles this amount. Nineteen percent of seniors carry balances greater than $7000 compared to only 5 percent of freshmen.


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124 See Barnes, supra note 43, at 61 (noting that “[t]hinking long-term, planning and evaluating risk are weak life skills of [Generation Y]”).
125 NAZARETH, supra note 42, at 110; SALLIE MAE STUDY, supra note 5, at 5.
126 Id.
127 See Bakewell & Mitchell, supra note 38, at 98 (“It is known that access to credit is a contributory factor in the practice of trading-up and overspending.”).
128 SALLIE MAE STUDY, supra note 5, at 5.
129 Id.
130 NAZARETH, supra note 42, at 110.
131 SALLIE MAE STUDY, supra note 5, at 6; see also MANNING, CREDIT CARD NATION, supra note 10, at 170 (reporting that the percentage of students who receive their first credit card by the end of their freshman year is nearly 80 percent).
132 Id. at 9.
133 Id. at 6.
134 Id.
135 In 2008, seniors’ average credit card debt totaled $4138. Id. at 8. See also EDWARD MIERZWINSKI ET AL., THE CAMPUS CREDIT CARD TRAP: A SURVEY OF COLLEGE STUDENTS AND CREDIT CARD MARKETING 6 (2008), available at http://www.calpirg.org/uploads/Ph/gg/PhggFY2n0kk9lcaVQuABY/A/CA-Campus-Credit-Card-Trap-Report.pdf (reporting findings from a 2008 study showing that seniors carry more than double the amount of credit card debt as freshmen).
136 Id. at 9.
Although disturbing, these figures are not surprising considering the credit card industry’s relentless efforts to induct impressionable young consumers into the “fashionable fraternity” that is consumer debt. For over twenty years, banks have aggressively targeted this previously untapped source of revenue. As noted by consumer protection expert Elizabeth Warren, “they ‘target high-school and college-age people because they see them as the only growth opportunities in a saturated market.’” Their solicitation techniques, which, according to some, border on predatory and deceptive, range from on-campus mass marketing campaigns complete with free giveaways such as pens, t-shirts, and pizza to partnering with universities, alumni associations, and student organizations to elicit their help in soliciting new customers. On-campus solicitation has become so pervasive that several colleges and universities have decided to restrict on-campus marketing, including banning credit card marketers from their campuses. Considering recent studies that show that a majority of students

137 See MANNING, CREDIT CARD NATION, supra note 10, at 166–68; MIERZWINSKI, supra note 135, at 1.
138 Dirk Smillie, Bankrupt by 25: People Under the Age of 25 Make Up the Fastest-Growing Age Group Filing for Bankruptcy, N.Y. TIMES UPFRONT, Apr. 5, 2004, available at http://findarticles.com/p/articles/mi_m0BUE/is_12_136/ai_n17206851/; see also Johnson, supra note 56, at 201–02 (noting that credit card companies aggressively market to college students because “students entering college are the only adult demographic group largely made up of non-credit card holders”).
140 As of February 22, 2010, credit card companies soliciting on or near college campuses or at college-sponsored events are no longer permitted to offer free gifts to induce young consumers to apply for cards. See Credit CARD Act § 304.
141 See MANNING, CREDIT CARD NATION, supra note 10, at 162; GAO REPORT, supra note 139, at 25–28 (reporting colleges’ various solicitation policies); Johnson, supra note 56, at 231–32 n.171 (discussing universities’ on-campus solicitation policies, including examples of schools who have banned marketers from their campuses); Lucy Lazarony, Marketing Plastic to Students Causes Lawmakers, Educators to Melt Down, BANKRATE.COM, June 21, 1999, http://www.bankrate.com/brm/news/ee/19990621.asp?keyword=CREDITCARDS (reporting that in 1999, approximately 300 colleges and universities banned on-campus solicitations); Ron Matus, Students are Still Hooked on Plastic, ST. PETERSBURG TIMES, Aug. 3, 2004, http://www.sptimes.com/2004/08/03/Tampabay/Students_are_still_ho.shtml (noting that several colleges in Florida have barred credit card issuers from on-campus solicitations); Merzer, supra note 139 (discussing Florida Atlantic University’s decision to ban credit card marketers from its seven campuses).
now obtain their credit cards online (16 percent) and through direct mail solicitations (38 percent) rather than from on-campus vendor booths (5 percent), 143 it is doubtful that such bans will positively impact students’ credit card indebtedness. 144

Although industry representatives often argue that most college consumers successfully manage their credit card debt, 145 many consumer advocates counter that such assertions are exaggerated and overstated. 146 Take, for instance, the reported percentage of college cardholders who pay their balances in full every month. 147 According to various sources, this number has declined from 59 percent in 1998 148 to 17 percent in 2008. 149 Consumer advocates such as Dr. Manning argue that because these figures do not account for the number of students whose parents pay their bill for them or who use student loans to pay their bills, they mask the complexity and gravity of students’ indebtedness. 150

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143 See SALLIE MAE STUDY, supra note 5, at 7.
144 See Johnson, supra note 56, at 231 n.171 (citing research “finding that students on campus which had banned on-campus solicitation actually carried higher balances (average balance $1079) than students at universities that permitted on-campus solicitation (average balance $792”). The recently enacted Credit CARD Act now prohibits card issuers from sending prescreened credit card offers to young consumers under the age of twenty-one unless the consumer has consented to receiving such offers. See Credit CARD Act § 302. It remains to be seen whether this restriction will significantly reduce the number of direct mail solicitations received by young consumers and, consequentially, their levels of credit card usage.
145 See MANNING, CREDIT CARD NATION, supra note 10, at 169 (refuting an industry representative’s assertion that “[c]ollege students can pay, do pay and are using their plastic cards responsibly”); Matus, supra note 142 (quoting a spokeswoman from the American Bankers Association as stating that “[c]ollege students are actually more responsible” than the greater consumer population in terms of paying their balance in full each month); Merzer, supra note 139 (according to a banking industry spokesman, “‘Anecdotes of student problems in the card area fail to paint the real picture that students, as a broader group, are in fact managing their credit obligations well . . .’”).
146 See MANNING, CREDIT CARD NATION, supra note 10, at 161 (describing industry’s research as “methodologically flawed”); id. at 169 (characterizing industry reported data and conclusions as “misleading,” “unreliable,” and “obscuring . . . the complexity of student credit card debt”); Johnson, supra note 56, at 223 n.135 (discussing and critiquing the credit card industry’s research related to student’s debt management); Merzer, supra note 139 (discussing consumer group research that shows greater credit card usage by college students than that reported in industry studies); Lazarony, supra note 142 (discussing Dr. Robert Manning’s claim that “past studies of students and credit cards have under-reported the problem”).
147 For a detailed discussion of studies reporting the percentage of college cardholders who pay their balances in full every month, see Johnson, supra note 56, at 222 n.136.
148 TERI STUDY, supra note 8, at 11.
149 SALLIE MAE STUDY, supra note 5, at 14.
150 See MANNING, CREDIT CARD NATION, supra note 10, at 176–77 (discussing the “increasingly popular practice” of students using loans to pay credit card bills); id. at 186 (recounting one consumer’s practice of using at least half of her Stafford student loan disbursements to pay down her credit cards); Johnson, supra note 56, at 224 (reporting Dr. Manning’s research
In fact, one could argue that this precipitous ten-year decline in the percentage of students paying off their balances each month and, thereby, avoiding costly finance charges is further evidence of students’ mismanagement of credit and debt. As noted in a recent consumer study, “[M]aintaining a good credit history is only part of the story when managing credit. Reducing finance charges is an important part of debt reduction and . . . helping consumers to balance budgets.”\textsuperscript{151} The financial costs borne by college students who carry over balances from month to month are often exacerbated by the negative academic and personal consequences that many experience as a result of their credit card usage—consequences that detrimentally impact both their current and future lives.

\textbf{B. Paying the High Price for Credit}

For many college cardholders, their accumulation of debt has significant ramifications for their academic and personal lives. Some full-time students who feel pressure to work more hours to pay their bills often reduce their course load or enter part-time programs.\textsuperscript{152} Unfortunately, some also opt to withdraw from school for a semester or year to facilitate their efforts to work and pay down their debt.\textsuperscript{153} Studies also show that students with greater credit card debt have a more difficult time managing their debt and are more likely to have lower grade point averages.\textsuperscript{154} Their poor academic performance is caused, in part, by common side effects of dealing with debt such as lack of concentration and priority placed on course work.\textsuperscript{155}

For many young consumers, debt-induced academic pressures are often coupled with negative personal consequences ranging from stress to depression.\textsuperscript{156} Research shows that a significant percentage of college consumers experience high levels of payment anxiety.\textsuperscript{157} Of the students surveyed, only 13 percent reported feeling no anxiety regarding their ability

\footnotesize{findings that “73% of freshmen and 67% of upperclassmen had used student loans to pay off credit card balances”}; Lazarony, \textit{supra} note 142 (citing student loan refinancing and private debt consolidation loans as measures that mask college students’ true levels of credit card debt); Matus, \textit{supra} note 142 (reporting Dr. Manning’s estimate that 20 percent of college students use student loans to hide their more than $10,000 credit card indebtedness).

\textsuperscript{151} SALLIE MAE STUDY, \textit{supra} note 5, at 14.
\textsuperscript{152} See Johnson, \textit{supra} note 56, at 209; Lazarony, \textit{supra} note 142.
\textsuperscript{153} See GAO REPORT, \textit{supra} note 139, at 33–34; Lazarony, \textit{supra} note 142.
\textsuperscript{155} See id. at 25–26.
\textsuperscript{156} See Johnson, \textit{supra} note 56, at 209–10.
\textsuperscript{157} See SALLIE MAE STUDY, \textit{supra} note 5, at 15.
to pay their credit card bills while 45 percent felt extremely or highly anxious.\footnote{158} There have also been cases, albeit extremely rare, where payment anxiety and other factors have contributed to overwhelmed students’ decisions to take their own lives.\footnote{159}

Contrary to previously discussed industry contentions regarding how well college cardholders manage their debt, students’ mismanagement of debt is evidenced not only by the aforementioned academic and personal consequences but also by the financial costs that many must bear as a result of their credit card usage. For instance, a recent study conducted by the U.S. Public Interest Research Group found that 25 percent of students surveyed had paid at least one late fee while 15 percent of respondents had paid at least one over-the-limit fee.\footnote{160} Perhaps more disturbing is the study’s finding that despite their relatively new foray into the world of consumer credit, over 6 percent of students had so mismanaged their card usage that the issuer canceled their card for delinquent behavior.\footnote{161} These literal and figurative “costs” are compounded by the negative impact such delinquencies can have on students’ credit reports—reports that, in many cases, dictate their financial futures for years to come.\footnote{162}

Two common, long-term economic consequences of students’ mishandling of debt are their inability to qualify for subsequent loans and to receive favorable interest rates on the loans for which they do qualify.\footnote{163} When many college cardholders seek to purchase a car or home, they often find that their previous failures to make card payments on time or their over-the-limit delinquencies have negatively affected their credit score. In light of the fact that such scores are often a paramount factor in lenders’ decisions,\footnote{164}
having an adverse credit history significantly curtails young consumers’ future borrowing prospects.

In dire situations, some young consumers experience perhaps the most costly financial consequence of debt—bankruptcy. In 1999, 18 to 24-year-olds accounted for 6.9 percent of debtors filing for bankruptcy. This figure represented a 51 percent growth rate of bankruptcy filings for consumers under the age of 25 from 1991 to 1999. In 2001, consumers in this age group accounted for 150,000 bankruptcy filings. A bankruptcy filing is included in a consumer’s credit report for ten years, thereby resulting in long-term financial and personal ramifications.

Not only are young consumers’ future financing opportunities limited by their negative credit history but also their prospective employment and professional opportunities. Employers are increasingly checking prospective employees’ credit reports prior to hiring. Therefore, unbeknownst to many

(165) See GAO REPORT, supra note 139, at 11–14.
(166) Id. at 13.
(167) Id. at 14. See also Johnson, supra note 56, at 218 (reporting that from 1995 to 2000, “the number of people under the age of twenty-six who filed for bankruptcy tripled”).
(168) See Smillie, supra note 138. Interestingly, the number of bankruptcy filings by consumers under the age of twenty-five has declined over the years from 8.7 percent in 1991 to 4.2 percent in 2007. See DEBORAH THORNE, ELIZABETH WARREN & TERESA A. SULLIVAN, GENERATIONS OF STRUGGLE 4 (2008), available at http://bdp.law.harvard.edu/pdfs/papers/Warren/Generations_Struggle.pdf. As researchers Deborah Thorne, Elizabeth Warren, and Teresa A. Sullivan acknowledge:

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

(170) See Johnson, supra note 56, at 218.
(171) A recent study conducted by the Society for Human Resource Management reported that 13 percent of organizations surveyed conducted credit background checks on all job applicants. Forty-seven percent reported conducting checks on selected job candidates. See SOC’Y FOR HUM. RESOURCES MGMT., BACKGROUND CHECKING: CONDUCTING CREDIT BACKGROUND CHECKS 3 (2010), available at http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx; see also MANNING, CREDIT CARD NATION, supra note 10, at 177; Johnson, supra note 56, at 214. There have been state and federal legislative initiatives to address this issue. To date, three states have banned employers’ use of credit reports to pre-screen prospective employees: Washington, Hawaii, and Oregon, and Representative Steve Cohen from Tennessee is pursuing federal legislation to ban the practice nationally. See Dana Dratch, STATES WEIGH LIMITS ON CREDIT CHECKS FOR EMPLOYMENT, CREDIT CARDS.COM, Aug. 10, 2009, http://www.creditcards.com/credit-card-news/states-weigh-limits-credit-checks-for-employment-1282.php; Jessica Hoch, LAW BANS EMPLOYMENT CREDIT
college students, “their employment prospects are limited due to their college legacy of credit card debt.”

In their efforts to protect college cardholders from the detrimental consequences discussed above, Congress incorporated specific provisions concerning college-aged consumers in the recently enacted Credit CARD Act. Part III of this Article questions whether these provisions will be effective in protecting vulnerable, young consumers.

III. THE CREDIT CARD ACT’S EMPTY PROMISE?

Signed into law by President Barack Obama on May 22, 2009, the Credit CARD Act is considered to be “the most significant credit card reform legislation” in over four decades. Amid concerns regarding the recent economic recession and efforts of recovery, both the President and lawmakers consider the Act to be an integral component of comprehensive financial reform intended to better protect consumers. With goals to end unfair and deceptive practices and to improve consumer disclosures, the Act includes new rules regarding interest rate increases, allocation and timing of payments, and periodic statement disclosures. Pertinent to this Article are the Act’s provisions concerning college-aged consumers.


MANNING, CREDIT CARD NATION, supra note 10, at 177; see also MANNING, LIVING WITH DEBT, supra note 47, at 38 (discussing students’ lack of knowledge regarding how their credit reports can negatively impact their employment and lending opportunities).

See supra note 21.


Credit CARD Act § 101(b).

Id. §§ 102(a), 106(a)–(b).

Id. § 201(a).

The college-aged consumer protection provisions are found in Title III of the Credit CARD Act entitled “Protection of Young Consumers.” See id. §§ 301–305.
As discussed below, the Credit CARD Act primarily seeks to protect young consumers by limiting their accessibility to cards. However, due to the broad latitude afforded credit card issuers by the new rules and regulations, it is doubtful that this approach will significantly reduce the number of college-aged cardholders or curtail their credit card usage. Therefore, as proposed in Part IV, additional legislation is needed to diminish the negative long-term consequences that many young cardholders suffer as a result of their credit card debt.

In its efforts to prevent college-aged consumers from sinking into an abyss of debt, Congress passed legislation that seeks to limit the number of young consumers who obtain credit cards and, thereby, decrease their overall usage.\(^{180}\) The Credit CARD Act includes three primary provisions aimed at reducing college-aged consumers’ credit card indebtedness.\(^{181}\) First, effective February 22, 2010, consumers under the age of twenty-one are not permitted to obtain a credit card unless their application contains one of the following two requirements: (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 repaying the bill.\(^{182}\) In addition, card issuers are no longer permitted to send prescreened credit offers to consumers under the age of twenty-one unless the consumer has previously consented to receive such offers.\(^{183}\) Finally, card issuers and creditors who engage in solicitation on or near a university campus or at a university sponsored or related event are now banned from offering college students “free” gifts as inducements to apply for a credit card.\(^{184}\) At first glance, one would think that these measures could indeed keep credit cards out of the hands of many young consumers and, thereby, inhibit their ability to rack up thousands of dollars in credit card debt. However, upon further inquiry, it becomes apparent that several factors exist that will most likely keep the Credit CARD Act’s

\(^{180}\) See Senator Dodd Statement, supra note 175, at S5316 (stating that the Act 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, or as soon as they set foot onto a college campus.”); 155 CONG. REC. H5013, H5020 (Apr. 30, 2009) (statement of Representative Louise Slaughter) [hereinafter Representative Slaughter Statement] (discussing her support of measures “to protect college students from the hardship of excessive credit card debt and bankruptcy”).

\(^{181}\) Although the House and Senate bills contained additional provisions, such as prohibiting the issuance of cards to minors under the age of 18 unless they have been emancipated under applicable State law and permitting consumers under the age of 21 to obtain a card if they complete an approved financial literacy course, the final version of the Act omitted these provisions. See H.R. REP. NO. 111-88, at 8 (2009); S. REP. NO. 111-16, at 12 (2009).

\(^{182}\) Credit CARD Act § 301.

\(^{183}\) Id. § 302.

\(^{184}\) Id. § 304.
promise of young consumer protection from being fulfilled—the most disconcerting of which being the Act’s rules and regulations themselves.

Because the Credit CARD Act permits college-aged consumers who have independent means of repaying their bill to obtain a card without a cosigner, it leaves the door open for impressionable, financially naïve consumers to continue amassing large amounts of credit card debt. The likelihood that this will occur is particularly great when one considers the Federal Reserve Board’s (the “Board”) newly promulgated regulations that accompany the Act.185

Consider, for instance, the regulations concerning a card applicant’s ability to pay. While the Act and regulations both require card issuers to verify that all consumers, including college-aged consumers, have the ability to pay before issuing them a card,186 this requirement only applies to prospective cardholders’ ability to pay “required minimum periodic payments under the terms of the account.”187 Thus, the issuer is not required to ensure that a consumer has the ability to pay the entire credit amount that will be made available to him under the credit card agreement, but rather only the minimum monthly amount due.188 Although the regulations require card issuers to assume “utilization . . . of the full credit line that the issuer is considering offering to the consumer”189 when “estimating the minimum periodic payments the consumer would be required to pay,”190 depending on the amount of the credit line and the minimum payment formula employed by the card issuer,191 this required payment amount could be as low as $25–$50 per month.192 With such a low payment threshold, it appears that card issuers can easily comply with the Credit CARD Act’s ability to pay rules and regulations by endeavoring to qualify college-aged consumers who have

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185 See generally Truth in Lending Unfair or Deceptive Practices, 75 Fed. Reg. 7658 (Feb. 22, 2010) (to be codified in 12 C.F.R. pt. 226). With regards to provisions discussed in this Article, the Board’s final rules were, in most respects, the same as those proposed. Compare id (final rule), with Truth in Lending, 74 Fed. Reg. 54124 (Oct. 21, 2009) (proposed rule).
186 Credit CARD Act § 109; Truth in Lending Unfair or Deceptive Practices, 75 Fed. Reg. at 7818 (to be codified in 12 C.F.R. § 226.51).
187 Id. (to be codified in 12 C.F.R. § 226.51(a)(1)(i)).
188 See id. at 7660.
189 Id. at 7818 (to be codified in 12 C.F.R. § 226.51(a)(2)(ii)(A))
190 Id. (to be codified in 12 C.F.R. § 226.51(a)(2)(i)).
independent means to pay these low amounts. As demonstrated below, credit card issuers will likely accomplish this undertaking with ease thanks to the wide latitude granted them concerning their verification (or lack thereof) of young consumers’ independent ability to pay.

As previously mentioned, consumers under the age of twenty-one can obtain a credit card without a cosigner if they can show that they have independent financial resources with which to make their minimum periodic payments.\(^{193}\) According to the Board’s official staff interpretations, both current resources as well as “reasonably expected”\(^{194}\) resources can be considered in establishing a young consumer’s independent ability to pay. “For example, a card issuer may use information about current or expected salary, wages, bonus pay, tips and commissions. Employment may be full-time, part-time, seasonal, [or] irregular . . . .”\(^{195}\) In addition, card issuers are permitted to consider consumers’ “assets or income,” which includes savings accounts, to establish their ability to pay.\(^{196}\)

Take, for instance, an eighteen-year-old incoming college freshman who is interested in obtaining a credit card. According to the regulations, she can submit the tips and wages she expects to earn while working as a server during holiday break to substantiate her independent ability to pay the low minimum periodic payments. According to the regulations, it does not matter that she will not actually receive this income for approximately four months since expected wages and tips from seasonal work qualifies as evidence of independent means to pay. If taking out student loans to fund her educational expenses, she can also place money from her loan disbursements into a savings account and use it to independently qualify for a card since the account could be considered an “asset” under the current regulations.\(^{197}\)

Even more disturbing than these methods of qualification is the fact that the student can merely state on her credit card application that she has (or expects to have) these financial resources, and the regulations do not require card issuers to independently verify the truthfulness or accuracy of such

\(^{193}\) See Credit CARD Act § 301; Truth in Lending Unfair or Deceptive Practices, 75 Fed. Reg. at 7818 (to be codified in 12 C.F.R. § 226.51(b)(1)(i)).

\(^{194}\) Id. at 7900 (to be codified in 12 C.F.R. Part 226.51(a)(1)-4) (emphasis added).

\(^{195}\) Id.

\(^{196}\) Id. (emphasis added).

\(^{197}\) If college students discover this practice (either via their own ingenuity or issuers seeking to “educate” them about the new credit card rules) as a permissible tactic to qualify for cards, then the disturbing and detrimental trend of college students using student loans to pay their credit card bills is likely to continue to escalate. See generally supra note 150 and accompanying text.
Effectively, the regulations create a “stated” income and assets regime similar to that employed in the subprime housing market—a regime that not only invites and facilitates fraudulent financial representations but also results in consumers obtaining credit and debt that they cannot afford to repay. In the housing context, this practice of deceptive and irresponsible lending not only caused grave consequences for thousands of consumers but also contributed to the “mortgage meltdown” felt throughout the world. Young consumers are likely to experience similar negative consequences if credit card issuers are permitted to engage in this same sort of imprudent and exploitative lending behavior.

One would think that Congress surely intended stricter requirements than these when attempting to protect young consumers and to restrict creditors’ ability to issue credit cards to them. As recognized by Senator Christopher Dodd:

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198 See Truth in Lending Unfair or Deceptive Practices 75 Fed. Reg. at 7722 (discussing commenters’ reactions to the Board’s rules regarding issuers’ ability to simply rely on the income and asset information stated on an applicant’s application without independently verifying the information).

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

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

200 See Dickerson, supra note 199, at 412 (detailing evidence of the housing crisis that was precipitated, in part, by unscrupulous and predatory lending); David Anderson & Sarah Hodges, Credit Crisis Litigation: An Overview of Issues and Outcomes, 28 NO. 6 BANKING & FIN. SERVICES POL’Y REP. 1, 1 (2008) (“The subprime mortgage crisis that began in the summer of 2007 has exploded into a global financial crisis more severe than anything seen in the past 70 years.”); Tami Luhby, Senate Votes to Ban Liar Loans, CNNMONEY.COM, May 13, 2010, http://money.cnn.com/2010/05/13/news/economy/senate_mortgage_rules/index.htm?section=money_realestate (stating that the Senate banned the controversial liar loans that brought down the housing market).

201 See supra note 180 and accompanying text; see generally Representative Slaughter Statement, supra note 180, at H5020 (discussing lawmakers’ efforts to “ensure that credit card companies cannot provide students with extravagant limits and require the creditors to obtain a proof of income, income history and credit history from the students before approving the application”).
Just as we saw in the mortgage crisis with lenders and borrowers, too often issuers offer cards to young people without verifying any ability to repay whatsoever. This is particularly true for students. . . . It is time to insist that credit card companies take into account a young person’s ability to repay before allowing them to take on what is all too often a lifetime worth of debt. Very little we do in our legislation will be more important than these provisions.\footnote{Senator Dodd Statement, \textit{supra} note 175, at S5316.}

Unfortunately, this intention does not appear to be shared by the Federal Reserve Board. As acknowledged in the regulations, the Board clearly rejected consumer advocates’ recommendations that it “require a more stringent evaluation of a consumer’s ability to make the required payments for consumers under the age of 21 than the one required” generally for all consumers.\footnote{Truth in Lending Unfair or Deceptive Practices, 75 Fed. Reg. at 7722.} According to the Board:

\begin{quote}
[C]onsumer group commenters suggested, for example, that card issuers be required to only consider income earned from wages or require a higher residual income or lower debt-to-income ratio for consumers less than 21 years old. A state regulatory agency commenter suggested that the Board require card issuers to verify income or asset information stated on an application submitted by a consumer under the age of 21. The Board declines to make the suggested changes. The Board believes that the heightened procedures already set forth in [the Truth in Lending Act] . . . as adopted by the Board . . . will provide sufficient protection for consumers less than 21 years old without unnecessarily impinging on their ability to obtain credit and build a credit history.\footnote{Id. (emphasis added).}
\end{quote}

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

As recognized by Professor Adam Levitin, “The card industry has shown that it is quite skilled at adaptation, and economic theory tells us that regulation has a hydraulic effect—if practice A is banned, the market will
simply move to practice B.”205 As evidenced by a recent report issued by the Pew Health Group, this is exactly what has happened since the enactment of the Credit CARD Act.206 While banks have eliminated troubling practices such as the imposition of over-the-limit fees without consumers’ consent and unfair payment allocation, some have also increased surcharge fees for cash advances and stopped disclosing the size of penalty interest rates.207

Interestingly, with respect to the Credit CARD Act’s provisions related to young consumers, the report found that out of its entire survey of over 450 bank and credit union issued cards,208 only one “mentioned special provisions for young people, indicating that a co-signer would be required if the applicant was under age twenty-one. These new protections have not been widely reflected in card issuers’ terms and conditions.”209 This finding begs the question: Why are issuers seemingly paying such little attention to these “protections”? Perhaps, they have been preoccupied with complying with other provisions of the Act, or the answer may be related to the fact that, as demonstrated above, the current legislation and regulations are not likely to have a significant impact on the way they currently do business.

Prior to the Board’s promulgation of final regulations, some industry representatives speculated that issuing cards to college-aged consumers would be so burdensome and costly that some banks may decide to stop extending credit to this class of consumers.210 It does not appear that this will be the case. The card issuers have seen the lenient regulations related to establishing young consumers’ independent ability to make periodic
payments; they know that they are permitted to simply rely on the financial information submitted by young consumers on their card applications.\textsuperscript{211} In fact, the regulations state that “[i]ndustry commenters were supportive of the Board’s approach"\textsuperscript{212} regarding this matter. Therefore, creditors will most likely continue issuing cards to consumers under the age of twenty-one and, thus, continue facilitating the growing crisis of young consumer indebtedness.

One final factor that may hinder the effectiveness of the Credit CARD Act in protecting young consumers is the Act’s allowance of college-aged consumers to obtain a card if they are able to secure a cosigner who is at least twenty-one years old.\textsuperscript{213} In most cases, the cosigner would be the consumer’s parent or guardian. As previously discussed in Part I of this Article, parents of Generation Y consumers are extremely indulgent and eager to fulfill the wants and desires of their children.\textsuperscript{214} In addition, many believe that having a card in their own name will not only enable their children to build their credit history\textsuperscript{215} but also provide financial assistance in the event an emergency arises while they are away at school.\textsuperscript{216} Obviously, not all parents will agree to cosign on a card for their children; however, many will and already do.\textsuperscript{217} Therefore, the Act paves the way for increasing

\begin{footnotes}
\footnotetext{211}{See Truth in Lending Unfair or Deceptive Practices, 75 Fed. Reg. at 7722.}
\footnotetext{212}{Id.}
\footnotetext{213}{Credit CARD Act § 301.}
\footnotetext{214}{See supra notes 59–60 and accompanying text.}
\footnotetext{215}{See Barbara Bedway, Credit Card Issuers’ Last Stab at Hooking Your Kid, CBS MONEYWATCH.COM, Sept. 10, 2010 (stating that some financial experts believe that having a credit card can help a “young adult learn how to manage credit responsibly, build a credit history, and provide peace of mind to his parents in an emergency”); Brian Burnsed, New Rules Place Barriers Between Students, Credit Card Issuers, U.S. NEWS & WORLD REPORT, Feb. 19, 2010 (“Credit cards are the simplest way for students to build strong credit before they're thrust into the real world.”); Connie Prater, Law May Force Parents, Children to Talk about Credit Cards: Parents Would Have to Co-sign for Students’ Credit Cards, CREDITCARD.COM, July 8, 2009, http://www.creditcards.com/credit-card-news/credit-card-law-college-students-parents-1282.php (stating that limiting college students’ access to credit will result in hindering or delaying the young adult in building a credit history in his or her name.).}
\footnotetext{216}{See Bedway, supra note 215. As previously discussed, the line between “emergencies” and “luxuries” can quickly become blurred when young consumers have access to credit. See supra notes 111–112 and accompanying text; see also MANNING, CREDIT CARD NATION, supra note 10, at 170 (noting that “credit cards have . . . altered [students’] perception of personal “emergencies”). Millennials’ parents’ need to constantly protect them even from afar is directly related to the “Wanted. Protected. Worthy.” era during which they have raised their children. See supra note 40 and accompanying text.}
\footnotetext{217}{See Hinson, supra note 23, at 306 (stating that wealthier parents may be willing to cosign for their children, whereas other parents may be unable or unwilling to do so); Kiddie Credit Cards: Hearings Before the Subcomm. on Consumer Credit and Ins. of the House Comm. on Banking, Fin. and Urban Affairs, 103d Cong. 79 (1994) at 5 (statement of Ruth Susswein, Executive Director of}
the indebtedness of not only college-aged consumers but also their cosigning parents, guardians, friends and relatives.

Unfortunately, the Credit CARD Act itself as well as the Board’s regulations severely impede the promise of young consumer protection that is touted to be provided for by the Act.\textsuperscript{218} Despite its efforts to limit the issuance of cards to young consumers, it is doubtful that the Credit CARD Act will significantly decrease the number of young cardholders or the amount of debt that they amass. Therefore, more comprehensive legislation is needed to diminish the negative long-term effects that credit card debt has on the lives and futures of many young consumers.

\textbf{IV. PROTECTING OUR YOUTH—PRESERVING THEIR FUTURES}

As previously demonstrated in Part II of this Article, credit card usage by college-aged consumers continues to increase resulting in detrimental academic, financial, and personal consequences for many young cardholders.\textsuperscript{219} Congress’s recent attempts to address this ever-expanding crisis may very well prove to be futile.\textsuperscript{220} Not only does the Credit CARD Act provide methods by which card companies can continue to issue cards to college-aged consumers but it also fails to include provisions that can provide protection to such consumers once they receive and begin to use their cards. This Article advocates for two such provisions: (1) restrictions on issuers’ ability to increase young consumers’ credit limits, and (2) a reduction in the amount of time negative credit history remains on their credit reports. It also urges lawmakers to amend the Act to require stricter eligibility requirements and income verification measures than those currently included in the regulations. Such additional legislation will more effectively help to preserve young consumers’ personal and financial futures.

\textit{A. College-aged Consumers as a “Protected Class”}

Although some of the legislative amendments proposed in this Article may be considered by some to be too restrictive on parties’ freedom to obtain

\textsuperscript{218} See \textit{id.} at 302 (stating that the Credit CARD Act does not fully protect young consumers because once the credit card is issued, they can still amass large amounts of debt for which they do not have the income or financial means to pay).

\textsuperscript{219} See supra Part II; \textit{see also SALLIE MAE STUDY,} supra note 5, at 3 (reporting that “[n]early every indicator measured in spring 2008 showed an increase in credit card usage [by college students] since the last study was conducted in fall 2004”).

\textsuperscript{220} See supra Part III.
and issue credit cards, consumers under the age of twenty-one should be viewed as a “protected class” deserving of heightened consumer protection. Similar to arguments advanced by Professors Steven Graves and Christopher Peterson concerning military personnel and predatory lending, college-aged consumers are particularly susceptible to the questionable lending practices employed by the credit card industry. And just as Congress found it necessary to provide greater consumer protection to military borrowers by imposing a 36 percent annual interest rate cap on certain types of consumer loans offered to them, lawmakers should also recognize the unique circumstances that necessitate the enactment of additional legislation aimed at protecting young, impressionable consumers.

Like military service members, college-aged consumers are “young people [who] often lack financial experience and tend to borrow with less regard for the long-term consequences.” Many of them are financially ignorant and view the use of credit cards as a readily accessible way to satiate their consumerist need for instant gratification. When coupled with their desire to conform and receive peer approval, these characteristics make young consumers especially vulnerable to the card industry’s ploys to saddle them with debt.

Having abandoned former policies of not marketing cards to “young and impressionable consumers [who] would act irresponsibly with ‘gifts’ of 

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221 See, e.g., supra note 204 and accompanying text (noting the Board’s concerns of “unnecessarily impinging on [college-aged consumers’] ability to obtain credit”); 155 CONG. REC. H5013, H5020 (Apr. 30, 2009) (statement of Representative Spencer Bachus) (expressing concern that some proposed amendments to the Credit Cardholders’ Bill of Rights Act of 2009 would “result in students not having the use of a credit card”); id. at H5020–H5021 (statement of Representative 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.”); Jessica Dickler, Credit Card Debt on Campus: Unprepared Students Have Been Increasingly Targeted by Card Issuers, and Some Lawmakers are Taking Notice, CNNMONEY.COM, July 14, 2008, available at http://money.cnn.com/2008/07/10/pf/credit_cards_college/?postversion=2008071413 (reporting a banking industry representative’s views that “credit cards are a valuable tool for students;” therefore, lawmakers should “exercise caution” when considering “legislative proposals that would limit or prevent certain students from obtaining cards”).


224 Id. at 677.

225 See supra notes 55–56 and accompanying text.

226 See supra Part I.B.

227 See supra Part I.C.
unearned money.”

credit card companies now welcome young cardholders and encourage their accumulation of debt. They engage in aggressive solicitation tactics to target college-aged consumers, and they set and raise credit limits seemingly without regard to young consumers’ capacity to repay the debt. As recognized by Representative Louise Slaughter, “If credit card companies applied the same scrutiny to college students as they do to adults when approving them for credit cards, college students would not be able to maintain the balances which they are incapable of paying.” And just as payday and installment lenders target military personnel by “situat[ing] themselves in close proximity to the front gates of military installations,” card companies descend on college campuses every fall to recruit a new class of debtors. When young consumers’ vulnerabilities are preyed upon by savvy, aggressive issuers, debt and detrimental consequences oftentimes ensue. Therefore, lawmakers should pass additional provisions that provide meaningful protections for this “protected class” of consumers, even if doing so may result in greater restrictions on their ability to obtain credit.

B. Unsolicited Credit Limit Increases

The first area in which Congress should provide greater protection to college-aged consumers concerns issuers’ ability to institute unsolicited increases in cardholders’ credit limits. Currently under the Act, consumers under the age of twenty-one who obtain a card with the assistance of a cosigner are not permitted to have their credit limits increased unless the

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228 MANNING, CREDIT CARD NATION, supra note 10, at 167.
229 See id. at 166–68.
230 See supra notes 137–141.
231 The Credit CARD Act’s ability to pay rules and regulations are intended to rectify this problem. See Credit CARD Act § 109; Truth in Lending Unfair or Deceptive Practices, 75 Fed. Reg. at 7818 (to be codified in 12 C.F.R. § 226.51). However, as discussed supra Part III, it is doubtful that this will be the case.
232 Representative Slaughter Statement, supra note 180, at H5020.
233 U.S. DEP’T OF DEF., REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS 10 (2006); see also Graves & Peterson, supra note 222, at 709–821 (detailing the concentration of payday lenders in military communities).
235 By advocating for additional legislative amendments that concern college-aged consumers, the author does not intend to imply that such consumer friendly provisions should only apply to young consumers. The author would welcome the applicability of her proposals to all consumers and cardholders.
cosigner provides written approval of the increase. This beneficial provision protects consumers from issuers’ unilateral limit increases and, thus, helps to reduce the amount of debt they will incur. Unfortunately, only consumers with cosigners will get to enjoy the protections and benefits provided by this provision because it does not apply to college-aged cardholders who can individually qualify for a card due to their independent means to repay their card obligations. Considering the ease with which card companies will be able to qualify such consumers and young consumers’ escalating indebtedness, lawmakers should immediately amend the Credit CARD Act to correct this oversight.

While it is true that cardholders who receive an unsolicited credit limit increase could easily contact the issuer and request that the limit be decreased to the original amount, for several reasons it is unlikely that consumers under the age of twenty-one will do this. First, they enjoy the perceived freedom and independence that credit gives them; therefore, they are unlikely to voluntarily seek to curb or restrict this freedom. Also, many enjoy the perceived sense of status that having cards with high balances gives them. They feel that having higher balances allows them to afford to socialize with and be accepted by individuals with higher financial and social stature, even if their reliance on credit and debt only masks their true ability to do so.

Young consumers’ confidence, optimism, and financial naïveté will also contribute to their decision not to request a reduction in their unilaterally
raised credit limits. As previously discussed in Part I, Generation Y is generally a very confident group of consumers who often think that they can handle greater amounts of debt because they expect that their future financial resources will enable them to pay the debts they incur during their young adulthood. Also, many college-aged consumers do not possess the financial maturity and knowledge to fully comprehend the consequences of credit and debt. So they thoughtlessly use their cards to amass large amounts of debt—some without awareness of the amount of debt they are accumulating and others without contemplating the future difficulties they may have repaying it.

A final factor that is likely to keep young consumers from requesting that their credit limits be lowered back down to their original amounts is that many Generation Y consumers have been indoctrinated with a “more is better” consumerism mentality—more clothes, more shoes, more gadgets, generally more “stuff.” And as their credit card balances indicate, they are not opposed to incurring more debt to finance their purchases.

While it is true that an increased credit limit can improve a consumer’s credit score if she can resist the temptation to use the additional amount, the reality for many young cardholders is the more credit they have, the more credit they will use. Because many of them are not financially savvy, it is

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242 See supra notes 71–74 and accompanying text; see also MANNING, CREDIT CARD NATION, supra note 10, at 171 (discussing how college cardholders “rationalized their indolent spending behavior by emphasizing ‘the great jobs that [they] will get [after graduation] that will enable [them] to pay off [their] credit card [debts].’”).

243 See supra notes 54–55 and accompanying text.

244 See MANNING, LIVING WITH DEBT, supra note 47, at 36 (reporting one student’s view that credit cards “‘provide you with an opportunity to get what you want now . . . without really thinking of the consequences’”).

245 See SALLIE MAE STUDY, supra note 5, at 12 (finding that 60 percent of college students surveyed reported being frequently or sometimes surprised at how high their credit card balances had reached).

246 See id. (reporting that 40 percent of college students admitted to frequently or sometimes charging items for which they did not have the money to pay the bill); see also MANNING, CREDIT CARD NATION, supra note 10, at 137–40 (discussing the experiences of one consumer whose “financial insolvency were sown by his credit dependency as a university student and the unforeseen difficulty in obtaining a job in the aftermath of the 1989 recession”).

247 See supra notes 82–83 and accompanying text; see also YARROW & O’DONNELL, supra note 33, at 57 (describing Millennials as “having, wanting, and expecting more”).

248 See supra note 84 and accompanying text; see also supra Part II.A.


250 See, e.g., MANNING, LIVING WITH DEBT, supra note 47, at 36 (reporting that “some students accumulate high levels of credit card debt within weeks and even within days of receiving their line of credit”); MANNING, CREDIT CARD NATION, supra note 10, at 175 (“Giving credit to
unlikely that a large number of young cardholders will submit limit increase requests to their card companies; however, they will likely use the additional credit seemingly “gifted” to them by their card issuers. Therefore, lawmakers should require all college-aged cardholders to request and approve credit limit increases instead of permitting sly issuers to unilaterally pave the way for vulnerable, young consumers to descend deeper into debt.

Arguably, such a rule would be consistent with the current credit card issuance rules found in the Truth in Lending Act (“TILA”) that prohibits card companies from issuing cards “except in response to a request or application therefor [sic].”

While it is true that a cardholder may have previously requested the card, he has not specifically requested or applied for an increase in the card limit. Admittedly, the cardholder agreement may grant the issuer the authority to review the cardholder’s credit status and make changes to the account accordingly; however, if the purpose of TILA’s issuance rules is to prevent issuers from unilaterally forcing credit and debt upon unsuspecting consumers, then this same purpose should be carried out in the Credit CARD Act’s provisions concerning all college-aged cardholders, including those who have cosigners and those who do not.

C. Reporting of Negative Credit History

As previously discussed, many young cardholders experience long-lasting negative economic and personal consequences as a result of their credit card usage. Their financial inexperience and naïveté often lead to problematic behaviors such as making late payments and exceeding credit limits. Unbeknownst to many of them, these and other financial missteps are chronicled in their credit reports—reports that can detrimentally affect many of their future employment and financial opportunities.

Currently under the Fair Credit Reporting Act (the “FCRA”), adverse items of information concerning a consumer’s credit history can generally
remain a part of his credit report for seven years. So if an eighteen-year-old freshman obtains a credit card then fails to make required payments by the due date, the resulting negative credit history can follow him and wreak havoc on his financial future until he is twenty-five years old. In light of the fact that young consumers’ financial mistakes are often attributable to their lack of financial knowledge and maturity, Congress should pass additional legislation amending the FCRA to decrease the amount of time adverse information can be included in college-aged consumers’ reports. Such action would provide young cardholders with greater and more long-term protection than that currently provided by the Credit CARD Act.

The specific proposal is that any adverse credit information reported to or obtained by a credit reporting agency while the consumer is under the age of twenty-one must be removed from the consumer’s credit report after three years. By reducing the duration that negative credit history can be included in young consumers’ credit reports, this FCRA amendment would significantly lessen the detrimental impact that financial mistakes have on uninformed, young cardholders’ future economic and employment opportunities. For instance, when they seek financing for large purchases such as a car or house, their credit score, which is a crucial factor in determining their interest rates, would not be negatively impacted by poorly-made, financial decisions when they were eighteen or nineteen years old. Perhaps more importantly, young consumers’ ability to qualify for additional student loans for future educational pursuits would be less hindered if their youthful financial indiscretions were purged from their


See supra notes 54–55 and accompanying text.

To conform to the language currently included in the FCRA, the proposal could read as follows: No consumer reporting agency may make any consumer report containing any adverse item of information that pertains to a consumer while he/she is under the age of twenty-one which antedates the report by more than three years. See generally 15 U.S.C. § 1681c(a) (2000).

Other scholars have advocated for a reduction in reporting periods as a means to protect consumers from various harms caused by the inclusion of adverse information in their credit reports. See, e.g., Lior Jacob Strahilevitz, Reputation Nation: Law in an Era of Ubiquitous Personal Information, 102 Nw. U. L. Rev. 1667, 1680 (2008) (suggesting a brief reporting period for information related to “someone’s involvement in landlord-tenant litigation”); Bankruptcy Law: Hearing Before the S. Comm. on the Judiciary, 110th Cong. 13-14 (Nov. 19, 2008) (statement of Professor Adam Levitin, Geo. U. L. Center), http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1070&context=cong [hereinafter Levitin Testimony] (recommending that the reporting period for bankruptcies be reduced to be the same as those for other items of adverse information such as foreclosures).

See supra note 163.
credit reports after three years. Considering that the FCRA already includes reporting differentiations for various adverse items, lawmakers should not oppose including another that affords greater protection for young consumers, especially in light of claims that the credit card industry seeks to exploit college-aged consumers’ impressionability and ignorance. By imposing a three-year reporting limitation for young consumers’ adverse credit information, the FCRA can protect young cardholders’ financial futures while also adhering to its goals of providing useful credit history information to those individuals requesting reports. The provision would strike the necessary balance between college-aged consumers experiencing consequences for their poor financial choices and receiving a fresh start with which to have access to beneficial economic and employment opportunities. Considering the likelihood that the current Credit CARD Act will prove to be ineffective in significantly remedying the crisis of young consumer indebtedness, lawmakers should immediately enact similar proposals that are aimed at lessening the long-term consequences caused by young consumers’ credit card usage.

D. Fulfilling the Credit CARD Act’s Promise

Congress should pass new laws that protect young consumers not only when they receive and begin using credit cards but also before cards are ever issued to them. Although lawmakers attempted to accomplish this latter goal with the current Act, additional legislation is needed to address the Board’s lax ability to pay regulations that will likely subvert Congress’s goals of

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262 The stated purpose of the FCRA is as follows:

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


263 *See supra* Part III.

264 For another proposal that seeks to accomplish the goal of young consumer protection via mandatory financial education, see Johnson, *supra* note 56, at 268–76.
young consumer protection" and facilitate the disturbing and expanding trend of young consumer indebtedness.

Similar to suggestions offered by consumer advocates to the Board during the proposed rulemaking comment period, such legislation should require that college-aged consumers who wish to obtain a credit card without a cosigner must provide some proof of current income, not "expected assets" as presently permitted by the regulations. Although wealthy prospective college-aged cardholders may have significant financial assets with which to pay their debts, most young consumers do not. Therefore, they should be required to show that they are currently generating income and wages that they can use to pay their bills.

Including such a requirement in the Credit CARD Act is good public policy because it reinforces the prudent financial principle that generally one should not incur credit card debt if one does not currently have sufficient income to repay the debt. It also teaches young consumers (and reminds the card industry) that receiving a credit card should not be looked upon as a right to which all consumers become entitled merely by turning eighteen-years-old. Rather, it should be viewed as a privilege that is granted to those individuals who possess the financial ability to repay the debt they incur.

Lawmakers should also amend the Credit CARD Act to reflect consumer advocates' recommendations that card issuers be required to independently verify the financial means information submitted by college-aged applicants. As previously discussed, permitting a "stated" income approach when issuing cards to young consumers is an untenable proposition and invites the very deceptive behaviors that the Act is intended to eliminate. Therefore, Congress should immediately amend the Credit CARD Act to include this provision if it hopes to provide meaningful protection for college-aged consumers.

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265 See supra Part III.
266 See supra Part II.A.
267 See supra notes 203–204 and accompanying text.
269 See generally MANNING, CREDIT CARD NATION, supra note 10, at 101 (recounting Warren Buffet’s advice to high school students that “‘if you can’t afford it, don’t buy it’”).
270 See supra notes 203–204 and accompanying text; see also Representative Slaughter Statement, supra note 180, at H5019–H5020 (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”).
271 See supra notes 198-199, 202 and accompanying text.
CONCLUSION

As this Article has demonstrated, the cohort of Generation Y consumers is a multifaceted group whose thoughts and behaviors regarding credit and debt have been greatly influenced by the consumerist society in which they have been raised.\textsuperscript{272} In efforts to instantly “have it all,” many Millennials have turned to the power of plastic and are paying a very high price for doing so.\textsuperscript{273} To provide some protection for this group of impressionable, vulnerable, and targeted consumers, lawmakers passed the Credit CARD Act. While lawmakers should be applauded for taking a step in the right direction toward young consumer protection, more must be done if lawmakers are serious about providing meaningful, long-term protection for college-aged consumers and cardholders.

\textsuperscript{272} See supra Part I.
\textsuperscript{273} See supra Part II.