

The CARD Act and College Students: Amending the Act to Meet the Needs of Young Consumers

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I. INTRODUCTION

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) was passed in the wake of what has been deemed “the worst financial crisis since the Great Depression.”¹ Many legislators feared that credit card debt would lead to the next economic crisis² and aimed to head off this possibility by curbing credit-lending practices that encouraged excessive

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¹Jon Hilsenrath et al., *Worst Crisis Since '30s, with No End Yet in Sight*, WALL ST. J. (Sept. 18, 2008, 12:01 AM), <http://online.wsj.com/news/articles/SB122169431617549947>, archived at <http://perma.cc/Z6QQ-M5J6>.

²See 155 CONG. REC. 12,284 (2009) (statement of Sen. Menendez) (comparing prescreened credit card offers to the subprime loans, and asserting that “[w]e cannot allow the credit card problem to become the next foreclosure crisis”); *id.* at 12,283 (statement of Sen. Menendez) (“[W]e see gathering clouds in this economic storm and those clouds are credit card debt.”); *id.* at 12,085 (statement of Sen. Dodd) (comparing the lending practices of credit card companies that do not verify ability to repay to those of lenders that caused the mortgage crisis).

consumer debt.³ The Act was well intended,⁴ and many of the Act's provisions have aided consumers in managing their credit card debt more effectively.⁵ Still, not all of the CARD Act's provisions have been successful in protecting

³ See 155 CONG. REC. 12,083 (statement of Sen. Dodd) (“[Americans] also have a right not to be deceived, misled, or ripped off by unfair and arbitrary practices that have become all too common within the credit card industry. Banning these practices is especially critical today. . . . [A]t a time when our economy is in crisis and consumers are struggling to live within their means, credit card companies too often are gouging them with hidden fees and sudden interest rate hikes that for many make the task nearly impossible.”). To prevent American families from “suffocating” under credit card debt, Senator Dodd explained that the Act must put an end to

[t]he range of abusive practices [that] is as long as it is appalling: retroactive rate increases on existing balances; double-cycle billing that charges interest on balances the consumers have already paid; deceptive marketing to young people; changing the terms of the credit card agreement at any time, for any reason, on any balance; skyrocketing penalty interest rates

Id.

⁴ The CARD Act aimed to “establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan.” Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (codified as amended in scattered sections of 15 and 16 U.S.C.).

⁵ For example, provisions requiring that consumers receive bills twenty-one days before due dates and that due dates occur on the same date each month have aided consumers in avoiding late fees and interest charges. See 15 U.S.C. §§ 1666b(a), 1637(o)(1) (2012). The Act also prohibits credit card companies from raising interest rates on existing balances, preventing surprise increases in amounts due and allowing consumers to better manage payments. See 15 U.S.C. § 1637(i); Letter from Nessa Feddis, Senior Vice President & Chief Counsel for Consumer Prot. and Payments, Am. Bankers Ass’n, to Monica Jackson, Consumer Prot. Fin. Bureau 1 (Feb. 19, 2013), available at <https://www.aba.com/Advocacy/commentletters/Documents/clCardAct2013Feb.pdf>, archived at <http://perma.cc/XYA8-8G9E>. Finally, one of the most applauded provisions of the Act requires credit card issuers to include minimum payment disclosures in monthly statements. See Janna Herron, *CARD Act: Pros and Cons 3 Years Later*, FOX BUSINESS (Sept. 12, 2013), <http://www.foxbusiness.com/personal-finance/2013/09/11/card-act-pros-and-cons-3-years-later/>, archived at <http://perma.cc/99E4-TCK2>. These disclosures must include how long it will take to pay off the card’s balance by paying only the minimum monthly payment, how much interest will be charged over the pay-off period compared to the monthly payment that would be required to pay off the balance in three years, and how much interest would be saved by making this payment instead of the monthly minimum payment. 15 U.S.C. § 1637(b)(11). A recent survey found that over 45% of consumers reported that they pay off more each month because of these required disclosures. CONSUMER ACTION, *CARD ACT IMPACT POLL 5* (2013), available at http://www.consumer-action.org/downloads/press/CARD_Act_Survey_2013.pdf, archived at <http://perma.cc/LU9S-6BG8>. Further, cardholders are paying off their balances at an all-time high since the passage of the Act. See *U.S. Credit Card Payment Rate to Reach All-Time High*, FITCHRATINGS (June 20, 2013, 9:23 AM), https://www.fitchratings.com/gws/en/fitchwire/fitchwirearticle/U.S.-Credit-Card?pr_id=794082, archived at <http://perma.cc/M6CU-WWNM>.

consumers as intended.⁶ In particular, the young consumer provisions of the CARD Act have failed college students—both those who use credit responsibly and those at risk of acquiring excessive debt.

The goal of the Act's young consumer provisions was to "address the growing problem of college student indebtedness."⁷ But was student credit card debt really a problem? For the majority of students, the answer was arguably no.⁸ Most students use credit cards responsibly to acquire a moderate level of debt while in school.⁹ "Good" credit card debt provides an additional

⁶ For example, the CARD Act has led to higher interest rates for open-end consumer lending. See Janna Herron, *3 Reasons Credit Card APRs Are So High*, BANKRATE (Sept. 16, 2013), <http://www.bankrate.com/finance/credit-cards/3-reasons-credit-card-aprs-are-so-high.aspx>, archived at <http://perma.cc/WFN4-CYSA> ("The biggest rout in credit card rates occurred in 2009 and 2010 around the implementation of the CARD Act [because] [i]ssuers had revenue avenues restricted." (internal quotation marks omitted)); see also Letter from Nessa Feddis to Monica Jackson, *supra* note 5, at 2.

⁷ 155 CONG. REC. 12,486 (2009) (statement of Sen. Feinstein).

⁸ The median credit card debt held by students in 2008 was \$1,645. SALLIE MAE, HOW UNDERGRADUATE STUDENTS USE CREDIT CARDS 3 (2009) [hereinafter SALLIE MAE 2009], available at <http://inpathways.net/SLMCreditCardUsageStudy41309FINAL2.pdf>, archived at <http://perma.cc/784A-7G7Z>. While this amount of debt is not inconsequential, viewed in the larger context of all student debt, including student loans, the debt is far from troubling. In 2012, the average undergraduate student graduated with more than \$27,000 of student loans. See Halah Touryalai, *More Evidence on the Student Debt Crisis: Average Grad's Loan Jumps to \$27,000*, FORBES (Jan. 29, 2013, 3:22 PM), <http://www.forbes.com/sites/halahtouryalai/2013/01/29/more-evidence-on-the-student-debt-crisis-average-grads-loan-jumps-to-27000/>, archived at <http://perma.cc/6W3B-W86M>. At an interest rate of 3.86% (the rate for federal undergraduate student loans), a student will pay more than \$5,500 in interest if he pays off his loan in ten years (the standard repayment term). See *Loan Calculator*, FINAID, <http://www.finaid.org/calculators/loanpayments.phtml> (last visited Mar. 10, 2015), archived at <http://perma.cc/Q2N5-CHTP> (enter \$27,000 in "Loan Balance" field, 3.86% in "Interest Rate" field, and 10 in "Loan Term (Years)" field, then click "Calculate"); Kim Clark, *Paying Back Your Student Loans*, CNN MONEY, <http://money.cnn.com/101/college-101/student-loan-payment.moneymag/> (last visited Mar. 23, 2014), archived at <http://perma.cc/4387-H9DT>. If a student takes the full course of the 30-year federal to pay, he will be charged nearly \$19,000 in interest. See *Loan Calculator*, *supra* (enter \$27,000 in "Loan Balance" field, 3.86% in "Interest Rate" field, and 30 in "Loan Term (Years)" field, then click "Calculate"). In comparison, a student could pay off \$1,645 in credit card debt charged at an interest rate of 13.1% (the average student credit card interest rate) in three years by making payments of only \$56 per month, paying a total of \$354 in interest. See *What Will It Take to Pay Off My Balance?*, CREDITCARDS.COM, <http://www.creditcards.com/calculators/payoff.php> (last visited Mar. 10, 2015), archived at <http://perma.cc/6R5J-25MM> (enter \$1,645 in "Current Balance" field, 13.1% in "Interest Rate (APR)" field, and 36 in "Desired Months to Pay Off" field, then click "Calculate").

⁹ In 2012, one-third of student credit cards had zero balances. See SALLIE MAE, HOW AMERICA PAYS FOR COLLEGE 2012, at 24 (2012) [hereinafter SALLIE MAE 2012], available at <https://www.salliemae.com/assets/Core/how-America-pays/HowAmericaPays2012.pdf>, archived at <http://perma.cc/ZZE9-SGF8>. Another 75% of students reported card balances of less than \$500. *Id.*

source of funds when students need it most.¹⁰ Students are arguably at their poorest while attending college—both because of the high cost of education and because many students have little or no income while in college.¹¹ At the same time, college students are on the verge of a substantial increase in wealth upon graduating and entering the workforce.¹² College students, thus, appear to be ideal candidates for a credit-borrowing situation—they have a short-term need to borrow and can reasonably expect to be able to repay their debt in the near future.

Legislators, however, failed to recognize the realities of student debt, instead perceiving all student credit card debt as bad debt.¹³ But the story of student credit card debt is not so simple. Student access to credit alone does not equate to irresponsible or excessive debt.¹⁴ In failing to recognize the nuances of student debt, legislators pegged easy access to credit as the source of student indebtedness and enacted the CARD Act's young consumer provisions based on one simple tactic: limit access to credit in order to limit debt.¹⁵ This approach was misguided and unnecessarily paternalistic, especially to the majority of students who used credit cards responsibly.¹⁶ Further, because legislators failed to identify the causes of excessive debt, they

¹⁰ The term “good” credit card debt is meant to suggest a moderate amount of credit card debt used to supplement costs during college that can be paid off in a relatively short time once a student becomes employed after graduation. In comparison, “bad” credit card debt is a level of debt that creates a significant risk of default. While it may be difficult to draw a bright line between good and bad debt, it is important to recognize that there is a range of credit that is beneficial to students and that will easily be paid off by the majority of students once they are employed.

¹¹ See Quentin Fottrell, *80% of Students Work at Least Part-time: Students Are Flipping Burgers for Tuition or Spending Money*, MARKETWATCH (Aug. 8, 2013, 7:34 AM), <http://www.marketwatch.com/story/nearly-4-out-of-5-students-work-2013-08-07>, archived at <http://perma.cc/8JKV-4HH7>.

¹² The average starting salary for a college graduate in 2012 was just over \$44,000. See NAT'L ASS'N OF COLL. & EMP'RS, NACE SALARY SURVEY 3 (2012) [hereinafter NACE SALARY SURVEY], available at http://www.nacweb.org/uploadedFiles/NACEWeb/Research/Salary_Survey/Reports/SS_ExecSummary_Sept2012.pdf, archived at <http://perma.cc/U3JY-R6G4>. Further, in September 2012, the unemployment rate for new college graduates was a relatively low 6.3% compared to 9% for workers overall. *Unemployment Rate for New College Graduates Continues to Drop*, NAT'L ASS'N COLLEGES & EMPLOYERS (Oct. 10, 2012) [hereinafter *Unemployment Rate*], <http://nacweb.org/s10102012/job-market-new-graduates/>, archived at <http://perma.cc/PPH4-BCEE>.

¹³ See, e.g., 155 CONG. REC. 12,486 (2009) (statement of Sen. Feinstein) (“[M]any students begin using credit cards with highly unfavorable terms, and end up ruining their credit.”); *id.* at 12,283 (statement of Sen. Menendez) (stating that student credit cards lead to “a lifetime of debt”); *id.* at 11,182 (statement of Rep. Slaughter) (“[M]ore students [] drop out of college because of credit card debt than because of their academics.”).

¹⁴ See *infra* Part II.

¹⁵ See *infra* Part IV.

¹⁶ See *infra* Part II.

also failed to include the most effective tool to prevent instances of excessive credit card indebtedness: a cap on credit limits.¹⁷

This Note proposes amending the CARD Act to include a cap on credit limits for young consumers. A credit limit cap would provide effective protection against excessive credit card debt by, quite simply, eliminating access to excessive amounts of credit. This Note also suggests eliminating the Act's ability-to-pay provision, which requires students to show an independent ability to pay or to open an account with a cosigner.¹⁸ The ability-to-pay provision is unnecessary. Students should have liberal access to a safe level of credit. Students often use credit cards to pay for school-related expenses when other sources of funding are insufficient¹⁹ and are ideally situated to repay debt upon entering the workforce.²⁰ As the Act currently exists, it essentially cuts off the nose to spite the face—it attempts to reduce all student access to credit to protect a small subset of students who acquire excessive debt. Students would be better served by regulations that allow liberal access to credit, but limit that credit to a safe amount.

Part II of this Note examines the realities of student credit card use, and compares these realities with the picture of student credit card debt painted by legislators during debate on the Act's young consumer provisions. Part III briefly addresses possible causes of excessive debt, including the rising costs of education, the financial illiteracy of students, and the use of multiple credit cards. Part IV summarizes the Act's young consumer provisions and explains why many of these provisions have failed to impact student use of credit. Finally, Part V suggests changes to the Act that would more effectively address students' credit needs, including amending the Act to include a cap on student credit limits and eliminating the ability-to-pay provision.²¹

II. COLLEGE STUDENT INDEBTEDNESS: HYPE VERSUS REALITY

The CARD Act was pushed through Congress at a time when the nation was still attempting to make sense of the economic crisis that began with the

¹⁷ See *infra* Part V.A.

¹⁸ See *infra* Part V.B.

¹⁹ In 2008, for example, 92% of students reported using their credit cards to pay for expenses directly related to their education, such as purchasing textbooks and school supplies. See SALLIE MAE 2009, *supra* note 8, at 3.

²⁰ See NACE SALARY SURVEY, *supra* note 12, at 3.

²¹ This Note and its proposed amendments deal only with the issue of credit cards and college students, although this Note, at times, uses more generic terms such as “young consumers.” Congress's primary focus in passing the young consumer provisions was to protect college students because this subset of young consumers is highly sought after by credit card issuers. See *infra* notes 89–90 and accompanying text. Further, this Note proposes loosening requirements that intend to restrict access to credit only for college students because this subset of young people is particularly appropriately positioned for “borrowing” on credit due to their short-term need and reasonable expectation of ability to pay off credit card debt in the near future.

subprime mortgage lending crash in 2007.²² Legislators feared that open-ended consumer credit lending might lead to the next economic crash, or at the very least add to the existing one,²³ and they sought to enact legislation that would reduce credit indebtedness before it reached a level of crisis.²⁴ Addressing the need for credit card reform, Senator Bob Menendez stated candidly: “If there is one thing we have learned from this economic crisis, it is that we can’t wait for a dangerous situation to reach full-blown crisis proportions before we act.”²⁵

In touting the need for credit card reform, legislators regularly compared open-ended consumer credit lending to the subprime mortgage lending that began the economic crash.²⁶ The driving concern behind enactment of the CARD Act was that the American people were amassing too much credit card debt.²⁷ Legislators also shared particular concerns about the debt levels of

²² See, e.g., MAJORITY STAFF OF THE JOINT ECON. COMM., THE SUBPRIME LENDING CRISIS: THE ECONOMIC IMPACT ON WEALTH, PROPERTY VALUES AND TAX REVENUES, AND HOW WE GOT HERE 1 (2007), available at <http://www.jec.senate.gov/archive/Documents/Reports/10.25.07OctoberSubprimeReport.pdf>, archived at <http://perma.cc/9Y2D-L8Y5>.

²³ See 155 CONG. REC. 12,284 (2009) (statement of Sen. Menendez) (“We cannot allow predatory and deceptive practices in the industry to continue as we did in the subprime mortgage market. We cannot allow the credit card problem to become the next foreclosure crisis.”); see also *supra* note 3.

²⁴ See 155 CONG. REC. 12,283 (statement of Sen. Menendez) (“[C]redit card companies are still making multibillion-dollar profits. This isn’t just impacting the lives of individual Americans and families trying to make ends meet; it has major ramifications for the entire economy.”); see also *supra* note 3.

²⁵ 155 CONG. REC. 12,283 (statement of Sen. Menendez).

²⁶ See, e.g., 155 CONG. REC. 12,461 (statement of Sen. Dorgan) (“This is some of the same culture and some of the same difficulty that has tipped this country’s economy over, beginning with the subprime loan scandal in housing but very quickly going into credit cards.”); see also *supra* note 2.

²⁷ 155 CONG. REC. 12,084 (statement of Sen. Dodd) (“[O]ur bill puts an end to the exorbitant and unnecessary fees that drive families further into debt.”); see also *id.* at 12,462 (statement of Sen. Dorgan) (“[T]here are some practices that have occurred that go way beyond that which is reasonable, and we are going to try to rein that in with this legislation.”). The media mirrored Congress’s concerns about credit card debt, often running accounts of individuals who amassed excessive debt and suffered sad consequences. See, e.g., Joshua Lipton, *Choking on Credit Card Debt*, FORBES (Sept. 12, 2008, 5:30 PM), http://www.forbes.com/2008/09/12/credit-card-debt-pf-ii-in_jl_0911creditcards_inl.html, archived at <http://perma.cc/TB56-C57S> (telling the story of a couple who became burdened with \$70,000 of debt on seven cards after the husband became ill and unable to work); Gretchen Morgenson, *Given a Shovel, Americans Dig Deeper into Debt*, N.Y. TIMES (July 20, 2008), <http://www.nytimes.com/2008/07/20/business/20debt.html>, archived at <http://perma.cc/WKD7-KPAM> (discussing a single mother paying \$20,000 in credit card debt interest a year on a \$48,000 salary who eventually lost her home to foreclosure); AIE, *Credit Card Debt—A Student’s Story*, YOUTUBE (June 4, 2008), <http://www.aie.org/managing-your-money/Credit-cards/Credit-Card-Debt-A-Students-Story.cfm>, archived at <http://perma.cc/RN3J-NVUN>.

young consumers, who they feared were “lured into deals” without understanding the consequences of credit.²⁸ During the debate on the young consumer provisions, legislators painted a troubling picture of student credit card debt, asserting that “[c]redit card companies are pushing cards on college students who can’t afford them and teenagers are winding up with a lifetime of debt,”²⁹ and even alleging that “one of the major reasons why students drop out [of college] is because of credit card debt.”³⁰ But did the picture painted by legislators accurately reflect the reality of credit card debt? For a large majority of college students, it seems it did not.³¹

In 2009, Sallie Mae released a report titled *How Undergraduate Students Use Credit Cards*.³² While the report did indicate that student credit card debt levels had grown significantly since the last Sallie Mae report in 2004,³³ the numbers alone fail to paint an accurate picture of student credit card debt. In 2008, 92% of students reported using their credit cards to pay for expenses directly related to their education, such as purchasing textbooks and school supplies, and 30% of students used a credit card to pay some portion of tuition.³⁴ The average amount of direct education costs that students charged in 2008 was \$2,200—more than double the amount charged in 2004.³⁵ The top reason students gave for paying direct-education expenses with a credit card was that they “[d]idn’t have enough savings and financial aid to cover all the costs.”³⁶ Another top response was that students “underestimated the total cost of attendance and used [their] card to cover expenses [they] hadn’t planned

²⁸ 155 CONG. REC. 12,284 (statement of Sen. Menendez); *id.* at 12,486 (statement of Sen. Feinstein) (“The underlying bill provides much-needed safeguards for young consumers, who too often do not have the financial knowledge and experience to manage their credit wisely.”).

²⁹ *Id.* at 12,283 (statement of Sen. Menendez).

³⁰ *Id.* at 12,285 (statement of Sen. Dodd).

³¹ See generally SALLIE MAE 2009, *supra* note 8.

³² *Id.*

³³ See *id.* at 3. According to the Sallie Mae report, the median debt held by undergraduate students in 2008 was \$1,645, up from \$946 in 2004. *Id.* at 3, 5. Not surprisingly, students’ median credit card debt increased by grade level. See *id.* at 8. While freshman held only just under \$940 of debt, seniors graduated with nearly \$2,500 of credit card debt. *Id.* Worse yet, slightly less than one-fifth of seniors carried significant balances of greater than \$7,000. *Id.*

³⁴ *Id.* at 11–12.

³⁵ *Id.* at 12.

³⁶ *Id.* (internal quotation marks omitted) (reporting that 31% of students ranked this as their primary reason for paying education expenses by credit card, while 58% ranked this in their top three reasons).

for.”³⁷ The most frequently charged non-direct education expenses were transportation costs and food.³⁸

The details of student credit card usage reported in the 2009 Sallie Mae findings appear to more readily reflect a response to the rising costs of education than a misuse of credit.³⁹ In fact, the Sallie Mae report began its summary of key findings by recognizing that “[i]n this time of credit crunch and economic downturn, college students are relying on credit cards more than ever before.”⁴⁰ The findings indicated that the vast majority of students used credit cards to pay for education-related expenses they may not otherwise have been able to cover.⁴¹ Further, the survey reported that 93% of students “follow credit card bill payment guidelines that will keep their credit records clean and not endanger their credit scores.”⁴² On the whole, these findings indicate that access to credit was a good thing for a large majority of students, and that most students were using credit responsibly.

Additionally, college students are arguably prime candidates for short-term credit lending because they are on the verge of joining the workforce and experiencing a sudden increase in wealth.⁴³ The average starting salary for a

³⁷ SALLIE MAE 2009, *supra* note 8, at 12 (internal quotation marks omitted) (reporting that 34% of students ranked this in their top third reasons for paying education expenses by credit card, while the second highest ranked reason was “convenience”).

³⁸ *Id.* at 13 (reporting that 34% of students said that transportation costs were the most frequently purchased non-direct education expense, while 23% identified food as the most frequent non-direct education item charged).

³⁹ In recent years, there has been growing concern about the surge in higher-education costs. See Andrew Rossi, *The Price of College Has Increased 1120 Percent Since 1978, So Is It Worth It?*, DAILY BEAST (Jan. 24, 2014), <http://www.thedailybeast.com/articles/2014/01/24/the-price-of-college-has-increased-1120-percent-since-1978-so-is-it-worth-it.html>, archived at <http://perma.cc/CRH9-7N6A>; see also Kathy Chu, *Average College Credit Card Debt Rises with Fees, Tuition*, USA TODAY (Apr. 13, 2009, 10:03 PM), http://usatoday30.usatoday.com/money/perfi/credit/2009-04-12-college-credit-card-debt_n.htm, archived at <http://perma.cc/74DL-82CP> (“In the past 10 years, tuition and fees at public four-year colleges have climbed 50% . . .”); Marty Ludlum et al., *Financial Literacy and Credit Cards: A Multi Campus Survey*, INT’L J. BUS. & SOC. SCI., Apr. 2012, at 25, 25 (stating that in recent years costs of education have risen faster than financial aid making it difficult for students to fund their educations).

⁴⁰ SALLIE MAE 2009, *supra* note 8, at 3.

⁴¹ *Id.*; Chu, *supra* note 39 (“As college costs soar, students are charging more educational expenses to plastic, helping boost credit card debt to record levels.”).

⁴² See SALLIE MAE 2009, *supra* note 8, at 14.

⁴³ Economist Steven D. Levitt argues that college students “should be borrowing” rather than “scrimping and saving.” *How to Think About Money, Choose Your Hometown, and Buy an Electric Toothbrush: A New Freakonomics Radio Podcast Full Transcript*, FREAKONOMICS (Oct. 3, 2013, 7:59 AM), <http://freakonomics.com/2013/10/03/how-to-think-about-money-choose-your-hometown-and-buy-an-electric-toothbrush-a-new-freakonomics-radio-podcast-full-transcript/>, archived at <http://perma.cc/T4LG-7RNJ> (attributing this idea to José Scheinkman, a professor of Economics at Columbia University, and to Milton Friedman). Levitt explains that students “are never poorer than

2012 college graduate was just over \$44,000.⁴⁴ Further, the average income earned in 2013 by college graduates (including recent and previous graduates) was nearly \$57,000,⁴⁵ and college graduates can expect to earn \$2.2 million dollars over their lifetimes.⁴⁶ Thus, college students, perhaps more than any other sector of the public, are ideally situated for open-ended consumer lending because they can reasonably expect to have the ability to pay off debt in the near future.⁴⁷

In debating the passage of the CARD Act, Congresswoman Diane Feinstein acknowledged that student access to credit can be valuable, noting that credit cards “provide purchasing power that otherwise may not be available” and that “[d]eveloping good credit is essential.”⁴⁸ But it appears these comments did not have traction. The underlying theory behind the Act’s young consumer provisions was that student credit card debt is bad, period.⁴⁹ Legislators failed to recognize that there is a difference between good and bad credit card debt.⁵⁰ This simplistic approach to the issue of student credit card debt explains why legislators failed to identify solutions that properly address the real causes of student indebtedness and, instead, enacted legislation that simply missed the mark.

when they are in college;” at the same time, “the overall earnings trajectory of college graduates, it goes up for 25 years, 30 years before it starts going down.” *Id.*

⁴⁴ See NACE SALARY SURVEY, *supra* note 12, at 3.

⁴⁵ See *Earnings and Unemployment Rates by Educational Attainment*, U.S. DEP’T LAB. BUREAU LAB. STAT., http://www.bls.gov/emp/ep_chart_001.htm (last modified Mar. 24, 2014), *archived at* <http://perma.cc/94NJ-WW4Q>.

⁴⁶ See Tami Luhby, *College Degree = \$650,000 More in Earnings*, CNN MONEY (Mar. 9, 2012, 10:10 AM), <http://economy.money.cnn.com/2012/03/09/college-degree-650000-more-in-earnings/>, *archived at* <http://perma.cc/4PW3-94TL> (stating that college graduates earn \$650,000 more than if they had received only a high school diploma); *College Graduation: Weighing the Cost . . . and the Payoff*, PEW RES. CENTER (May 17, 2012), <http://www.pewresearch.org/2012/05/17/college-graduation-weighing-the-cost-and-the-payoff/>, *archived at* <http://perma.cc/7NAA-TKVK>.

⁴⁷ Some college graduates will, of course, not find employment upon graduating; however, this number is relatively small. See *Unemployment Rate*, *supra* note 12, at 3. In September 2012, the unemployment rate for new college graduates was 6.3%, less than the 9% unemployment rate for all workers. See *id.* Further, as previously mentioned, the average starting salary for a college graduate in 2012 was nearly \$44,000. See NACE SALARY SURVEY, *supra* note 12, at 3. The combination of low unemployment and sufficient salary means that, on the whole, the majority of college graduates are in a position to pay off credit card debt that is at least as good, if not a better, than the average credit card holder.

⁴⁸ 155 CONG. REC. 12,486 (2009) (statement of Sen. Feinstein).

⁴⁹ See sources cited *supra* note 13.

⁵⁰ See *supra* note 10 and accompanying text.

III. DANGEROUS DEBT

In the early 2000s, sudden increases in student-held credit card debt raised concerns about possible misuse of credit by students and the risk of excessive debt.⁵¹ A series of studies found, however, that contrary to popular opinion the majority of students were “using [credit cards] responsibly and [were] not accumulating large amounts of debt.”⁵² The studies did, however, show that a small percentage of students were acquiring excessive debt.⁵³ Why and how did this small subset of students cross the line into excessive indebtedness?

A. Educational Costs and Financial Illiteracy

Some academics suggest that the rising costs of higher education and students’ financial illiteracy have contributed significantly to students’ acquisition of excessive debt.⁵⁴ Starting in the early 2000s, increases in the costs of higher education began to outpace the availability of financial aid.⁵⁵ In 2003, nearly half of students receiving financial aid indicated that the amount was not enough to cover the costs of college.⁵⁶ Not surprisingly, students with little or no financial support from their families were the most likely to end up with excessive credit card debt due to a need for additional funding.⁵⁷

⁵¹ Angela C. Lyons, *A Profile of Financially At-Risk College Students*, 38 J. CONSUMER AFF. 56, 56–57 (2004).

⁵² *Id.*

⁵³ *Id.* at 57; see also Mary Beth Pinto & Phylis M. Mansfield, *Financially At-Risk College Students: An Exploratory Investigation of Student Loan Debt and Prioritization of Debt Repayment*, 36 J. STUDENT FIN. AID 22, 24 (2006) (finding that 14% of students surveyed were considered financially at-risk, meaning the student had either a credit card balance of at least \$1,000, paid only the minimum amount or less than the minimum amount due on their credit card each month, or had reached the limit on his or her credit card).

⁵⁴ See Pinto & Mansfield, *supra* note 53, at 22 (noting that financial assistance has more than tripled since the 1990s due to the high price of college and the growing gap between college prices and families’ ability to pay); Touryalai, *supra* note 8 (stating that in 2012, the average undergraduate student graduated with more than \$27,000 of student loans); see also Tamar Lewin, *Burden of College Loans on Graduates Grows*, N.Y. TIMES (Apr. 11, 2011), http://www.nytimes.com/2011/04/12/education/12college.html?_r=0, archived at <http://perma.cc/T4XT-A2XR> (“Student loan debt outpaced credit card debt for the first time . . .”); Ludlum et al., *supra* note 39.

⁵⁵ See Tamar Lewin, *As College Fees Climb, Aid Does Too*, N.Y. TIMES, Oct. 28, 2010, at A14 (discussing how college prices are rising faster than inflation and family incomes); Ludlum et al., *supra* note 39, at 27 (noting that the costs of education have risen faster than financial aid, and explaining that “[c]redit cards have become a default tool of financial aid for college students”).

⁵⁶ Lyons, *supra* note 51, at 73.

⁵⁷ Pinto & Mansfield, *supra* note 53, at 23 (finding that students who are most at risk for excessive debt are those who are financially independent and from low- to middle-income families).

A lack of financial education also appears to increase the risk of acquiring excessive credit card debt.⁵⁸ In a 2012 survey of undergraduate business majors, fewer than one in ten knew the three basic terms of their credit card, including the card's interest rate, late charges, and over-balance penalties.⁵⁹ More than three-quarters of the surveyed students were unaware of the consequences of late payments.⁶⁰ Further, a 2006 study comparing students who were at risk of acquiring excessive debt with those who were not, found that at-risk students prioritized their debts differently from other students.⁶¹ Interestingly, at-risk students chose to pay off credit card debt rather than student loan debt, while students not at risk of acquiring excessive debt chose to do to the opposite.⁶²

Naturally, students who lack basic knowledge about the costs of using a credit card and the terms of repayment will likely fail to optimally manage their credit card debt. Providing education about the appropriate use of credit cards would help students properly manage their credit and avoid pitfalls that may lead them to excessive debt and poor credit scores.⁶³ But neither the rising cost of education nor financial education can explain how a small percentage of students end up with excessive debt when comparatively large numbers of students have a need for financial aid and lack financial knowledge, but do not rack up excessive debt.

B. Multiple Credit Cards

One possible explanation for excessive debt is the use of multiple credit cards. There has been little focus on the connection between excessive credit card debt and the use of multiple credit cards, perhaps because the link is so straightforward. Most credit users can acquire excessive debt only through multiple cards,⁶⁴ and this applies doubly so to students who generally have a

⁵⁸ *Id.* (suggesting that groups who are more likely to acquire excessive debt, such as minorities, women, and individuals with low income, are also those who traditionally had difficulty obtaining credit and lack financial education).

⁵⁹ See Ludlum et al., *supra* note 39, at 28.

⁶⁰ See *id.* (noting that students were unaware that late payments led to fees and affected their credit scores).

⁶¹ See Pinto & Mansfield, *supra* note 53, at 27–28.

⁶² See *id.*

⁶³ *Id.* at 30 (concluding that the results of the 2006 study show that “there is a financially at-risk group of students who may benefit from further education about the proper use and misuse of credit cards”).

⁶⁴ See, e.g., Dave Carpenter, *Credit Cards and Colleges Can Be a Dangerous Mix*, USA TODAY (July 12, 2012, 12:52 PM), <http://usatoday30.usatoday.com/money/perfi/college/story/2012-07-14/credit-cards-and-college-students/56170448/1>, archived at <http://perma.cc/J45P-6VTW> (comparing student with one card who pays balance in full each month with friends who have three to four cards and significant debt); Lipton, *supra* note 27 (telling the story of a college graduate acquired \$40,000 of debt on eleven credit cards and couple amassed \$70,000 debt on seven cards).

low credit limit on any single card.⁶⁵ In fact, a 2006 study of student credit card usage found that students at risk of obtaining excessive debt hold up to twenty credit cards.⁶⁶

While remedying the rising costs of education and students' lack of financial knowledge may have been beyond the scope of the CARD Act, Congress could have done more to focus its legislation on preventing excessive debt by limiting the number of cards a student may open. Instead, Congress aimed to reduce student debt across the board.⁶⁷ Congress's failure to recognize the connection between multiple cards and excessive debt, and to address this behavior directly, resulted in legislation that has been ineffective at preventing the very concern it was meant to remedy—excessive student debt.

IV. CARD ACT YOUNG CONSUMER PROVISIONS: RATIONALES AND FAILURES

Young consumers are particularly attractive to credit card issuers because the average consumer will likely use his first credit card for between twelve and fifteen years.⁶⁸ In the years preceding the passage of the CARD Act, issuers aggressively marketed to college students in an attempt to grasp this key market.⁶⁹ Issuers provided students with easy access to credit cards through prescreened offers and on-campus promotions and giveaways.⁷⁰ In 2008, nearly half of students obtained their first credit card through direct mail or from an on-campus vendor.⁷¹

The CARD Act intended to limit student access to credit in two ways. First, the Act aimed to reduce credit card issuers' access to students by

⁶⁵ See Daniel Bortz, *A Guide for Credit Card Newbies*, U.S. NEWS & WORLD REP. (Mar. 14, 2013, 9:20 AM), <http://money.usnews.com/money/personal-finance/articles/2013/03/14/a-guide-for-credit-card-newbies>, archived at <http://perma.cc/NA3V-3E7J> (noting that the average credit limit for a first-time cardholder is \$500 to \$2,500).

⁶⁶ See Pinto & Mansfield, *supra* note 53, at 25 (concluding that at-risk students at public institutions held up to 20 credit cards and at-risk students at private institutions held up to twelve credit cards).

⁶⁷ See *infra* Part IV.

⁶⁸ See Jacquelyn Warwick & Phylis Mansfield, *Credit Card Consumers: College Students' Knowledge and Attitude*, 17 J. CONSUMER MARKETING 617, 623 (2000).

⁶⁹ See 155 CONG. REC. 12,481 (2009) (statement of Sen. McCaskill) (recalling that a credit card executive testified that students are "very good risks").

⁷⁰ See Ylan Q. Mui, *Credit Card Reform Has Companies Treading Lightly on Campus*, WASH. POST (Aug. 27, 2010, 12:10 AM), <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/26/AR2010082604058.html>, archived at <http://perma.cc/479C-W8N6>.

⁷¹ See SALLIE MAE 2009, *supra* note 8, at 7 (showing that 38% of students selected their credit card issuer from direct postal mail, 3% through a vendor e-mail, and 5% from a vendor booth on campus).

restricting issuers' marketing habits.⁷² Second, the Act intended to limit students' access to credit by tightening requirements to qualify for a credit card.⁷³ This section briefly describes each of the Act's young consumer provisions and its effect on student credit card debt and usage.⁷⁴

A. *Limitations on Marketing*

The Act intended to eliminate "predatory" marketing to students in three ways.⁷⁵ First, it aimed to reduce the number of prescreened offers students received by mail.⁷⁶ Second, the Act sought to eliminate promotions that incentivized students to obtain a credit card in exchange for giveaways.⁷⁷ Finally, the Act aimed to expose the terms of university-issuer arrangements, under which colleges provide student contact information to issuers in exchange for money.⁷⁸

1. *Prescreened Offers*

Prior to the CARD Act, students received unsolicited preapproved credit card offers in the mail at remarkable rates.⁷⁹ Legislators worried that students bombarded with preapproved offers were opening credit cards without fully understanding the consequences.⁸⁰ Interestingly, legislators chose not to directly regulate the marketing of prescreened offers—that is, the Act does not

⁷² See *infra* Part IV.A.

⁷³ See *infra* Part IV.B.

⁷⁴ In 2012, Jim Hawkins, a law professor at the University of Texas, conducted the first empirical field study to measure the effectiveness of the young consumer provisions. See generally Jim Hawkins, *The CARD Act on Campus*, 69 WASH. & LEE L. REV. 1471 (2012). This Note draws on the data collected in this study.

⁷⁵ Legislators repeatedly referred to credit card issuers' practices as "predatory" during debate. See, e.g., 155 CONG. REC. 12,283–84 (2009) (statement of Sen. Menendez); *id.* at 12,082–86 (statement of Sen. Dodd); *id.* at 11,183 (statement of Rep. Neugebauer).

⁷⁶ Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 302, 123 Stat. 1734, 1748 (amending the Fair Credit Reporting Act, 15 U.S.C. § 1681b(c)(1)(B) (2012)); 155 CONG. REC. 12,286 (2009) (statement of Sen. Reed) ("[The bill] shields young people from taking on more debt than they can handle by limiting prescreened offers to young consumers.").

⁷⁷ See *infra* Part IV.A.2.

⁷⁸ See *infra* Part IV.A.3.

⁷⁹ See Jill M. Norvilitis et al., *Factors Influencing Levels of Credit-Card Debt in College Students*, 33 J. APPLIED SOC. PSYCHOL. 935, 941 (2003) (reporting that 69% of students surveyed received a prescreened offer in the prior week).

⁸⁰ See 155 CONG. REC. 12,085 (statement of Sen. Dodd) ("Our bill limits the kinds of prescreened offers that get so many young people into trouble."); see also *id.* at 12,460 (statement of Sen. Dorgan) ("With credit cards, the big companies out there—and by the way it is heavily concentrated—wallpaper this country with preapproved credit card solicitations: Come to us, load up; come on, spend what you don't have on things you don't need; come on, you can load up on my card.").

forbid credit card issuers from sending credit card offers directly to students.⁸¹ Instead, the CARD Act aimed to reduce prescreened offers to students by limiting issuers' access to students' information.⁸²

Specifically, the Act prohibits credit-reporting agencies from providing issuers with credit reports on consumers under age twenty-one unless the consumer consents.⁸³ But, credit card issuers may obtain students' mailing addresses through other sources, such as commercial mailing lists⁸⁴ or from universities themselves.⁸⁵ Issuers may also contact students directly through email, because the Act does not prohibit electronic marketing to students.⁸⁶ While the Act appears to have reduced the number of unsolicited prescreened offers to young consumers, a recent study reported that nearly 58% of college students under age twenty-one continued to receive pre-approved credit card offers in the mail in 2011.⁸⁷

The Act's provision prohibiting consumer-reporting agencies from providing student information without student consent, quite simply, creates little more than a speed bump for issuers attempting to market credit cards to consumers under age twenty-one. In light of credit card companies' significant incentive to draw in student consumers,⁸⁸ it is not surprising that issuers have found ways around the Act's ban on accessing credit reports by attaining student mailing addresses from alternative sources.

⁸¹ See generally Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (codified as amended in scattered sections of 15 and 16 U.S.C.).

⁸² See 15 U.S.C. § 1681b(c)(1) (2012). This provision of the CARD Act was included as an amendment to the Fair Credit Reporting Act.

⁸³ See *id.* ("A consumer reporting agency may furnish a consumer report relating to any consumer . . . in connection with any credit or insurance transaction that is not initiated by the consumer only if . . . the consumer report does not contain a date of birth that shows that the consumer has not attained the age of 21, or, if the date of birth on the consumer report shows that the consumer has not attained the age of 21, such consumer consents to the consumer reporting agency to such furnishing.").

⁸⁴ See Warwick & Mansfield, *supra* note 68, at 621 (noting that credit card companies access student information via commercial mail to send unsolicited credit card mailings).

⁸⁵ See Hawkins, *supra* note 74, at 1500 (stating that a recent review of 300 university-issuer agreements showed that 68% of the agreements require colleges to provide a list of student mailing addresses to the issuers for marketing purposes).

⁸⁶ See Tim Chen, *The New Rules for Student Credit Cards*, U.S. NEWS & WORLD REP. (Jan. 19, 2011, 3:18 PM), <http://money.usnews.com/money/blogs/my-money/2011/01/19/the-new-rules-for-student-credit-cards>, archived at <http://perma.cc/6HWD-TCJX> ("An e-mail address does not physically exist anywhere, and therefore, cannot be considered an address on or near campus.").

⁸⁷ See Hawkins, *supra* note 74, at 1519 (finding that the number of students under twenty-one who received unsolicited offers is down from just over 76% in 2010).

⁸⁸ See Warwick & Mansfield, *supra* note 68, at 618 (noting that the typical consumer retains his first credit card for 12 to 15 years).

2. On-Campus Promotions and Giveaways

Before the passage of the CARD Act, credit card vendors regularly gave students free T-shirts, pizza, or other gifts to incentivize them to sign up for credit cards.⁸⁹ Legislators sought to end this practice, worrying that students were being lured into obtaining credit cards by the promotional giveaways.⁹⁰

The CARD Act prohibits issuers from offering students any tangible item in exchange for completing a credit card application.⁹¹ Several clarifications issued by the Federal Reserve Board have, however, limited the effectiveness of this provision. First, the Board has broadly defined the term “inducement.”⁹² Under the Board’s definition, when “a tangible item is offered to a person whether or not that person applies for or opens an open-end consumer credit plan, the tangible item has not been offered to induce the person to apply for or open the plan.”⁹³ Thus, credit card companies may set up promotional booths on campuses so long as they offer giveaways to all students, whether or not they complete an application. Further, the Board provided a narrow interpretation of a “tangible item,” finding that the term does not include “discounts, rewards points, or promotional credit terms.”⁹⁴

Despite the additional leeway given under the Board’s interpretation, it does appear that many credit card issuers are respecting the Act’s on-campus marketing provisions.⁹⁵ Still, on-campus marketing has not entirely

⁸⁹ See Melanie Hicken, *Credit Card Issuers Still Cashing in on College Students, Alums*, CNN MONEY (Dec. 17, 2013, 5:47 PM), <http://money.cnn.com/2013/12/17/pf/college-credit-cards/>, archived at <http://perma.cc/4EXD-DN2Z>; Ben Protess & Jeannette Neumann, *Banks Paying Colleges for Students Who Rack up Credit Card Debt*, HUFFINGTON POST, http://www.huffingtonpost.com/2010/06/08/banks-paying-colleges-for_n_604109.html (last updated May 25, 2011, 4:40 PM), archived at <http://perma.cc/4HKH-GSVV>.

⁹⁰ See 155 CONG. REC. 12,486 (2009) (statement of Sen. Feinstein) (“Credit card companies lure cash-strapped students with all kinds of offers. Free food. T-shirts—the most-common inducement. Frisbees. Candy. Even iPods. All for filling out a credit card application.”).

⁹¹ 15 U.S.C. § 1650(f)(2) (2012) (“No card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open end consumer credit plan offered by such card issuer or creditor, if such offer is made—(A) on the campus of an institution of higher education; (B) near the campus of an institution of higher education, as determined by rule of the Bureau; or (C) at an event sponsored by or related to an institution of higher education.”).

⁹² 12 C.F.R. § 226.57(c)(2) (Supp. I 2012).

⁹³ *Id.*

⁹⁴ *Id.* § 226.57(c)(1).

⁹⁵ See Hicken, *supra* note 89 (quoting Bank of America spokeswoman Betty Riess as having said, “[w]e don’t market credit cards to students on campus and haven’t done so for many years”); Steve Rosen, *Kids and Money: Credit Card Law Succeeds in Protecting Students*, CHICAGO TRIB. (Jan. 20, 2014), http://articles.chicagotribune.com/2014-01-20/lifestyle/sns-201401201030--tms--kidmoneyctnsr-a20140120-20140120_1_card-act-credit-card-card-companies, archived at perma.cc/245H-4E3H.

disappeared.⁹⁶ Further, the apparent success in reducing on-campus marketing may simply be masking a shift to other methods of accessing the student market, such as through university-issuer agreements⁹⁷ and alumni networks.⁹⁸

3. *University-Issuer Agreements*

Legislators sought to require public disclosure of university-issuer agreements, believing that shedding light on the terms of these agreements would force universities to act with the best interests of students in mind.⁹⁹ Before the CARD Act's disclosure requirement, little was known about the terms of university-issuer agreements and the benefits schools received in exchange for providing student information.¹⁰⁰ Legislators and the media speculated that universities were "receiv[ing] large cash payments in exchange for providing students' personal information, . . . enabl[ing] companies to target students with precision."¹⁰¹ Senator Feinstein described the agreements as "shameful," asserting that schools were "encourag[ing] their students to sign up for products with high interest rates and fees that could get them bogged down in debt" in exchange for multimillion dollar deals.¹⁰²

The Act's disclosure requirement does not, however, appear to have much of an impact on agreement terms. A recent review of nearly 300 university-issuer agreement terms shows that agreement terms have changed little following the disclosure requirement.¹⁰³ Under the agreements, schools continue to provide issuers with student contact information in exchange for

⁹⁶ Hawkins, *supra* note 74, at 1522 (finding that for students who had been in college only during years in which the CARD Act was in effect, 22% reported seeing credit card companies marketing on campus, down from 49% of students who had been in college before the CARD Act; 67% had seen credit card marketing off campus directed at students, down from 81%; and 40% reported seeing credit card companies giving gifts to students, down from 60%).

⁹⁷ See *infra* Part IV.A.3.

⁹⁸ See Hicken, *supra* note 89 (reporting that credit card issuers are now heavily marketing college-affiliated cards to alumni).

⁹⁹ 155 CONG. REC. 12,486 (2009) (statement of Sen. Feinstein) ("Shining a light on the agreements between universities and credit card issuers not only makes good sense. It may also act as a deterrent to deals with highly unfavorable terms for students."). University-issuer agreements arise both between issuers and the administration of universities and colleges themselves, and also between issuers and organizations related to colleges, such as fraternities, sororities, and alumni associations. See CONSUMER FIN. PROT. BUREAU, COLLEGE CREDIT CARD AGREEMENTS: ANNUAL REPORT TO CONGRESS 3 (2013).

¹⁰⁰ See Jonathan D. Glater, *Colleges Profit as Banks Market Credit Cards to Students*, N.Y. TIMES, Jan. 1, 2009, at B5; see also 155 CONG. REC. 12,486 (statement of Sen. Feinstein).

¹⁰¹ 155 CONG. REC. 12,486 (statement of Sen. Feinstein); see Protes & Neumann, *supra* note 89 ("Some colleges can receive bonuses when students incur debt.").

¹⁰² 155 CONG. REC. 12,486 (statement of Sen. Feinstein).

¹⁰³ See Hawkins, *supra* note 74, at 1525.

royalties from cards opened.¹⁰⁴ The agreements with universities also remain primarily aimed at marketing to students rather than other university groups such as alumni,¹⁰⁵ although alumni marketing has also grown.¹⁰⁶ The value of the agreements to the universities and university entities, such as fraternities and sororities, varies greatly—some schools receive as little as \$1,000 per year,¹⁰⁷ while others make more than a million dollars from the arrangement.¹⁰⁸

The CARD Act's disclosure requirement has somewhat reduced the prevalence of university-issuer agreements, but has in no way caused them to disappear.¹⁰⁹ In 2009, there were a total of 1,045 agreements in effect, compared to 617 agreements in 2012.¹¹⁰ Interestingly, the 617 agreements in effect in 2012 created nearly as many new accounts as the 1,045 agreements did in 2009,¹¹¹ perhaps indicating an increased emphasis on marketing through issuer-agreements after the CARD Act.

B. Ability to Pay

The CARD Act sought to regulate the behavior of students in addition to card issuers. Legislators reasoned that enacting an ability-to-pay requirement would help to protect students from taking on more debt than they could afford.¹¹² The ability-to-pay provision requires that a student applying to open

¹⁰⁴ See Protes and Neumann, *supra* note 89.

¹⁰⁵ See Hawkins, *supra* note 74, at 1500 (noting that 73% of agreements reviewed related to student marketing, while 27% related to marketing to alumni or other university groups). Agreements often give issuers exclusive rights to advertise on the school's website and at university sporting events. *Id.* at 1501–02 (reporting that over 90% of agreements granted issuers the right to market on the university's website, and 29% allowed the issuer to solicit customers at sporting events). Some schools and organizations go even further, sending emails to students recommending the issuers and including applications for the issuers' credit cards in organization newspapers or magazines. *See id.* at 1502.

¹⁰⁶ See Hicken, *supra* note 89.

¹⁰⁷ See Hawkins, *supra* note 74, at 1504 (finding that 604 universities and university-related entities made less than \$10,000 and 219 made less than \$1,000 per year).

¹⁰⁸ See *id.* (finding that 143 universities and university-related organizations made more than \$100,000 and 25 made more than \$1,000,000 million dollars).

¹⁰⁹ See CONSUMER FIN. PROT. BUREAU, *supra* note 99, at 7.

¹¹⁰ *Id.*

¹¹¹ See *id.* In 2009, university-issuer agreements led to 55,747 new credit card accounts compared to 45,519 new accounts in 2012. *Id.*

¹¹² 155 CONG. REC. 12,085 (2009) (statement of Sen. Dodd) (“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. . . . I don't have the statistics in front of me, but a significantly high percentage of students drop out of school because of the debt they have incurred. A lot of it is credit card debt, not just the student loans but the credit card debt.”).

a credit card must show either an “independent ability to make the required minimum periodic payment” or obtain the signature of a cosigner who is over twenty-one years old and assumes joint liability for the credit card debt.¹¹³

As with the CARD Act’s provisions regulating the conduct of card issuers, both issuers and students have found ways around the ability-to-pay requirements. First, there is no statutory standard for what constitutes an ability to pay.¹¹⁴ Instead, the Federal Reserve Board has ignored consumer advocates’ requests to establish guidelines on how issuers must evaluate an applicant’s income and has left this decision entirely to the issuers.¹¹⁵ Further, a student must show only an ability to pay the monthly minimum payment, not the amount charged.¹¹⁶ Finally, neither the Act nor the Federal Reserve Board offers guidance on what constitutes income for purposes of obtaining a credit card.¹¹⁷ A 2012 study found that only 52% of students who applied as having an “independent” ability to pay listed any independently earned income.¹¹⁸ Thirty percent of the students who received credit cards under the independent ability-to-pay qualification listed student loans as a source of income, while 35% listed money from relatives.¹¹⁹

Students who are unable to qualify for a credit card under an independent ability to pay must apply for a credit card with a cosigner.¹²⁰ The cosigner must be at least twenty-one years of age, must show the means to repay any debt incurred by the student applicant, and must agree to assume joint responsibility for the student applicant’s debt.¹²¹ The Federal Reserve Board has, however, again essentially left it to the credit card issuer to determine what constitutes a “means to repay.”¹²² Requiring a cosigner, thus, does not necessarily provide additional protection.

Further, there is nothing that prohibits a student from having a sibling or friend who is over twenty-one years of age cosign for him, potentially

¹¹³ 12 C.F.R. § 226.51(b)(1)(i)–(ii) (2014).

¹¹⁴ See Truth in Lending, 75 Fed. Reg. 7658, 7720 (Feb. 22, 2010).

¹¹⁵ *Id.* (In response to consumer groups’ requests, the Board provided merely that “it would be unreasonable for a card issuer to not review any information about a consumer’s income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets.”).

¹¹⁶ *Id.* at 7660.

¹¹⁷ See *id.* at 7722 (rejecting consumer groups requests to base ability-to-pay determinations on *earned* income).

¹¹⁸ Hawkins, note 74, at 1514.

¹¹⁹ *Id.*

¹²⁰ 12 C.F.R. § 226.51(b)(1)(ii) (2014).

¹²¹ *Id.*; Truth in Lending, 75 Fed. Reg. at 7660 (When applying with a cosigner, the applicant must provide “the signature of a cosigner who has attained the age of 21, who has the means to repay debts incurred by the underage consumer in connection with the account, and who assumes joint liability for such debts.”).

¹²² *Id.* (providing only that “it would be unreasonable for an issuer not to review any information about a consumer’s income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets”).

resulting in not one but two young consumers being harmed if an applicant later defaults.¹²³ The friend or sibling is not only liable for the debt, but also suffers harm to his or her credit score, which may affect the young consumer's future success in applying for jobs, apartment leases, and credit applications.¹²⁴

V. PROPOSED AMENDMENTS TO THE ACT

The CARD Act's young consumer provisions should be amended to better meet the needs of the college students it is designed to protect. After four years in effect, many of the Act's young consumer provisions have proven ineffective, creating little more than extra steps to the same end.¹²⁵ Further, the Act ignores the realities of student credit use: namely, that the majority of students use credit responsibly and that students should have access to credit.¹²⁶

This Note proposes shifting the CARD Act's focus from reducing all student debt to reducing excessive student debt by amending the Act to include a credit limit cap and eliminating the ability-to-pay provision. These amendments would better serve students by closing off opportunity to obtain excessive indebtedness without unnecessarily restricting access to credit.

A. Credit Limit Cap Amendment

Presently, the CARD Act regulates credit limit increases for young consumers who apply with a cosigner by requiring the cosigner's approval prior to any increase, but the Act does not regulate credit limit increases for those students who apply independently.¹²⁷ Assuming that a student's cosigner

¹²³ It is unclear whether friends or siblings often cosign for young consumers. There is anecdotal evidence to suggest that it is occurring, but studies have not indicated that it is a significant problem. See Carpenter, *supra* note 64 ("Some students under 21 have upperclassmen, friends or siblings sign for them to avoid parental hassles."); Colleen Kane, *Should College Students Have Credit Cards?*, CNBC (Oct. 12, 2012, 3:57 PM), <http://www.cnbc.com/id/49259514>, archived at <http://perma.cc/MS28-LQP2> (quoting Mitchell D. Weiss, who teaches financial literacy at the Univ. of Hartford, as having said, "I've heard about students asking friends and relatives to cosign"). But see Hawkins, *supra* note 74, at 1515–16 (reporting that no student under the age of twenty-one in his survey used a friend as a cosigner).

¹²⁴ See Rohit Chopra, *Cosigning on Campus?*, CONSUMER FIN. PROTECTION BUREAU (Aug. 26, 2011), <http://www.consumerfinance.gov/blog/co-signing-on-campus/>, archived at <http://perma.cc/N2J4-6KYV>.

¹²⁵ See *supra* Part IV.

¹²⁶ See *supra* Part II.

¹²⁷ 12 C.F.R. § 226.51(b)(1)(ii)(B)(2) (2014) ("If a credit card account has been opened [with a cosigner], no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint

is a parent with a meaningful stake in the student's use of credit (and not a friend unwittingly doing a favor by cosigning), this provision likely helps to protect against students spending at an irresponsible and harmful level. But what about a student who has a friend or sibling cosign or who obtains a credit card independently (perhaps based upon little more than a showing of income through student loans)? The credit limit for these students will be regulated only by the credit card issuer.

An amendment that caps credit limits for all students would best protect young consumers against excessive credit card debt. Simply put, if an excessive amount of credit is not available to students, students cannot acquire excessive debt. As one academic noted, "several provisions of the CARD Act failed because they did not directly regulate the behavior that concerned policymakers."¹²⁸ This is one of those instances. Policymakers' primary concern was excessive indebtedness,¹²⁹ and, yet, the Act's provisions aimed to reduce *all* student debt. This roundabout approach of attacking excessive debt by reducing all debt has missed the mark. Instead, the Act should be amended to directly target instances of excessive student credit card debt by capping credit limits to more efficiently and effectively protect young consumers.

1. *The Slaughter Amendment*

In 2009, Congresswoman Louise Slaughter proposed an amendment to the CARD Act that would have capped credit limits for students who obtained cards without a cosigner.¹³⁰ The amendment aimed to directly prevent students from acquiring "balances which they are incapable of paying" by imposing restrictions on the amount of credit that card issuers may extend to students.¹³¹ Congresswoman Slaughter's underlying approach was solid; however, her

accountholder who assumed liability at account opening agrees in writing to assume liability on the increase.").

¹²⁸ Hawkins, *supra* note 74, at 1529.

¹²⁹ See 155 CONG. REC. 12,481 (2009) (statement of Sen. McCaskill) (stating that students are obtaining debt that will keep them "on line to them for the principal for the rest of their lives"); *id.* at 12,283 (statement of Sen. Menendez) (adding that student credit card use is resulting in "lifetime of debt").

¹³⁰ *Id.* at 11,180 (statement of Rep. Slaughter). Students who opened a card with a cosigner would be protected by the Act's provision prohibiting credit limit increases without the written approval of the cosigner. 12 C.F.R. § 226.51(b)(2) ("If a credit card account has been opened [with a cosigner], no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase.").

¹³¹ 155 CONG. REC. 11,182 (statement of Rep. Slaughter); see *id.* ("[O]ur amendment will . . . requir[e] the credit card companies to take responsibility for their lending practices to reduce the number of young people carrying excessive debt and filing for bankruptcy.").

amendment was ultimately rejected as being overly restrictive and, thus, impractical.¹³²

The Slaughter Amendment capped the credit limit extended to a student by any one creditor to the greater of 20% of the student's income or \$500 per year.¹³³ Additionally, a single card issuer, or any of its affiliates, could issue a student no more than one card.¹³⁴ Further, the amendment limited the total amount of credit that a student could access on all cards to no more than 30% of the student's income.¹³⁵ Finally, no creditor could provide a credit card to any student who had "no verifiable annual gross income."¹³⁶

In practice, the Amendment would entitle a student making more than \$1 but less than \$1,667 of income to a maximum credit limit of \$500 per year.¹³⁷ Students making more than \$1,677 would be entitled to additional credit, increasing according to their income, with their total credit limit capped at 30% of their income.¹³⁸ A \$500 credit limit seems unreasonably low, particularly given the number of students who use credit to supplement educational expenses.¹³⁹ Further, a student with no independent source of income, and who cannot obtain a cosigner, would have no access to credit at all.¹⁴⁰

Congresswoman Slaughter's amendment was ultimately rejected by the Senate,¹⁴¹ and rightly so. While the amendment's focus on directly regulating the amount of credit available to students was on point, many in Congress shared concerns that the credit limit caps would be insufficient for most

¹³² See *infra* Part V.A.1.

¹³³ 155 CONG. REC. 11,182 (Proposed Amendment § 9(B)(i)).

¹³⁴ *Id.* (Proposed Amendment § 9(E)(ii)).

¹³⁵ *Id.* (Proposed Amendment § 9(B)(ii)). This proposed provision is noteworthy because it would have required creditors to be aware of a student's credit liability with other credit card issuers.

¹³⁶ *Id.* (Proposed Amendment § 9(E)(i)).

¹³⁷ Based on a plain reading of the proposed rule, a student with *any* income is eligible for a credit card. Whether a student is making \$1 of income or \$1,667, the student's credit limit would be capped at \$500.

¹³⁸ For example, a student who made \$2,500 during any year would be eligible to receive a total credit limit of \$750 (30% of \$2,500). This \$750 would be spread across at least two cards, with a maximum limit of \$500 on one card (20% of \$2,500) and the remaining \$250 limit on a card from a separate issuer. Based on a plain reading of the proposed rule, the student would have a minimum of \$500 of credit.

¹³⁹ SALLIE MAE 2009, *supra* note 8, at 3 (reporting that 92% of students use credit cards for expenses directly related to their education, such as purchasing textbooks and school supplies).

¹⁴⁰ 155 CONG. REC. 11,182 (2009) (statement of Rep. Slaughter).

¹⁴¹ The amendment passed the House 276-154, but failed to pass the Senate. See 155 CONG. REC. 11,183; Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734 (codified as amended in scattered sections of 15 and 16 U.S.C.).

students and worried that the Amendment verged on paternalism.¹⁴² Senator Spencer Bachus pushed back against Congresswoman Slaughter's amendment, remarking that the 20%-of-income cap would be meaningless for a majority of students because they have little to no income, while a \$500 cap would be insufficient to satisfy the needs of most students.¹⁴³ He worried that, in effect, the amendment would strip many students of credit needed to supplement educational costs.¹⁴⁴ Senator Bachus conceded that the amendment would prevent some instances of excessive indebtedness, but argued that this benefit would be outweighed by the large number of students who would lose access to credit used to cover educational and living costs.¹⁴⁵ Likewise, Representative Randy Neugebauer summed up his concerns, stating, "[W]e have an amendment that says . . . we're not going to teach you how to use your credit appropriately. We're just going to take your credit away."¹⁴⁶

These comments get to the heart of the issue related to setting a credit limit cap: the cap must be conservative enough to protect young consumers, but not so low that a student's access to credit is meaningless. Congresswoman Slaughter's efforts to amend the Act to include a credit limit cap were well-founded, but her proposed credit caps were, at best, unreasonably low and, at worst, nonexistent for those students who have no independent source of income and no cosigner. Although proposing a specific credit limit cap amount is beyond the scope of this Note, certain principles in the following section may help guide the legislature to an appropriate credit limit.¹⁴⁷

2. Guidelines for Setting Appropriate Credit Limit Cap

First, all students should have access to some level of credit regardless of whether they have independently earned income. As previously mentioned, students are uniquely situated. Though many students have little to no income while in school, the large majority will experience a sudden spike in earnings

¹⁴² 155 CONG. REC. 11,183 (statement of Sen. 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.").

¹⁴³ *Id.* (statement of Sen. Bachus). The thirty-percent-of-income cap on overall credit would be similarly meaningless for many students.

¹⁴⁴ *Id.* ("[T]o get around [the caps], their parents can cosign What if their parents won't sign? But what if they need a credit card to go to school and they need to charge over \$500? You're really beginning to micromanage. And sometimes it will prevent some injustices, sometimes it will prevent some financial difficulties . . . but oftentimes, it will result in students not having the use of a credit card.").

¹⁴⁵ *See id.*

¹⁴⁶ *Id.* (statement of Rep. Neugebauer).

¹⁴⁷ The proposals in this Note address proper credit limits for students obtaining credit cards independently rather than students who open cards with a cosigner. Where a student applies for a credit card with a cosigner, the cosigner's contributions and income would, naturally, affect the amount of credit that should be available to a student.

upon graduating and a portion of these earnings can be used to pay off debt.¹⁴⁸ Students should have access to credit while they are in school and need it most because they can reasonably be expected to repay their debt within a relatively short period of time.

Second, the amount of credit extended to students should not be dependent upon their earnings. Student income is too intermittent to serve as a measure for credit cap amounts.¹⁴⁹ Students are unlike traditional workers in that student employment is often highly irregular.¹⁵⁰ A student may work one summer, but take a non-paying internship the next. Using student income for any given year as a basis for the student's credit limit would often lead to an inaccurate portrayal of the student's financial position and may lead to an artificially inflated (or low) credit cap.¹⁵¹

Instead, credit limits should be linked to a student's progress in school. Students generally require greater access to credit as they complete additional years in school because of compounding costs.¹⁵² Further, the closer a student is to graduating, the closer he or she is to earning a wage that can be used to satisfy debts obtained during school. Thus, credit limit caps linked to grade-level would appropriately meet the needs of students and also align with students' potential to pay off debt.

Finally, a credit limit cap must cap the overall amount of credit a student may access, not simply the credit limit on any single card. A student must not be able to skirt a credit limit cap on one card simply by obtaining another. There are two ways to execute an overall cap. First, the overall cap could simply apply per person, regardless of the number of cards held. This was the approach taken by Congresswoman Slaughter.¹⁵³ Her proposed provision barred companies from issuing a card "if the credit limit for that credit card account, combined with the credit limits of any other credit card accounts held by the student, would exceed 30% of the annual gross income of the student."¹⁵⁴ Under this approach there is no need to limit the number of cards a

¹⁴⁸ See *supra* Part II.

¹⁴⁹ Many common student jobs, such as babysitting and tutoring, provide irregular earning opportunities. See Amanda Lilly, *Great Part-Time Jobs for College Students*, KIPLINGER (Sept. 19, 2011), <http://www.kiplinger.com/article/business/T012-C006-S001-great-part-time-jobs-for-college-students.html>, archived at <http://perma.cc/8M9V-RQND>. Further, many students do not work year-round. See JESSICA DAVIS, U.S. CENSUS BUREAU, SCHOOL ENROLLMENT AND WORK STATUS: 2011, at 4 (2012), available at <http://www.census.gov/prod/2013pubs/acsbr11-14.pdf>, archived at <http://perma.cc/SHW5-VATB> (reporting that approximately 52% of college students work less than year-round, 20% of work year-round, and 28% do not work at all).

¹⁵⁰ See Lilly, *supra* note 149.

¹⁵¹ In contrast, where there is a cosigner with steady employment, it seems appropriate that a student's credit limit be increased according to the contributions and income of the cosigner.

¹⁵² See SALLIE MAE 2012, *supra* note 9, at 23.

¹⁵³ 155 CONG. REC. 11,182 (2009) (Proposed Amendment § 9(B)(ii)).

¹⁵⁴ *Id.*

student holds because a student simply cannot access credit that exceeds a certain limit.

A second approach is to enact a credit limit cap in conjunction with a cap on the number of cards a student can hold. This Note proposes enacting this approach and limiting students to two cards. While the goal of preventing excessive debt can be met under either approach, capping the number of cards a student can hold provides additional benefits.¹⁵⁵ Limiting students to two cards helps to ensure that students can more easily manage their credit and avoid pitfalls, such as missing payment deadlines.¹⁵⁶ At the same time, allowing young consumers to hold more than one card provides a fallback in case of loss, theft, or fraud¹⁵⁷ and may help to improve the young consumers' credit score.¹⁵⁸

It is important that a credit limit cap be added to the Act because it would provide a highly effective protection against excessive indebtedness. Students, quite simply, cannot acquire excessive debt if they do not have access to it. But it is equally important that the caps not be being overly restrictive because many students rely on credit to supplement educational and living expenses.¹⁵⁹ In determining the appropriate cap amount, legislators must account for the realities of student credit use to set a cap that provides access to a reasonable amount of credit.

B. *Eliminating the Ability-to-Pay Provision*

The ability-to-pay requirement has not noticeably reduced the number of students qualifying for credit cards.¹⁶⁰ As previously mentioned, the Act fails to define “ability to pay,” and the Federal Reserve Board’s guidelines have left

¹⁵⁵ Even without an express cap on the number of credit cards a student could hold, a credit limit cap would, itself, act as a cap on the number of cards for many students. That is, many students would be unable to obtain additional cards simply because they would exceed their credit limit cap. Capping the number of credit cards a student can hold will, however, ensure certain protections to all students, including those whose credit limit caps may be larger because of cosigner contributions.

¹⁵⁶ See, e.g., Matt Carstens, *How Many Credit Cards Should You Have?*, MONEY TALKS NEWS (Sept. 12, 2013, 1:16 PM), <http://money.msn.com/saving-money-tips/post--how-many-credit-cards-should-you-have>, archived at <http://perma.cc/R3G7-BN5Q>; Christine DiGangi, *How Many Credit Cards Should I Have?*, YAHOO FIN. (Oct. 2, 2013, 8:00 AM), <http://finance.yahoo.com/news/many-credit-cards-120028779.html>, archived at <http://perma.cc/W2XB-44FR/>.

¹⁵⁷ Carstens, *supra* note 156.

¹⁵⁸ *Id.* Holding a second card will improve a cardholder’s credit score if he does not use the full amount of credit available on the second card, because a cardholder’s credit score is affected by his credit utilization ratio—essentially, how much debt is owed compared to the cardholder’s credit limit. *Id.*

¹⁵⁹ See *supra* Part II.

¹⁶⁰ See *supra* Part IV.B.

this determination to credit card issuers.¹⁶¹ Thus, students who have not independently earned income may be able to open credit cards based on student loans or relatives' earnings, a result that Congress likely did not intend.¹⁶² In this same vein, the Act requires only that a cosigner be over the age of twenty-one and have a means to repay the cosigned debt without defining "means to repay."¹⁶³ Again, this requirement provides no meaningful protection for young consumers, who are able to use friends or siblings as cosigners.¹⁶⁴

The ineffectiveness of the ability-to-pay provision could be remedied by passing stricter guidelines on what constitutes an ability to pay, what qualifies as income, and who may cosign. Doing so would likely lead to an ability-to-pay provision closer to what Congress intended. But a stricter provision may also prevent responsible students who need access to additional funds from obtaining cards. Thus, while a stricter provision would likely reduce student debt overall, the reduction in debt would likely come at a cost to students who cannot obtain the credit they need.

In effect, tightening the restrictions of the ability-to-pay provision would likely force many students to apply under the cosigner provision.¹⁶⁵ This, in turn, might eliminate access to credit for some students, and in particular for low-income students who need it most.¹⁶⁶ In 2011, family contributions to students' educational expenses decreased by 32% from the amount contributed in 2009.¹⁶⁷ Further, 69% of U.S. households held some form of debt in 2011.¹⁶⁸ Parents might hesitate to take on additional debt liability by cosigning on a student credit card. In particular, low-income families might be the most

¹⁶¹ See Truth in Lending, 75 Fed. Reg. 7658, 7720 (Feb. 22, 2010).

¹⁶² 155 CONG. REC. 12,085 (2009) (statement of Sen. Dodd) (supporting ability-to-pay provision because "too often issuers offer cards to young people without verifying any ability to repay whatsoever"); *id.* at 12,284 (statement of Sen. Menendez) (noting that the ability-to-pay provision is intended to require that students "prove that they or a cosigner can actually make the payments on that debt before they get that card").

¹⁶³ 12 C.F.R. § 226.51(b)(1)(ii) (2014); Truth in Lending, 75 Fed. Reg. at 7660 (providing only that "it would be unreasonable for an issuer not to review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets").

¹⁶⁴ 155 CONG. REC. 11,182 (Proposed Amendment § 9(B)).

¹⁶⁵ Nearly 30% of students do not work at all while in college. DAVIS, *supra* note 149, at 4.

¹⁶⁶ Low-income families, not surprisingly contribute the least to their children's college expenses. See SALLIE MAE 2012, *supra* note 9, at 6. Low-income students carry the highest credit card debt, indicating a need for credit while in college. See Lyons, *supra* note 51, at 73.

¹⁶⁷ SALLIE MAE 2012, *supra* note 9, at 6.

¹⁶⁸ MARINA VORNOVYTSKY ET AL., HOUSEHOLD DEBT IN THE U.S.: 2000 TO 2011 (2011), available at <http://www.census.gov/people/wealth/files/Debt%20Highlights%202011.pdf>, archived at <http://perma.cc/QG4Y-Z8R3>.

unwilling or unable to cosign on a student credit card, although a low-income student may need the supplementary source of funding most.¹⁶⁹

In short, by heightening the ability-to-pay provision requirements, responsible students may lose access to credit in order to prevent a small number of at-risk students from obtaining credit cards. Students should not be required to show an ability to pay to obtain a moderate level of credit card debt—all students should have access to some level of credit, while students who want or need higher levels of credit could obtain a larger credit limit by applying with a cosigner or providing proof of family contributions. Rather than imposing further restrictions on students' access to credit at the expense of responsible students, the Act should be amended to provide students with liberal access to safe levels of credit. This can be effectuated through removing the ineffective ability-to-pay provision and enacting a credit limit cap.

VI. CONCLUSION

The CARD Act has provided consumers many valuable protections against abusive credit issuer practices,¹⁷⁰ but it has not effectively addressed the needs and risks of young consumers. By ignoring the realities of student credit use, legislators failed to enact young consumer provisions that adequately protect students. Rather than aim to reduce student access to credit across the board, the Act should be amended in ways that target excessive student credit card debt while maintaining liberal access to safe levels of credit. Amending the Act to include credit limit caps for students and eliminating the ability-to-pay requirement would accomplish these goals.

¹⁶⁹ See SALLIE MAE 2012, *supra* note 9, at 6.

¹⁷⁰ See, e.g., 15 U.S.C. §§ 1666b(a), 1637(b)(11), (i), (o)(1) (2012).