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NOTES

CREDIT CARD ACCOUNTABILITY, RESPONSIBILITY AND DISCLOSURE ACT OF 2009: PROTECTING YOUNG CONSUMERS OR IMPINGING ON THEIR FINANCIAL FREEDOM?

INTRODUCTION

There are an estimated 1.22 billion credit cards in the United States.¹ The average adult has about five credit cards.² This increased use of credit has led to substantial debt and an increase in bankruptcy filings across the nation.³ College students are not immune to this trend.⁴ Although reports vary on the number of college students with credit cards, students are a well known market for credit card issuers.⁵ According to a 2001 Government Accountability Office (GAO) Report, almost “two-thirds of all college students had at least one credit card”⁶ In fact, of the nearly 9.9 million students currently enrolled at four-year colleges, each has an average of 2.8 cards.⁷ Estimates of credit card debt upon graduation range from \$2,200⁸ to

1. Press Release, Wisconsin Public Interest Research Group, Sen. Kohl et al., WISPIRG Advocate Student Credit Card Reform Proposals (Apr. 7, 2009), <http://www.wispirg.org/news-releases/consumer-protection/consumer-protection-news/sen.-kohl-reps.-hintz-and-hixson-wispirg-advocate-student-credit-card-reform-proposals> (citing CardTrack.com) [hereinafter WISPIRG].

2. U.S. PUB. INTEREST RESEARCH GROUP EDUC. FUND, THE CAMPUS CREDIT CARD TRAP: A SURVEY OF COLLEGE STUDENTS AND CREDIT CARD MARKETING 1 (Mar. 2008), available at <http://cdn.publicinterestnetwork.org/assets/x-3Q-0RsKNbZtwOKzK1-dA/AZ-Campus-Credit-Card-Trap-Report.pdf> (citing THE FEDERAL RESERVE BOARD OF GOVERNORS, REPORT TO THE CONGRESS ON THE PROFITABILITY OF CREDIT CARD OPERATIONS OF DEPOSITORY INSTITUTIONS (July 2007)) [hereinafter CAMPUS CREDIT CARD TRAP].

3. Wayne Jekot, Note, *Over the Limit: The Case for Increased Regulation of Credit Cards for College Students*, 5 CONN. PUB. INT. L.J. 109, 113–14 (2005).

4. In the time between initially writing this note and its subsequent publication, Regina L. Hinson published *Credit Card Reform Goes to College* in the North Carolina Banking Institute. Regina L. Hinson, Note, *Credit Card Reform Goes to College*, 14 N.C. BANKING INST. 287 (2010). While both notes discuss flaws in the Act, the theses and approaches to the material differ in salient ways. Hinson addresses, among other things, the Act’s failure to regulate underage consumers’ spending habits (such as maximum credit limit and number of cards issued) and discusses how earlier versions of the Act would have required underage consumers to attend a financial literacy course prior to obtaining a credit card. *Id.* at 303–08. This note, rather, focuses on the general lack of protections for student data, discusses the impact on the rights of young consumers in depth, and suggests potential alternatives for dealing with the underlying issues facing young consumers. See *infra* Part III–IV.

5. Jekot, *supra* note 4, at 112–13.

6. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-01-773, CONSUMER FINANCE: COLLEGE STUDENTS AND CREDIT CARDS 17 (June 2001), available at <http://www.gao.gov/new.items/d01773.pdf> [hereinafter GAO REPORT].

7. College Credit Card Statistics, U.C.M.S.COM, <http://www.ucms.com/college-credit-card-statistics.htm> (last visited Nov. 20, 2010) (listing statistics on college marketing).

8. WISPIRG, *supra* note 1.

\$4,100.⁹ It is no wonder that credit solicitors aggressively target this market. As Senator Tom Carper (D-DE) stated, “[t]hey wallpaper all of those college hallways with credit cards because if you can get someone at that age to start using credit cards with your company, then you have got them for a long period of time.”¹⁰ In fact, more than 70% of students keep their first credit card.¹¹ This provides a powerful incentive for the credit card industry.

There have been several attempts by colleges and universities,¹² state attorneys general,¹³ and state legislators to address this issue.¹⁴ However, only recently did Congress pass reform legislation that targets credit card marketing on college campuses and offers protections for students. The Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act or the Act)¹⁵ was intended as general credit reform legislation geared toward assisting those in debt and stopping abusive tactics of the credit card industry.¹⁶ The Act also specifically addresses young consumers. In Title III, the Act places a number of restrictions on extending credit to consumers under twenty-one, limits the ability of credit card issuers to solicit students, and adds protections for students from prescreened offers.¹⁷ The Act also places heavy disclosure requirements on institutions of higher education.¹⁸

This note argues that Title III is a huge step toward protecting young consumers and reigning in the credit card industry. The Act puts an end to a number of coercive and deceptive practices of credit issuers¹⁹ while pressuring universities to be more open and forthcoming regarding their

9. Anne Flaherty, *Credit Reform Means New Era for College Students*, ASSOCIATED PRESS, May 21, 2009, available at <http://www.signonsandiego.com/news/2009/may/21/us-congress-credit-cards-052109/?education>; Joshua Heckathorn, *Credit CARD Act of 2009 Restricts Credit for Students*, BROKEGRADSTUDENT.COM (Aug. 4, 2009), <http://www.brokegradstudent.com/credit-card-act-of-2009-restricts-credit-for-students>.

10. Connie Prater & Tyler Metzger, *A Guide to the Credit CARD Act of 2009*, CREDITCARDS.COM (July 30, 2009), <http://www.creditcards.com/credit-card-news/credit-card-law-interactive-1282.php> (follow “Youth and credit” hyperlink; then follow “Under-21 college students” hyperlink) (quoting Senator Tom Carper).

11. College Credit Card Statistics, *supra* note 7.

12. Jonathan D. Glater, *Extra Credit*, N.Y. TIMES, Jan. 1, 2009, at B1.

13. CAMPUS CREDIT CARD TRAP, *supra* note 2, at 10.

14. Creola Johnson, *Maxed Out College Students: A Call to Limit Credit Card Solicitations on College Campuses*, 8 N.Y.U. J. LEGIS. & PUB. POL’Y 191, 255 (2004).

15. Credit CARD Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (codified as amended in scattered sections of 15 U.S.C.).

16. See Ben Rooney, *Credit Card Relief: Phase one: The First Part of Obama’s Crackdown on the Credit Card Industry Will Give Consumers More Notice When Contracts are Changed and the Option to Reject Rate Increases*, CNNMONEY.COM, Aug. 20, 2009, http://money.cnn.com/2009/08/19/news/economy/credit_card_reform/?postversion=2009082004.

17. 15 U.S.C.A. §§ 1637(c), (p), (r), 1650(f), 1681b(c)(1)(B) (West 2010).

18. *Id.* § 1650(f).

19. See *id.* §§ 1637(p), 1650(f).

participation in the problem.²⁰ However, this note will assert that Title III also creates several legal and policy problems in how it restricts young consumers and how alternative solutions may have provided more efficient and impactful ways of addressing the underlying problems.

Part I of this note provides a brief overview of the marketing, soliciting, and lending practices of credit card companies on college campuses, the ramifications of student credit card debt, past attempts at reform, and the movement that led to the passing of the Credit CARD Act. Part II breaks down Title III of the Act and examines the rules and protections placed on young consumers and the institutions of higher education that they attend. Part III discusses the legal and policy ramifications of the Act, arguing that Title III severely curtails the financial autonomy of eighteen- to twenty-one-year-olds, and falls short in protecting students from coercive marketing practices. Finally, Part IV suggests that the Act fails to solve the documented problems, and proposes alternative solutions that might better address the underlying issues.

I. THE PROBLEM OF SOLICITING AND MARKETING PRACTICES BY CREDIT ISSUERS ON U.S. CAMPUSES

Credit issuers flood college students with brochures, applications, advertisements, and freebies.²¹ As a result, 56% of students have their first card at age eighteen.²² By their final year, 91% have at least one credit card and 56% carry four or more cards.²³ Credit issuers set up tables on campuses and outside school events in order to sell their products.²⁴ This practice is so rampant that 76% of students have reported stopping at such tables to consider applying for credit cards.²⁵ Most of the time students are enticed to stop at these tables by the offer of free gifts.²⁶ The gifts are conditioned, however, on applications for cards.²⁷ Once the cards are in the

20. *See id.* §§ 1637(r), 1650(f).

21. CAMPUS CREDIT CARD TRAP, *supra* note 2, at 2–4.

22. 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, http://money.cnn.com/2008/07/10/pf/credit_cards_college/?poversion=2008071413 (citing data from Nellie Mae).

23. *Id.*

24. Lucy Lazarony, *Marketing Plastic to Students Causes Lawmakers, Educators to Melt Down*, BANKRATE.COM (June 21, 1999), <http://www.bankrate.com/brm/news/cc/19990621.asp>.

25. CAMPUS CREDIT CARD TRAP, *supra* note 2, at 3.

26. *Id.* at 3–4.

27. *Id.* Of the 76% of students who stop, 31% report being offered a free gift. Most common gifts are t-shirts (50%), other (40%), frisbee or sports toy (20%), and mug or water bottle (18%). The “other” was most commonly food. *Id.*; *see also* Amy Johannas, *College Bound: Marketers Welcome, But Credit Card Companies Get a Warning Signal*, PROMO (Aug. 1, 2008, 12:00 PM), <http://promomagazine.com/eventmarketing/0801-companies-college-campaigns>.

‘There is just this kind of crazy marketing atmosphere on campuses,’ [says Christine Lindstrom, the higher education program director for U.S. PIRG]. ‘It’s pretty easy

hands of the students, the issuers continually increase interest rates and employ high penalties, exacerbating the consequences of the original misguided judgment.²⁸

The scene that awaits students is not a product of chance, nor is it solely due to credit issuers' initiative. Indeed, universities have a stake in these exchanges and actively facilitate the marketers' access to their students.²⁹ Universities have multimillion-dollar deals with credit card companies.³⁰ For example, "Michigan State [University] had a seven-year, \$8.4 million contract with Bank of America during which MSU gave the bank information on students, alumni, sports ticket holders and employees."³¹ In addition, many universities have affinity card agreements that allow the credit issuer to use the university's name to market its cards.³² In exchange, the university receives a share of the profits from new accounts.³³ This incentivizes the university to entice and indebt students with credit cards.³⁴ Some, however, see the agreements between universities and credit card issuers as a win-win situation.³⁵ Banks get ideal marketing opportunities, students get help paying the bills, and universities get an additional revenue source.³⁶

when facing [a gift of] free pizza for a student to say, 'Oh, I'll just go ahead and get the card.' That is a big problem.'

Id.

28. See WISPIRG, *supra* note 1.

29. Glater, *supra* note 12.

30. Flaherty, *supra* note 9. Bank of America is one of the biggest credit card issuers on college campuses. Glater, *supra* note 12. As of January 2009, the bank has agreements with about 700 colleges and alumni associations. *Id.*

31. Susan Tompor, *Credit Cards to be Curbed at Colleges*, DETROIT FREE PRESS, Aug. 27, 2009, <http://www.freep.com/article/20090827/COL07/908270447/Credit-cards-to-be-curbed-at-colleges>. Michigan State University even stands to receive additional money if the students who sign up carry a balance. Glater, *supra* note 12. According to the New York Times, Michigan State University gets "\$3 for every card whose holder pays an annual fee, and a payment of a half percent of the amount of all retail purchases using the cards," and "\$3 if the holder has a balance at the end of the 12th month after opening an account." *Id.* Additionally, the "alumni association of the University of Michigan is guaranteed \$25.5 million" in exchange for "lists of names and addresses of students, faculty, alumni and holders of season tickets to athletic events" over an 11 year agreement with Bank of America. *Id.*

32. GAO REPORT, *supra* note 6, at 7.

33. *E.g.*, Tompor, *supra* note 31. The profit from these contacts with credit issuers is so important to many universities that they have fought legislative reform. *See, e.g.*, Joseph Kenny, *College Fights to Preserve Student Credit Card Marketing*, JSNET.ORG (Apr. 10, 2009), <http://www.jsnet.org/news-article/college-fights-to-preserve-student-credit-card-marketing> (describing Ohio State University's fight against legislation that would limit their agreements with credit issuers).

34. See Ben Protess & Jeannette Neumann, *As Student Credit Card Debt Rises, Banks Quietly Reward Schools*, HUFFINGTON POST INVESTIGATIVE FUND (June 8, 2010, 8:01 AM), <http://huffpostfund.org/stories/2010/06/student-credit-card-debt-rises-banks-quietly-reward-schools>.

35. See Glater, *supra* note 12.

36. *Id.*

There are several reasons why the university campus is an ideal marketing setting for banks and credit card companies. First, most students are first time credit card users, making them a fresh market.³⁷ Second, they constitute an isolated and easily identifiable market.³⁸ Most college students live on or commute to a campus.³⁹ Third, because they are relatively new consumers, they are more likely to be naïve to the practices of the credit card industry.⁴⁰ Most students realize that they must build their credit because it will be a useful tool for future purchases.⁴¹ At the same time, they may not be educated in the nuances of how credit works.⁴² For example, a student may realize that he must pay the credit card company every month but may not understand what an annual percentage rate (APR) is or how it will affect his balance.⁴³ Credit card issuers rely on this naiveté when they raise interest rates to increase their profits. Lastly, many students, like other consumers, keep and continue to use their first credit card.⁴⁴ These factors lead to heavy soliciting of, and marketing to, college students on or near campuses.⁴⁵

This heavy marketing is demonstrated by the twenty-five to fifty credit card solicitations students receive per semester.⁴⁶ The solicitations take various forms, including tabling at school events, direct mail solicitations, and brochures in a variety of campus locations.⁴⁷ A study conducted by the U.S. Public Interest Research Group reported that 80% of respondent students had received mail solicitations from credit card issuers and 22% “reported receiving an average of nearly four (3.6) [solicitation] phone calls per month”⁴⁸

In a 2005 report, Ohio State University’s Creola Johnson described the scene set by credit card companies that awaits incoming freshmen as “a ‘carnival atmosphere’ of blaring music and free food . . . with glossy promotional brochures and loaded with free T-shirts, Frisbees and other

37. Dickler, *supra* note 22.

38. See CAMPUS CREDIT CARD TRAP, *supra* note 2, at 1.

39. *Id.*

40. See Laurie A. Lucas, *Integrative Social Contracts Theory: Ethical Implications of Marketing Credit Cards to U.S. College Students*, 38 AM. BUS. L.J. 413, 414–16, 422–24 (2001).

41. CAMPUS CREDIT CARD TRAP, *supra* note 2, at 1.

42. Lucas, *supra* note 40, at 414–16.

43. See generally Basic Facts About Credit Card Rates: Key Information Every Cardholder Should Know, BANK OF AMERICA, <http://learn.bankofamerica.com/articles/managing-credit/basic-facts-about-credit-card-rates.html> (last visited Nov. 20, 2010) (describing the complexities in applying APR rates to credit card balances).

44. See CAMPUS CREDIT CARD TRAP, *supra* note 2, at 7 (detailing how credit card companies compete for college students to become their “first-in-the-wallet, top-of-the-wallet” card).

45. See *id.* at 2–4.

46. College Credit Card Statistics, *supra* note 7.

47. CAMPUS CREDIT CARD TRAP, *supra* note 2, at 2–4.

48. *Id.* at 4.

gifts to lure students into applying for credit cards.”⁴⁹ Johnson goes on to explain that, “[c]ompany representatives do not talk about the interest rates or fees associated with the cards. Presumably, that information is contained in the brochures. Instead, the credit card vendors emphasize the free items and an easy way to buy clothes and books or pay for spring break vacations.”⁵⁰

These practices have contributed to a documented increase in student credit card debt and financial management problems.⁵¹ Many critics also cite excessive credit lines for those who do not necessarily qualify as an additional source of the problem.⁵² Although introductory credit limits may be low, they can quickly rise to \$2,000 or \$4,000.⁵³

In response, some universities are starting to rethink their policies and agreements with credit issuers.⁵⁴ In recent years, there has been a big push from students and public advocates who oppose such aggressive marketing techniques on college campuses.⁵⁵ Some universities have banned or greatly restricted the practice of soliciting on campus altogether⁵⁶ while others have limited its scope and frequency.⁵⁷

Along with the push for change from within the university, some state legislators are stepping in and trying to set limits on these practices. However, while statistics vary on the number of states with legislation specifically restricting marketing on campus, the number remains generally low.⁵⁸ Texas, California, New York, and Oklahoma are among the few

49. Martin Merzer, *Student Credit Card Issuers Losing Their Welcome on Campus: Relationship Between Banks, Colleges is Complex*, CREDITCARDS.COM (Dec. 8, 2008), <http://www.creditcards.com/credit-card-news/student-credit-card-issuers-losing-welcome-on-campus-1279.php>.

50. *Id.*

51. See SALLIE MAE, HOW UNDERGRADUATE STUDENTS USE CREDIT CARDS: SALLIE MAE'S NATIONAL STUDY OF USAGE RATES AND TRENDS 2009, at 3 (Apr. 2009), available at <http://www.salliemae.com/NR/rdonlyres/0BD600F1-9377-46EA-AB1F-6061FC763246/10744/SLMCreditCardUsageStudy41309FINAL2.pdf> [hereinafter SALLIE MAE STUDY]; see also Jekot, *supra* note 3, at 113–14; Johnson, *supra* note 14, at 206–19.

52. See, e.g., Tompor, *supra* note 31 (citing as an example a student who was given \$25,000 even though he did not have a full-time job).

53. Jeanne Sahadi, *Dad, Will You Pay My Visa?: That's One Question Facing Parents of College Students Who've Racked Up Credit Card Debt*, CNNMONEY.COM, Dec. 12, 2002, <http://money.cnn.com/2002/12/10/commentary/everyday/sahadi> (citing Robert Manning during his testimony before the U.S. Senate Committee on Banking, Housing and Urban Affairs).

54. GAO REPORT, *supra* note 6, at 25–29.

55. See generally *id.* at 27–29.

56. *Id.* at 25–27.

57. *Id.*; Johnson, *supra* note 14, at 195–96. For example, Ball State University, whose alumni association had a contract with a credit issuer, does not give out student information to marketers. Glater, *supra* note 12. Likewise, University of Oregon has a similar policy. *Id.*

58. Editorial, *The College Credit Card Trap*, N.Y. TIMES, Oct. 18, 2008, at A22 (“A half-dozen states have placed restrictions on how credit cards can be marketed at public colleges.”); Jon Chavez, *Card Firms Lure Students; Experts Urge Crackdown*, TOLEDO BLADE, Oct. 14, 2007, <http://toledoblade.com/apps/pbcs.dll/article?AID=/20071014/BUSINESS04/71013025> (“About 15 states restrict or ban credit-card marketing to students on campus”); see also

states that have passed such laws.⁵⁹ For example, the California law, passed in 2007, prohibits the exchange of gifts for applications.⁶⁰ The New York statute (part of New York's Education Law) is much broader.⁶¹ It prohibits marketing altogether, except as allowed by university policy.⁶² The law also makes suggestions for fair policies that schools could adopt.⁶³

In addition to these state legislative reforms, several attorneys general have tried to initiate reform in credit marketing to college students. Several have opened investigations into the practices of credit card issuers on campuses.⁶⁴ For example, in 2008, former New York Attorney General Andrew Cuomo investigated whether credit card marketers had offered money to universities in exchange for access and information on students.⁶⁵ Likewise, the Ohio Attorney General sued Citibank, a credit card marketing company, and a sandwich shop over their alleged deceptive marketing to college students.⁶⁶

On the federal level, there have been a number of congressional attempts to add protections for college students wishing to obtain credit.⁶⁷ For example, the Consumer Credit Card Protection Amendments of 1999 (CCCPA) was introduced in the Senate and in the House of Representatives

Tyler Metzger, *Campus Credit Card Regulation Brewing . . . Again*, CREDITCARDS.COM (Feb. 3, 2009), <http://blogs.creditcards.com/2009/02/campus-credit-card-regulation-brewing.php> (detailing proposed New Jersey bill).

59. Merzer, *supra* note 49. Maryland also passed legislation which "requires higher education institutions to develop practices regarding credit card marketing and the use of free gifts on campus." Johannas, *supra* note 27. If the universities allow these practices, they must also provide additional educational credit information. *Id.* Another example is Tennessee, where state legislators passed a law that prohibits credit issuers from using student organizations or facilities in order to recruit applicants. *Id.* They are, however, allowed to do so at athletic events, but are banned from giving gifts in exchange for applications. *Id.*

60. College Student Credit Protection Act of 2007, Ch. 679, 2007 Cal. Stat. 262; Ashley Geren, *Credit Card Death: Students Might Want to Think Twice Before Getting a Credit Card*, THEROUNDUPNEWS.COM (Sept. 16, 2009), <http://www.therounduponline.net/features/credit-card-death-1.1878895>.

61. See N.Y. EDUC. § 6437 (McKinney 2010).

62. *Id.*

63. *Id.*

64. CAMPUS CREDIT CARD TRAP, *supra* note 2, at 10.

65. *Id.*

66. *Id.* The Ohio Attorney General sued Citibank, Elite Marketing, and Potbelly Sandwiches for "'unfair and deceptive' marketing practices." Johannas, *supra* note 27. The Attorney General alleged that "students visited local restaurants for free food, only to find out they had to apply for a credit card to receive it." *Id.* The case has been partially settled. *Id.* As part of the settlement, Potbelly agreed to give out coupons for its products as an incentive to get students to watch a documentary on the credit industry. *Id.*

67. See Student Credit Card Protection Act of 2007, S. 1925, 110th Cong. (2007); College Student Credit Card Protection Act, H.R. 1208, 109th Cong. (2005); Credit Card Accountability Responsibility and Disclosure Act of 2004, S. 2755, 108th Cong. (2004); College Student Credit Card Protection Act, H.R. 184, 107th Cong. (2001); Credit Card Protection Amendments of 1999, S. 787, 106th Cong. (1999); Consumer Credit Card Protection Amendments of 1999, H.R. 900, 106th Cong. (1999).

in April and May of 1999, respectively.⁶⁸ Like the Credit CARD Act of 2009, the CCCPA contained a provision mandating a consumer under twenty-one have a parent or guardian co-signer or to have an independent means of repaying their credit card debt.⁶⁹

Despite several attempts in both the House and Senate, including the CCCPA, credit reform for college students had not passed into law.⁷⁰ However, things in Washington changed with the 2008 election.⁷¹ President Obama made consumer protection a part of his campaign.⁷² Amid a climate of foreclosures and high debt, Obama pushed for reform in several industries, including the credit card sector.⁷³ In the White House press release announcing the Credit CARD Act, President Obama tied the new law into his larger economic recovery plans.⁷⁴ With the turbulent changes in the economy, the shift in Washington, and new support for major credit reform, the Credit CARD Act survived the legislative process and passed into law.⁷⁵

II. PROTECTIONS PROVIDED BY THE CREDIT CARD ACT

In January 2009, Representative Carolyn B. Maloney (D-NY) introduced H.R. 627, which would later form the basis for the Credit CARD Act.⁷⁶ H.R. 627 was intended to amend the Truth in Lending Act⁷⁷ and the Fair Credit Reporting Act (FRCA)⁷⁸ in order to “establish fair and transparent practices relating to the extension of credit under an open end

68. 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, 106 (Spring 2001).

69. H. R. 900 § 7; S. 787 § 7; 15 U.S.C.A. 1637(c) (West 2010).

70. Kimberly Gartner & Elizabeth Schiltz, *What's Your Score? Educating College Students About Credit Card Debt*, 24 ST. LOUIS U. PUB. L. REV. 401, 408–09 (2005); see also Johnson, *supra* note 14, at 254–56.

71. See Philip Elliott, *Obama Signs Law Curbing Surprise Credit Card Fees*, ASSOCIATED PRESS, May 22, 2009, available at http://www.huffingtonpost.com/2009/05/22/obama-signs-law-curbing-s_n_206944.html.

72. Press Release, The White House, Fact Sheet: Reforms to Protect American Credit Card Holders (May 22, 2009), http://www.whitehouse.gov/the_press_office/Fact-Sheet-Reforms-to-Protect-American-Credit-Card-Holders [hereinafter White House Press Release].

73. See Elliott, *supra* note 71.

74. See White House Press Release, *supra* note 72 (“With this new law, consumers will have the strong and reliable protections they deserve. We will continue to press for reform that is built on transparency, accountability, and mutual responsibility—values fundamental to the new foundation we seek to build for our economy.”).

75. See *id.*

76. Bill Summary & Status: 111th Congress (2009–2010): H.R. 627: All Congressional Actions with Amendments, LIBRARY OF CONGRESS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR00627:@@S> (listing Rep. Maloney as the sponsor of the bill H.R. 627 that ultimately became the Credit CARD Act).

77. Truth in Lending Act, 15 U.S.C. §§ 1601–1667f (2006).

78. Fair Credit Reporting Act, 15 U.S.C. §§ 1681–1681x (2006).

consumer credit plan, and for other purposes.”⁷⁹ It became public law on May 22, 2009 when President Obama, in a Rose Garden ceremony, signed the bill.⁸⁰ The Act covers general consumer protection, enhanced consumer disclosures, protection of young consumers, gift cards, and other miscellaneous items.⁸¹

Title III of the Act is devoted exclusively to protecting young consumers and is broken down into five sections. The first section of Title III amends the Truth in Lending Act by limiting the “extension of credit to underage consumers.”⁸² Section 301 prohibits the issuance of a credit card or open end credit plan to a consumer under the age twenty-one⁸³ unless the application for that consumer contains a signature of a co-signer⁸⁴ or financial information indicating means of repayment.⁸⁵ According to the Act, the co-signer can be a “parent, legal guardian, spouse, or any other individual” twenty-one-years-of-age or older.⁸⁶ The co-signer must have the “means to repay the debts” of the consumer and will be considered jointly liable for that debt.⁸⁷ However, the co-signer is only liable for the debt incurred before the consumer has reached the age of twenty-one.⁸⁸ Alternatively, absent a viable co-signer, a credit card applicant under the age of twenty-one may demonstrate an “independent means of repaying any obligation arising from the proposed extension of credit”⁸⁹ The text does not give much explanation as to what “means” would qualify under this provision. It only requires that the consumer submit such financial information through the application or otherwise.⁹⁰

Section 301(C) tasks the Board of Governors of the Federal Reserve System (the Board) with issuing regulations outlining the standards required to satisfy subparagraph (B)(ii).⁹¹ The Board usually issues clarifications on

79. Credit CARD Act of 2009, H.R. 627, 111th Cong. (2009).

80. Elliott, *supra* note 71.

81. Credit CARD Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (2009).

82. 15 U.S.C.A. § 1637(c) (West 2010) (implying that the use of the word “underage” applies to consumers under the age of twenty-one).

83. *Id.* § 1637(c)(8)(A).

84. *Id.* § 1637(c)(8)(B)(i).

85. *Id.* § 1637(c)(8)(B)(ii).

86. *Id.* § 1637(c)(8)(B)(i).

87. *Id.*

88. *Id.*

89. *Id.* § 1637(c)(8)(B)(ii).

90. *Id.*

91. *Id.* § 1637(c)(8)(C). The regulations, over 800 pages, detail what credit card issuers must do to grant or extend credit to all consumers covered under the Act. Connie Prater, *Fed: Want a Credit Card? Prove You Can Pay the Bill*, CREDITCARDS.COM (Sept. 30, 2009), <http://www.creditcards.com/credit-card-news/credit-card-act-fed-income-rules-1282.php>. The regulations also clarify several vague terms in the provisions dealing with young consumers, including “prohibited inducements,” “near campus,” “independent means of paying,” and co-signer requirements. Jay MacDonald, *Fed: Credit Card Issuers, Stay Far Away From College Campus: Stay At Least 1,000 Feet Away, New Regulations State*, CREDITCARDS.COM (Sept. 30,

the terms of a newly issued law,⁹² and it did so on September 28, 2009, providing examples of the type of information that would qualify as proof of an independent means of repaying.⁹³ This included “expected salary, wages, bonus pay, tips and commissions” for any type of employment, “interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments,” or “savings accounts or investments that the consumer can or will be able to use.”⁹⁴ These provisions likely limit the number of college students under age twenty-one who could qualify.⁹⁵ It is unclear, however, how strictly credit issuers must adhere to this “proof” standard.⁹⁶

The Act further provides that even once a student has been issued a credit card, the co-signer, if jointly liable for a consumer under twenty-one, must approve any increase to the credit line for that consumer.⁹⁷ By amending § 127 of the Truth in Lending Act,⁹⁸ § 303 of the Credit CARD Act restricts young consumers beyond the application process.⁹⁹ It places an additional hurdle for eighteen- to twenty-one-year-olds to obtain and manage their credit by requiring that the co-signer approve the credit increase.

To stem the flow of solicitations on college campuses, Congress included protections from prescreened offers as well as restrictions on the distribution of promotional items. Title III, § 302 amends § 604(c)(1)(B) of the FRCA¹⁰⁰ to include restrictions on prescreened credit offers to consumers under twenty-one.¹⁰¹ This section provides that credit reporting agencies can furnish credit reports for offers of credit *only if* the consumer is over twenty-one or has consented to the disclosure.¹⁰² In other words, except for eighteen- to twenty-one-year-olds who have consented to the

2009), <http://www.creditcards.com/credit-card-news/student-credit-card-rules-1279.php>. This is discussed *infra* Part III.

92. MacDonald, *supra* note 91.

93. Truth in Lending Proposed Rule, 74 Fed. Reg. 54,125, 54,313 (Oct. 21, 2009) (to be codified at 12 C.F.R. pt. 226).

94. *Id.*

95. See generally Prater, *supra* note 91. See also Brian Burnsed, *New Rules Place Barriers Between Students, Credit Card Issuers*, US NEWS & WORLD REP., Feb. 19, 2010, <http://www.usnews.com/articles/education/best-colleges/2010/02/19/new-rules-place-barriers-between-students-credit-card-issuers.html>.

96. See generally MacDonald, *supra* note 91 (explaining the Federal Reserve’s clarifications but noting the failure to clarify certain aspects of the Act); see also Prater, *supra* note 91 (failing to specify what reasonable policy or procedure might entail).

97. 15 U.S.C.A. § 1637(p) (West 2010).

98. Truth in Lending Act § 127, 15 U.S.C. § 1637(c) (2006).

99. 15 U.S.C.A. § 1637(p).

100. Fair Credit Reporting Act § 604, 15 U.S.C. § 1681b(c)(1)(B) (2006).

101. 15 U.S.C.A. § 1681b(c)(1)(B)(2)(iv) (West 2010).

102. *Id.*

disclosure of their credit report for offers of credit, the automatic flood of mailings that bombard college freshman should theoretically start to ebb.¹⁰³

The Act also adds protection from solicitations by proscribing physical inducements in exchange for applications.¹⁰⁴ Section 304(f)(2) prohibits creditors from offering “tangible item[s]” to college students in exchange for a credit card application.¹⁰⁵ However, this prohibition is limited to offers made on or near campus or at a school-sponsored event.¹⁰⁶ In its clarifications of the Act, the Board gave examples of what types of inducements would be prohibited.¹⁰⁷ The Act proscribes the use of tangible items, such as a “gift card, a T-shirt, or magazine subscription” in exchange for filled applications, but does not prohibit “non-physical items” like “discounts, reward points, or promotional credit terms.”¹⁰⁸ Not only is the type of item an important distinguishing factor in determining the legality of a practice, but the agreement must indeed be a quid pro quo.¹⁰⁹ If the items are given out freely regardless of whether applications are in fact being filled out, then it would seem the Act does not apply.¹¹⁰

The Board’s regulations also specify that “near campus” is defined as “within 1,000 feet of the border of the campus of an institution of higher education”¹¹¹ The borders should be determined by the institution.¹¹² The prohibition against promotions near campus also extends to related events, including any event in which the institution’s name or logo is used in connection with the event so as to imply the institution’s sponsorship.¹¹³ In this way, § 304 potentially covers an expansive area on or near campus.

Besides the limitations specifically outlined in § 304, Congress also recommends that institutions of higher education adopt their own policies to help monitor and limit credit card marketing.¹¹⁴ It recommends that these institutions instruct credit issuers to notify them of the locations where marketing of credit cards will occur.¹¹⁵ Section 304 also recommends that schools limit the number of locations for marketing¹¹⁶ and offer debt counseling and education to new students.¹¹⁷

103. See 15 U.S.C. § 1681b(c)(1)(B); see also Heckathorn, *supra* note 9.

104. 15 U.S.C.A. § 1650(f)(2) (West 2010).

105. *Id.*

106. *Id.*

107. MacDonald, *supra* note 91.

108. Truth in Lending Proposed Rule, 74 Fed. Reg. 54,123, 54,127 (Oct. 21, 2009) (to be codified at 12 C.F.R. pt. 226).

109. See *id.* at 54,328.

110. MacDonald, *supra* note 91.

111. Truth in Lending Proposed Rule, 74 Fed. Reg. at 54,328; MacDonald, *supra* note 91.

112. Truth in Lending, 74 Fed. Reg. at 54,328; MacDonald, *supra* note 91.

113. Truth in Lending, 74 Fed. Reg. at 54,328; MacDonald, *supra* note 91.

114. 15 U.S.C.A. § 1650(f)(3) (West 2010).

115. *Id.* § 1650(f)(3)(A).

116. *Id.* § 1650(f)(3)(B).

117. *Id.* § 1650(f)(3)(C).

The final protection Title III provides is required disclosure of the contracts between universities and creditors.¹¹⁸ Institutions of higher education must “publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.”¹¹⁹ Likewise, the Act mandates reporting by each creditor who has any “business, marketing, and promotional agreements and college affinity card¹²⁰ agreements with an institution of higher education.”¹²¹ The report must include the terms and conditions of any agreements between creditors and universities, including memoranda of understanding, amounts of payments between them, and the number of accounts covered by the agreement.¹²² Once creditors have submitted the reports to the Board, the Board will review them and submit an annual report to Congress and the public.¹²³ Additionally, from time to time the Comptroller General of the United States is to review the Board’s reports, determine the impact of creditor agreements, and write a report recommending any needed action.¹²⁴

The passage of Title III is a tacit recognition of the need to protect young consumers against the aggressive and deceptive practices of credit issuers. The Act finally puts an end to the exchange of gifts for applications.¹²⁵ Prohibiting tangible inducements will limit the ability of marketers to get the attention of college students.¹²⁶ In turn, only those truly interested in obtaining a credit card will likely approach a promotional table. Furthermore, the Act protects students from insidious pre-screened offers with which they are consistently bombarded.¹²⁷

118. *Id.* §§ 1650(f)(1), 1637(r)(2)(A).

119. *Id.* § 1650(f)(1).

120. The Act defines college affinity card as a:

[C]redit card issued by a credit card issuer under an open end consumer credit plan in conjunction with an agreement between the issuer and an institution of higher education, or an alumni organization or foundation affiliated with or related to such institution, under which such cards are issued to college students who have an affinity with the institution, organization and—

- (i) the creditor has agreed to donate a portion of the proceeds of the credit card to the institution . . . ;
- (ii) the creditor has agreed to offer discounted terms to the consumer; or
- (iii) the credit card bears the name, emblem, mascot, or logo of such institution . . . or other words, pictures, or symbols readily identifies with such institution, organization, or foundation.

Id. § 1637(r)(1)(A).

121. *Id.* § 1637(r)(2)(A).

122. *Id.* § 1637(r)(2)(B)(i)–(iii).

123. *Id.* § 1637(r)(3).

124. *Id.* § 1637(r)(3)(B)(1)–(2).

125. *Id.* § 1650(f)(2).

126. See generally CAMPUS CREDIT CARD TRAP, *supra* note 2, at 13 (proposing “prohibit[ing] use of gifts in marketing on campus” as part of “fair campus credit card marketing principles”).

127. 15 U.S.C.A. 1681b(c)(1)(B) (West 2010).

Finally, forcing the universities to disclose their contracts with credit issuers will provide a new level of transparency and accountability. Most students are unaware of the benefits the university is gaining through credit marketing on campus.¹²⁸ With every application and subsequent account, the university usually makes a profit.¹²⁹ These deals may stipulate when and how marketing can be done, provide unlimited access to student registration data, or even allow for use of the university name in connection with the credit cards.¹³⁰ Exposing the agreements will not only increase public awareness about these practices but may also deter the more unconscionable aspects of these agreements.¹³¹

Although the Act has the potential to provide significant protection for young consumers, it also implicates several legal and policy issues. The Act discriminates on the basis of age by imposing additional requirements on consumers under twenty-one¹³² and disproportionately impacts specific segments of the young adult population.¹³³ The Act also does not go far enough in protecting students from solicitations on campus¹³⁴ and fails to solve the underlying problems that originally created the need for reform.¹³⁵

III. LEGAL AND POLICY RAMIFICATIONS OF THE ACT

A. RIGHTS OF YOUNG CONSUMERS

Title III of the Act creates different contractual standards for consumers between the ages of eighteen and twenty-one.¹³⁶ Placing additional restrictions on this specific age group is both discriminatory and ineffective.¹³⁷ In addition, the all-inclusive restrictions freeze out many young consumers who would benefit from a credit card and are capable of handling credit responsibly but who cannot meet the heightened standards.¹³⁸ Lastly, the restrictions disproportionately affect lower income students as well as eighteen- to twenty-one-year-old non-students.¹³⁹

128. See Glater, *supra* note 12.

129. *Id.*

130. *Id.*

131. See, e.g., Ylan Q. Mui, *Credit Reforms Reach Campuses*, WASH. POST., Aug. 27, 2010, at A14 (describing some of the contracts between credit card issuers and universities and the hope that the contract disclosure requirement will increase transparency); Protes & Neumann, *supra* note 34 (describing the millions of dollars and secrecy surrounding agreements between universities and credit card companies).

132. See Palmer et al., *supra* note 68 (discussing similar objections to a bill introduced in 1999).

133. See *infra* Part III.A.

134. See *infra* Part III.B.

135. See *infra* Part IV.

136. 15 U.S.C.A. §§ 1637(c)(8), 1637(p) (West 2010).

137. See discussion *infra* Part III.

138. See discussion *infra* Part III.

139. See discussion *infra* Part III.

Young consumers are a vital and important part of the economic marketplace.¹⁴⁰ They often lead the way in consumer trends and shape certain markets.¹⁴¹ Although most people enter the marketplace at a young age under the purchases of their parents, once they reach the age of majority—eighteen in most states¹⁴²—they can be considered financially independent consumers.¹⁴³ At the age of majority, consumers gain the right to enter into binding economic contracts, along with the right to vote and join the military without parental consent.¹⁴⁴ Parents' legal duty of support ends when offspring reach this age, as does parental authority.¹⁴⁵ Although many parents may continue to support their children, they are not legally required to do so.¹⁴⁶

Although a child under eighteen may enter into a contract, the child retains the right to disaffirm any contract before she reaches the age of majority.¹⁴⁷ The right of disaffirmance is meant to protect children from careless financial decisions and reduce the incentive for adults to enter into contracts with children.¹⁴⁸ At the age of majority, however, young adults lose this right and are bound by their contractual obligations.¹⁴⁹ Because they are responsible for their contractual agreements, young adults at the age of majority should therefore be given full control over their contractual decisions.¹⁵⁰

Despite the full responsibility young adults assume for their contractual obligations, Title III of the Act places limitations on their ability to enter into contractual agreements with credit card companies.¹⁵¹ These limits are

140. "Teenagers spend billions of dollars annually on clothing, video games, CD players, stereos, and cars." ROBERT H. MNOOKIN & D. KELLY WEISBERG, *CHILD, FAMILY, AND THE STATE: PROBLEMS AND MATERIALS ON CHILDREN AND THE LAW* 675 (Wolters Kluwer 6th ed. 2009) (citation omitted).

141. *See id.*

142. LAUREN KROHN ARNEST, *CHILDREN, YOUNG ADULTS, AND THE LAW: A DICTIONARY* 199–200 (1998).

143. *See generally id.*

144. *See generally* ARNEST, *supra* note 142, at 84–85, 199; 10 U.S.C. § 505 (2006). A few rights, such as buying alcohol, are withheld from eighteen year olds; however, these are the exceptions rather than the rule. *See* James Mosher, *The History of Youthful-Drinking Laws: Implications for Public Policy*, in *MINIMUM-DRINKING-AGE LAWS: AN EVALUATION* 26–31 (Henry Wechsler ed., 1980), *reprinted in* MNOOKIN & WEISBERG, *supra* note 140, at 682.

145. ARNEST, *supra* note 142, at 199.

146. *See id.*

147. *Id.* at 84–85.

148. *See, e.g.,* McGuckian v. Carpenter, 110 A. 402 (R.I. 1920); *see also* ARNEST, *supra* note 142, at 84–85.

149. ARNEST, *supra* note 142, at 84–85.

150. *See generally* Ashley Goetz, Editorial, *Credit Card Act Treats Adults as Children*, MINN. DAILY, June 9, 2009, <http://www.mndaily.com/2009/06/09/credit-card-act-treats-adults-children> ("Congress is saying that college-aged people aren't really adults yet.").

151. 15 U.S.C.A. § 1637(c)(8)(B) (West 2010).

stricter than those placed on adults over the age of twenty-one.¹⁵² Section 301(B) requires an eighteen- to twenty-one-year-old applicant without a co-signer to indicate through financial information that he or she has the ability to repay *any obligation* under the account.¹⁵³ In contrast, § 109 of Title I of the Act, which applies to consumers over twenty-one, states that in order to open an open-end consumer credit plan, the card issuer must consider “the ability of the consumer to make the required payments under the terms of such account.”¹⁵⁴ Section 109 provides a much easier standard to qualify for a credit card than § 304. First, it only applies to open-end consumer credit plans, rather than any credit card application.¹⁵⁵ Second, the issuer must only *consider* the consumer’s ability to make *required payments*, as compared to *requiring* an ability to repay *any obligation*.¹⁵⁶ In other words, under § 109, the card issuer must consider only whether the consumer over twenty-one is able to make minimum monthly payments, while § 304 requires that the consumer under twenty-one be able to repay any debt incurred. The tougher standards for consumers eighteen- to twenty-one years old discriminate against this group solely on the basis of their age.¹⁵⁷ Despite the fact that eighteen-year-olds are considered adults and bound by their contractual obligations, the Act treats them as a separate and distinct group—different from children but not yet having full financial rights.

The arguably arbitrary restrictions on eighteen- to twenty-one-year-olds also freeze out many young adult consumers who want and would benefit from credit. In an attempt to protect young consumers, Congress has “limited the ability of their more responsible peers to build up credit histories they’ll need when they graduate.”¹⁵⁸ It is wise for many young consumers to build such histories. Credit reports are being used more and more for a variety of purposes including renting apartments, loan rates, job

152. *Compare id.* § 1665e (describing the requirements necessary for individuals over twenty-one years of age to qualify for credit cards), *with id.* § 1637(c)(8)(A)–(B) (describing the requirements necessary for those under twenty-one years of age to qualify for credit cards).

153. *Id.* § 1637(c)(8)(B).

154. *Id.* § 1665e.

155. *Compare id.* § 1665e (applying new regulation to “open end consumer credit plans” only), *with id.* § 1637(c)(8)(B) (applying restrictions to anyone who chooses “to open a credit card account”).

156. *Compare id.* § 1665e (requiring credit card companies to “consider[] the ability of the consumer to make the required payments under the terms of such account”), *with id.* § 1637(c)(8)(B) (applying restrictions in regards to “any obligation arising from the proposed extension of credit in connection with the account”).

157. Consider if the Act made tougher restrictions for adults over sixty-five than for those under sixty-five. The issue of age discrimination would be central in the debate. However, when it comes to discrimination based on age against the young, most commentators dismiss it as necessary and miss the inherent paternalism and prejudice. *See* Goetz, *supra* note 150.

158. William P. Barrett, *College Students Face New Credit Card Cut-Off*, FORBES.COM (Aug. 4, 2009, 12:20 PM), <http://www.forbes.com/2009/08/04/credit-card-reform-bill-college-students-personal-finance-collegecredit.html>; *see also* Burnsed, *supra* note 95.

hiring, and insurance.¹⁵⁹ However, many students who need and are capable of handling credit would not qualify under the new rules. First, because the co-signer will incur any of the obligations and suffer any damages that result from the student's use of the card, few students are likely to obtain a potential co-signer other than a parent.¹⁶⁰ Second, without co-signers, it may be difficult for young consumers who actually need and will use credit cards responsibly to provide enough documentation to demonstrate that they are financially stable, even to issuers who require the bare minimum.¹⁶¹ "Many—especially college students and lower-income young adults—don't have easy access to a financially stable co-signer, [or] a full bank account . . ."¹⁶²

Not only will these restrictions limit students' ability to build credit histories, but it will also hamper their ability to finance important purchases, like books or health insurance.¹⁶³ Many students are no longer financially supported by their parents.¹⁶⁴ They may be unable to pay for expensive textbooks all at once, and would rather finance the purchase and make payments over a few months.¹⁶⁵ By restricting their ability to get credit, the Act is especially harmful to responsible students working to put themselves through school.¹⁶⁶

In the same way the Act hurts responsible young adults wishing to build their credit, it also has a disproportionate effect on lower income students. These students may have little or no financial support from their parents.¹⁶⁷ Likewise, they or their parents may not be able to provide proof of their ability to repay.¹⁶⁸ So while these lower income students may be able to make minimum monthly payments and repay their obligation over time, they may not be able to prove that to a credit issuer.

Another group adversely affected by the Act is non-students. Although many sections of Title III are aimed at protecting *students* from aggressive solicitations, it also has a significant impact on young non-student consumers.¹⁶⁹ Many young adults do not continue on to college after high

159. Barrett, *supra* note 158.

160. For example, late payments will show up on their credit history. Tompor, *supra* note 31.

161. Goetz, *supra* note 150.

162. *Id.*

163. Ninety-two percent of undergraduates with credit cards report using the card for an education related expense, such as textbooks, fees, or general school supplies. SALLIE MAE STUDY, *supra* note 51, at 3.

164. Scott Jaschik, *Understanding Independent Students*, INSIDE HIGHER ED (Oct. 24, 2005), <http://www.insidehighered.com/news/2005/10/24/independent>.

165. See SALLIE MAE STUDY, *supra* note 51, at 3.

166. Heckathorn, *supra* note 9.

167. See Jekot, *supra* note 3, at 126.

168. See *id.*

169. See Press Release, Office of Senator Chris Dodd, Senate Approves Dodd's Bill to Protect Consumers from Abusive Credit Card Practices (May 19, 2009), <http://dodd.senate.gov/?q=node/4968>; see also White House Press Release, *supra* note 72; Ashley Goetz, *Credit CARD Act Impacts College Students: The Act Has Received Mixed Reactions*, MINN. DAILY, June 2, 2009,

school graduation, often opting to work or go to a vocational training program.¹⁷⁰ According to the National Center for Education Statistics, compared with the sixty-three million students in elementary and secondary school, only twenty-one million are in post-secondary degree granting institutions.¹⁷¹ These eighteen- to twenty-one-year-old young adults are especially vulnerable to the new restrictions. Often independent from their parents and building a life of their own, they may need to make significant purchases such as a car, furniture, insurance, or even a house.¹⁷² Obtaining credit in order to finance such purchases and build a credit history is vital in establishing financial independence.¹⁷³ By placing heavier restrictions on acquiring credit, the Act hampers the ability of these eighteen- to twenty-one-year-olds to become fully independent adult consumers despite the fact that they function as such in every other aspect.¹⁷⁴

Although the Act frames the issue as one of protectionism, its restrictions on the financial freedom of young adults is saturated with paternalism. At a certain point, society must stop placing restrictions on the autonomy of young adults.¹⁷⁵ Usually this point comes at the age of majority when children are considered legal adults, independent from their parents and subject to the same rights and responsibilities as other adults.¹⁷⁶ By restricting the ability of eighteen- to twenty-one-year-olds to get a credit card like any other adult, the Act merely delays full financial freedom and tramples on the autonomy of young consumers.

The Act also only delays and does not solve the youthful misjudgments its proponents were originally concerned about. In passing the Act, many legislators and advocates justified the provisions with the idea that young consumers were getting buried in debt because they did not know how to manage and build responsible credit.¹⁷⁷ Those young adults who now cannot get a credit card under Title III will be no better equipped with the skills and knowledge necessary to manage credit upon their twenty-first birthday.¹⁷⁸ By failing to mandate credit education or provide any additional

<http://www.mndaily.com/2009/06/02/credit-card-act-impacts-college-students> (noting that the Act “has certain rules and restrictions designed to protect college-age students”).

170. Projected Number of Participants in Educational Institutions, by Level and Control of Institution: Fall 2008, NATIONAL CENTER FOR EDUCATION STATISTICS, http://nces.ed.gov/programs/digest/d08/tables/dt08_001.asp (last visited Nov. 21, 2010).

171. *Id.*

172. See Barrett, *supra* note 158.

173. *Id.*

174. See Goetz, *supra* note 150.

175. See generally Gary B. Melton, *Decision Making by Children: Psychological Risks and Benefits*, in CHILDREN’S COMPETENCE TO CONSENT 21–37 (Melton, Koocher, & Saks eds., 1983) (discussing the psychological aspects of decision making by young adults); Goetz, *supra* note 150; Geren, *supra* note 60.

176. See ARNEST, *supra* note 142, at 199.

177. See WISPIRG, *supra* note 1.

178. See generally Johnson, *supra* note 14, at 269–76.

resources to teach young consumers these skills, Title III does not get to the heart of the underlying problem.¹⁷⁹ On the contrary, the financial independence of young consumers is merely delayed, specific groups are disproportionately impacted, and the autonomy of young adults is hampered without adequately addressing the issues that form the basis of the problem.

B. NOT FAR ENOUGH: CONTRACT AGREEMENTS AND LIMITATIONS ON MARKETING

While the Act's limitations on marketing and its requirements of university contract disclosures contribute to solving the problem of predatory solicitation on college campuses, these limitations do not go far enough. Contract disclosures will not prevent universities from providing student data to credit card issuers.¹⁸⁰ At the same time, the disclosures may violate confidentiality provisions and impinge on contractual privacy.¹⁸¹ In addition, Title III's limits on marketing merely prevent the distribution of pre-screened offers and tangible gifts,¹⁸² leaving large loopholes for solicitors to continue to take advantage of students on campus.

Forcing universities to disclose their contracts with credit issuers¹⁸³ may have some beneficial effects. For one, it may deter universities from using blatantly unconscionable contract provisions.¹⁸⁴ However, it will not likely deter universities from freely giving out student data in exchange for a portion of the profits issuers realize from student credit accounts.¹⁸⁵ The sharing of student information provides creditors with the ability to target the student market and provides the essential means for the tactics the Act is trying to stop.¹⁸⁶ By failing to limit student data disclosure, the Act does not go far enough in addressing contractual agreements between universities and credit card issuers.

179. *See id.*

180. *See* CAMPUS CREDIT CARD TRAP, *supra* note 2, at 9.

181. Memorandum from Bond, Schoeneck & King, Higher Education Law Information Memo: Federal Credit CARD Act Regulates College and University Relationships with Credit Card Issuers (Aug. 2009), available at <http://www.bondschoeneckking.com/pdfinfomemos/08-2009%20im%20higher%20ed.pdf>.

182. 15 U.S.C.A. §§ 1650(f)l, 1681b(c)(1)(B) (West 2010).

183. *Id.* § 1637(r).

184. *See* Protess & Neumann, *supra* note 34 (describing provisions that allow universities to "receive bonuses when students incur debt" and when students carry a balance from one year to the next); *see also* Glater, *supra* note 12.

185. *See* Glater, *supra* note 12 (discussing the practice of using revenue from credit card issuers to fund "scholarships and other programs"). In a separate survey earlier this year, USA Today found that "two-thirds of the nation's largest 15 universities either partner with banks to promote debit cards or are looking to do so." Kathy Chu, *Credit Cards Go After College Students; Banks Increase Efforts to Forge Relationships with Attractive Demographic*, USA TODAY, Mar. 31, 2008, at B6.

186. *See* Glater, *supra* note 12. However, many students are unaware of this information sharing. *Id.*

The Act also insufficiently limits marketing on campus. Although it prohibits giving out tangible items in exchange for credit card application, the Act does not prohibit issuers from providing these gifts for free.¹⁸⁷ Under Title III, credit card marketers are still able to give out free items to entice students to come over to a table and speak with representatives. The items simply cannot be conditioned on a filled out application.¹⁸⁸ In other words, before the Act the marketers had tables giving out free pizza in exchange for a filled out application, and now the marketers can still have tables with pizza and applications but just no quid pro quo exchange.¹⁸⁹ There is no doubt that students will still be enticed by the smell of free pizza and fall into the same traps laid by the solicitors.¹⁹⁰ While the elimination of the quid pro quo exchange is an important and crucial step in reforming credit card marketing practices on college campuses, it is not enough.

IV. THE ACT'S FLAWS PREVENT IT FROM ADDRESSING SOME OF THE UNDERLYING ISSUES FACING YOUNG CONSUMERS WHILE OTHER ALTERNATIVES MAY PROVIDE MORE FUNDAMENTAL SOLUTIONS

Although the Act may bring about some important changes in the predatory lending practices of credit card issuers on college campuses, it does not solve some core problems. Reform that does not directly restrict student access would likely prove a better solution.¹⁹¹ A combination of stronger protections for student data, increased marketing limitations on credit card issuers, and student credit education would inform and empower students to take responsibility for their own finances while still protecting them from the most deceptive and coercive practices. Protecting student data would force universities to be more honest and accountable to their students.¹⁹² Placing further limitations on marketing on campuses would decrease the availability of credit cards and therefore force responsible students to more actively seek out credit information on their own.¹⁹³

187. See MacDonald, *supra* note 91.

188. 15 U.S.C.A. § 1650(f) (West 2010).

189. See MacDonald, *supra* note 91.

190. See *generally id.* (stating that if the gift is given to students regardless of whether they fill out an application it is not an inducement under the Act).

191. See Heckathorn, *supra* note 9.

192. See U.S. PUB. INTEREST RESEARCH GROUP EDUC. FUND, IMPROVING THE CREDIT CARD ACT'S BENEFITS TO STUDENTS AND OTHER YOUNG PEOPLE: A GUIDE FOR COLLEGES AND POLICYMAKERS 7–8 (Aug. 2010), available at http://www.studentpirgs.org/uploads/0b/3a/0b3a756061e78f775da9c1dd228bf0f4/CreditCARDActIssuebrief_Aug2010.pdf [hereinafter PIRG GUIDE FOR COLLEGES].

193. See Johnson, *supra* note 14, at 267–68.

Finally, better credit education would inform and empower students rather than suppress their financial freedom.¹⁹⁴

A. STRONGER PROTECTIONS FOR STUDENT DATA

Student data is already partially protected by the Family Educational Rights and Privacy Act (FERPA).¹⁹⁵ FERPA was enacted in order to protect student privacy and educational records.¹⁹⁶ It includes a general prohibition against releasing information from a student's educational record without written permission.¹⁹⁷ However, there is an exception for student directory information¹⁹⁸—the exact type of information institutions of higher education provide to credit issuers.¹⁹⁹ Further, FERPA only applies to schools receiving Department of Education funds.²⁰⁰

The exception for student directory information does, however, include the requirement that the school have an opt-out provision.²⁰¹ Therefore, schools may release student directory information but must allow students to opt-out of the disclosure. For example, at the University of Michigan students are generally told how they can opt-out of having their information publicly displayed in directories or provided in response to a request.²⁰² The policy is not specific to credit card companies.²⁰³ However, opt-out systems are problematic because they require an affirmative step by the individual student before her information is protected.²⁰⁴ In addition to placing the burden on the student, universities may also fail to widely publicize the option.²⁰⁵ In order to truly protect student data, this FERPA exception must be changed to require an opt-in for disclosure.

An opt-in privacy policy is one in which students would have to expressly give permission before their information may be shared with

194. *See id.* at 269–77.

195. *See* 20 U.S.C. § 1232g (2006).

196. Federal Education Rights and Privacy Act (FERPA), U.S. DEPT. OF ED., <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last modified 6/16/09).

197. 20 U.S.C. § 1232g(b).

198. *Id.*

199. *See id.* at 1232g(a)(5)(A) (defining “directory information” as “the student’s name, address, telephone listing, date and place of birth, major field of study”); *see also* Glater, *supra* note 12 (“Students are generally told how they can opt out of having their information publically displayed in directories”).

200. 20 U.S.C. § 1232g(a)(3)

201. *Id.* § 1232g(a)(5)(B).

202. Glater, *supra* note 12.

203. *Id.*

204. Jeff Sovern, *Opting In, Opting Out, Or No Options At All: The Fight For Control of Personal Information*, 74 WASH. L. REV. 1033, 1071–91 (1999).

205. *See* Glater, *supra* note 12 (discussing the lack of awareness by students to agreements between universities and credit card companies); *see also* Eric Goldman, *On My Mind: The Privacy Hoax*, FORBES.COM (Oct. 14, 2002), <http://www.forbes.com/forbes/2002/1014/042.html>. Goldman argues that the “cost-benefit ratio [of protecting privacy/information] is tilted too high for consumers.” *Id.* A similar argument can be made for students opt-out provisions.

credit card marketers.²⁰⁶ By requiring this affirmative step, the opt-in policy would decrease available member lists.²⁰⁷ In this way, opt-in regimes would slow, if not end, direct marketing to college students by limiting the amount of information shared with credit issuers.²⁰⁸

The decision between opt-out and opt-in policies comes down to who should internalize the costs of protecting student information—the university or the student. Universities may not want opt-in policies because they will incur the costs when students opt-out while getting very few benefits in return.²⁰⁹ When students fail to opt-in, the university has less information to sell and therefore will receive less money in exchange for student directories.²¹⁰ They will also incur costs from disseminating opt-in information to students, persuading them to act, and sorting through requests received.²¹¹ Due to the low benefit and high cost to the universities, legislation may be required in order to ensure the use of opt-in policies.²¹²

Opt-out policies, on the other hand, are better for universities but worse for the protection of students. They provide for some student control while eliminating the cost of permission seeking.²¹³ The efficiency of the opt-out system assumes that the student has full information and can easily and readily regain control over her personal information.²¹⁴ Students often do not receive, read, or understand the implications of university policies on the use and sharing of their information.²¹⁵ As a result, students will internalize the costs of the information sharing.²¹⁶ Opt-out policies diminish student power and make it substantially more difficult for students to secure their personal data.²¹⁷ As a result, they provide little protection of student information.

A default opt-in policy—or any default rule in which the individual retains control over her information even after she provides it freely to one

206. See Sovern, *supra* note 204, at 1103.

207. See Michael E. Staten & Fred H. Cate, *The Impact of Opt-In Privacy Rules on Retail Credit Markets: A Case Study of MBNA*, 52 DUKE L.J. 745, 770 (2003).

208. See *id.*

209. Sovern, *supra* note 204, at 1106.

210. See *id.* at 1106–13.

211. See Staten & Cate, *supra* note 207, at 767 (discussing the costs of opt-in policies for particular credit issuers).

212. See generally Sovern, *supra* note 204, at 1081–83 (discussing how businesses may adopt opt-out systems to preempt government regulation).

213. See generally *id.* at 1099–1100.

214. See *id.*

215. See generally Goldman, *supra* note 205.

216. See Sovern, *supra* note 204, at 1106; see also Paul M. Schwartz, *Property, Privacy, and Personal Data*, 117 HARV. L. REV. 2056, 2076–84 (2004).

217. See Sovern, *supra* note 204, at 1072–78; see also Paul M. Schwartz, *Privacy and the Economics of Personal Health Care Information*, 76 TEX. L. REV. 1, 49 (1997) (discussing how information shortfalls in the health care context lead to a “monopoly equilibrium” that is maintained through a shallow consent process that does not provide consumers with the information they need and therefore makes it more difficult for them to retain any real control over their data).

entity—would provide for more protection of student data than an opt-out system. Professor Jerry Kang points out that a default rule placing power in the student's hands would eliminate inefficiencies common to the contrary approach.²¹⁸ If the default rule leaves the use of students' personal information to the university's discretion, a single student would face considerable difficulties in determining what information is collected and how it is used or distributed.²¹⁹ With a default rule reserving student control over her information, these information costs would be greatly decreased; students would know how their information is being used because the university would be required to seek their permission to use it.²²⁰ This type of default rule or opt-in to university disclosure of student directory information is necessary to protect students' data privacy.²²¹ Amending FERPA to include such a rule would provide a more comprehensive solution to the endless flow of credit offers that bombard college students by addressing the problem at its source.²²²

B. STRONGER MARKETING LIMITATIONS ON CREDIT CARD ISSUERS

In order to truly address the problem of predatory solicitations on college campuses, the loopholes in § 304 of the Act must be closed.²²³ Although these provisions ostensibly provide protections from some of the more coercive marketing practices, they may be easily navigated around.²²⁴ Credit issuers will likely only have to change their behavior slightly in order to legally continue the same practices.²²⁵

Credit issuers should be prohibited from providing free gifts on campus. Under Title III, credit card marketers may technically still be able to give out free items to entice students to come over and speak with them.²²⁶ However, they cannot provide the items as a quid pro quo exchange for a filled-out credit card application.²²⁷ Students will likely still be unduly enticed by the offer of free gifts.²²⁸ This is a deceptive practice

218. See Jerry Kang, *Information Privacy in Cyberspace Transactions*, 50 STAN. L. REV. 1193, 1253–57 (1998).

219. See *id.*

220. See *id.*

221. See PIRG GUIDE FOR COLLEGES, *supra* note 18, at 3. Some universities are already putting these types of policies in place. See Grant McCool, *NY AG Cuomo Strikes Student Credit-Card Reform Agreement*, REUTERS, Sept. 7, 2010, available at <http://www.reuters.com/article/idUSTRE6863S020100907>.

222. See PIRG GUIDE FOR COLLEGES, *supra* note 192, at 3.

223. See *supra* Part III.B.

224. See MacDonald, *supra* note 91 (describing the opportunity for credit card issuers to avoid the restrictions of the Act by offering items without requiring that students apply for the card).

225. See *id.*

226. See *id.*

227. 15 U.S.C.A. § 1650(f) (West 2010).

228. See MacDonald, *supra* note 91.

that the Act should have completely eliminated.²²⁹ Title III should have required that only information be provided at tables.²³⁰ This would provide a balance between allowing credit issuers access to students while prohibiting any undue influence.²³¹ The information would be there for those students who wish to seek it out. This convenience will still likely pull in many new customers for the credit issuers, but the new customers would not have been enticed by the usual traps.²³²

C. CREDIT EDUCATION

With 39% of students arriving on campus with a credit card²³³ and 84% of the overall student population having credit cards,²³⁴ credit education is more important than ever. In general, college students may lack the financial knowledge and skills necessary to successfully manage their credit.²³⁵ This ignorance of basic credit management information makes credit education an essential element in solving underlying credit misuse by undergraduates.²³⁶ Financial education can be successful for many vulnerable groups, including those new to credit.²³⁷ Using guidance from students on how to provide the information, universities should be required to implement programs that actively educate students on the proper and responsible use of credit.²³⁸

More and more freshman students are carrying credit cards. A study conducted by Sallie Mae reported a 60% increase—from the Fall of 2004 to the Spring of 2008—in the percentage of first-year students carrying credit cards.²³⁹ At the same time, a large percentage of these students have reported being “surprised” by their credit balance.²⁴⁰ Fully 38% have at some point expressed surprise at their credit card balance and 22% report being frequently surprised.²⁴¹ Although the feeling of “surprise” may be attributed to a number of factors, including failure to account for all

229. See CAMPUS CREDIT CARD TRAP, *supra* note 2, at 13.

230. See *supra* Part III.B.

231. See *supra* Part III.B.

232. Johnson, *supra* note 14, at 266–68.

233. SALLIE MAE STUDY, *supra* note 51, at 6.

234. *Id.* at 5.

235. Johnson, *supra* note 14, at 268–76.

236. *Id.* at 269; see also CAMPUS CREDIT CARD TRAP, *supra* note 2, at 13.

237. See Gartner & Schiltz, *supra* note 70, at 419–20 (discussing a project that brought all stakeholders in the credit debate together for educational purposes and conducted a study that determined that new credit users are “especially vulnerable” and “could benefit from initiatives designed to help consumers manage credit cards successfully”).

238. SALLIE MAE STUDY, *supra* note 51, at 16 (reporting that students are “interested in pursuing some areas of education to increase financial literacy” and presenting data collected regarding how and when students would like to receive such information).

239. *Id.* at 6.

240. *Id.* at 11.

241. *Id.*

purchases or how they will add up,²⁴² it is difficult to imagine that a student would be frequently surprised if they completely understood the way credit works. In fact, 84% of undergraduates admitted the need for more financial management information.²⁴³ Credit education could be used to limit the likelihood of surprise based on such lack of knowledge. Financial literacy can be gained through credit education.²⁴⁴ Credit education provides basic information about terms and conditions, how to avoid and manage debt, and how interest rates and penalties work.²⁴⁵ Increasing awareness of credit issues through education could influence how young consumers view and use credit cards.²⁴⁶ At a time when they are being bombarded with credit offers, credit education is particularly vital to stemming the flood of poor credit decisions.²⁴⁷

Students appear to agree with this idea. In all, 84% of undergraduate students indicated that they would like more education on financial management.²⁴⁸ Many students are not receiving this information.²⁴⁹ Furthermore, 64% indicated that they would like to receive information in high school and 40% as college freshman.²⁵⁰ In addition to providing a positive response to the idea of credit education, the Sallie Mae study also asked students about the best way to provide such information.²⁵¹ Students reported wanting financial management information provided in person, preferably “in the classroom” or “through one-on-one meetings.”²⁵² With students willing to participate in educational programs and providing the roadmap on how best to do it, credit education programs should be relatively easy to implement.

In fact, many credit issuers already provide financial education to undergraduate students.²⁵³ Likewise, some universities offer financial

242. *See id.*

243. *Id.* at 16; *see also* Johnson, *supra* note 14, 227–28 (citing 2002 survey of 401 students at The Ohio State University that found that less than half of the freshman understood that missed payments will negatively affect their credit).

244. *See* U.S. FIN. LITERACY & EDUC. COMM’N, TAKING OWNERSHIP OF THE FUTURE: THE NATIONAL STRATEGY FOR FINANCIAL LITERACY xi–xii (2006), *available at* <http://205.168.45.52/sites/default/files/downloads/ownership.pdf> [hereinafter LITERACY STUDY].

245. Johnson, *supra* note 14, at 268–76; CAMPUS CREDIT CARD TRAP, *supra* note 2, at 13.

246. Gartner & Schiltz, *supra* note 70, at 423 (“[T]he results of one issuer demonstrate that credit education works for people who are new to credit, especially college students.”); Johnson, *supra* note 14, at 268–69.

247. Johnson, *supra* note 14, at 268–76.

248. SALLIE MAE STUDY, *supra* note 51, at 16.

249. *Id.* A third of respondents for the Sallie Mae study reported that they had never or rarely discussed credit cards with their parents. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. Jessica Silver-Greenberg, *Majoring in Credit-card Debt*, BLOOMBERG BUSINESSWEEK, Sept. 5, 2007, <http://www.msnbc.msn.com/id/20607411/ns/business-businessweekcom/>.

literacy and credit education.²⁵⁴ The Credit CARD Act could have taken credit education a step further by mandating it in universities.²⁵⁵ In the alternative, the Act could have required credit education only when the university had a contract with a credit issuer.²⁵⁶ Either way, this would go further in addressing the underlying dearth of knowledge that can lead to credit mismanagement by young consumers.²⁵⁷ As it is, the Act's limits on eighteen- to twenty-one-year-olds merely delay the potential problem instead of providing the fundamental education needed to solve it.

CONCLUSION

Title III of the Credit CARD Act is a huge step toward providing better protection for young consumers. The aggressive solicitation and marketing practices by credit issuers on college campuses made change necessary. Although the Act gets it right when it comes to banning the quid pro quo exchange of tangible items, prohibiting pre-screened offers, and mandating contract disclosures, it leaves open many loopholes and fails to address some fundamental problems. Restricting young adult ownership of credit cards only delays credit misuse; it does not solve it. The Act should not be aimed at discouraging all use, but rather encouraging responsible use. A combination of stronger protection of student data, increased marketing limitations on credit card issuers, and credit education would create a solution where informed and empowered students could take responsibility for their own finances and still be protected from the most deceptive and coercive practices.

*Kathryn A. Wood**

Bank of America, Citibank, JPMorgan Chase, American Express, and others say they are providing a valuable service to students and they work hard to ensure that their credit cards are used responsibly. Citibank and JPMorgan both offer extensive financial literacy materials for college students. Citibank, for instance, says it distributed more than 5 million credit-education pieces to students, parents, and administrators last year for free.

Id.

254. LITERACY STUDY, *supra* note 244, at 93–94 (discussing examples and the importance of “higher education institutions . . . providing financial literacy opportunities to students”); Grant McCool, *supra* note 221 (discussing N.Y. Attorney General’s negotiations with the State University of New York System to adopt practices like financial literacy programs to educate students, as well as an opt-in system for sharing students’ personal information with credit card companies).

255. See 15 U.S.C.A. § 1650(f) (West 2010).

256. See Johnson, *supra* note 14, at 268–76.

257. See generally *id.* at 224–27.

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