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Abstract

In February 2010, the Credit Card Accountability, Responsibility, and Disclosure (CARD) Act intervened in student credit card markets in a dramatic way, attempting to prevent student over-indebtedness, to end aggressive marketing to college students, and to reveal and change avaricious agreements between credit card issuers and colleges. Yet, two years after it became effective, we still have little measurement of whether the Act has accomplished these goals.

This Article offers the first empirical assessment of the rationales for the CARD Act and the Act's effects. Over the two years since the CARD Act went into effect, I conducted surveys of more than 500 students at two different colleges. I also examined 300 agreements between issuers and college-related organizations, which the CARD Act made publicly available for the first time.

Based on this survey and study, I found that many of the CARD Act's student and young consumer provisions have not affected credit markets in the ways the Act's proponents had hoped. Young consumers are still qualifying for credit cards without enough earned income to pay off the debt, and students are still reporting high levels of credit card marketing efforts aimed at the students. Most strikingly, the requirement that credit card companies disclose the secret agreements between issuers and colleges has caused virtually no change in the number of these agreements or their terms.

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I. Introduction

The Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act)[1] is the most important credit card legislation of our generation.[2] Among the many important provisions of this ground breaking Act, the Act's sponsors highlighted its protections of young consumers and college students as some of the most significant. Senator Christopher Dodd argued: "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."[3]

Senator Dodd was referring to several provisions that affect how credit card companies interact with students and young consumers. First, the CARD Act requires that credit card companies verify that people under twenty-one have the ability to repay their credit card debt.[4] Second, it places restrictions on credit card issuers' marketing activities aimed at young consumers, including prohibiting giving tangible gifts to students on college campuses and banning credit bureaus from giving out young consumers' addresses.[5] Finally, it obligates credit card companies and colleges to disclose their agreements about credit card marketing to students.[6] The central goal of these provisions was to prevent young consumers from accumulating excessive credit card debt.[7]

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1. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734.

2. *See, e.g.*, Christopher L. Peterson, *The CARD Act in Perspective: Ongoing Efforts to Find Balance in Credit Card Regulation,* 2011 UTAH L. REV. 335, 336 (2011) (stating that "the country has struggled to strike a balance between the risks of consumer indebtedness and the convenience that credit cards provide" and calling the CARD Act "the most important effort to recast this balance in several generations").

3. 155 CONG. REC. S5,316 (daily ed. May 11, 2009) (statement of Sen. Christopher Dodd).

4. *See infra* Part III.A.

5. *See infra* Part III.B.

6. *See infra* Part III.C.

7. *See infra* Part III.D.

Student credit cards are a hotly contested issue,[8] and the CARD Act's young consumer provisions have similarly generated significant academic debate about their theoretical underpinnings and likely effects.[9] But, two years after these protections became effective, we still have little empirical measurement of whether the Act's goals have been achieved and whether either critics' or supporters' predictions about the Act have come true. While academics have conducted empirical studies on other aspects of the Act[10] and have noted the efficacy

8. For just a few of the many possible examples, *see generally* RONALD J. MANN, CHARGING AHEAD: THE GROWTH AND REGULATION OF PAYMENT CARD MARKETS (2006) (providing a detailed discussion of credit cards and their costs and benefits); ROBERT D. MANNING, CREDIT CARD NATION: THE CONSEQUENCES OF AMERICA'S ADDICTION TO CREDIT (2000) (discussing the prevalence of credit card usage in the United States, including a chapter devoted to credit cards aimed at college students); Katherine Porter, *College Lessons: The Financial Risks of Dropping Out*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS 85 (Katherine Porter ed., 2012) (analyzing the financial difficulties of those who completed some college but did not graduate); Vincent D. Rougeau, *Rediscovering Usury: An Argument for Legal Controls on Credit Card Interest Rates*, 67 U. COLO. L. REV. 1 (1996) (discussing the growing problems associated with credit cards, with students as one aspect of the overall problem).

9. *See, e.g.*, Eboni S. Nelson, *Young Consumer Protection in the "Millennial" Age*, 2011 UTAH L. REV. 369 (2011) [hereinafter *Young Consumer Protection*] (discussing and predicting the effects of the Act's young consumer provisions); Eboni S. Nelson, *From the Schoolhouse to the Poorhouse: The Credit CARD Act's Failure to Adequately Protect Young Consumers*, 56 VILL. L. REV. 1 (2011) [hereinafter *Schoolhouse to Poorhouse*] (applauding the passage of the Act and suggesting further action); Andrew A. Schwartz, *Old Enough to Fight, Old Enough to Swipe: A Critique of the Infancy Rule in the Federal Credit CARD Act*, 2011 UTAH L. REV. 407 (2011) (advocating for the repeal of a section of the Act that forbids individuals under age twenty-one from having credit cards); Manley Williams & Sara E. Emley, *CARD Act's Ability to Pay Proposal Ignites Public Policy Debate*, 60 AM. U. L. REV. 1417 (2011) (describing the debate between the business community and consumer advocates over the Act's ability-to-pay proposal); Regina L. Hinson, Note, *Credit Card Reform Goes to College*, 14 N.C. BANKING INST. 287 (2010) (describing the Act's background, modifications, and likely effects); Kathryn A. Wood, Note, *Credit Card Accountability, Responsibility and Disclosure Act of 2009: Protecting Young Consumers or Impinging on Their Financial Freedom?*, 5 BROOKLYN J. CORP. FIN. & COM. L. 159 (2010) (describing the Act's intended impact on young people, the negative effects it will have, and some proposed solutions).

10. *See, e.g.*, Oren Bar-Gill & Ryan Bubb, *Credit Card Pricing: The CARD Act and Beyond* 1 (N.Y.U. Center for L., Econ. & Org., Working Paper No. 11-40, 2011), *available at* http://ssrn.com/abstract=1960005 (arguing that "[p]ost-CARD Act, consumers continue to face high long-term prices and low short-term prices, and imperfectly rational consumers still find it difficult to understand the cost of

of many of its provisions,[11] no one has measured the impact of the young consumer provisions. Members of Congress have been quick to congratulate the government for stopping "students from being sent credit card offers"[12] without bothering to check if the CARD Act's provisions have actually had that effect.

The Act's consequences for college students and other young consumers should be the central concern of those studying these provisions. As Elizabeth Warren observed, while serving as Assistant to the President and Special Advisor to the Secretary of the Treasury on the Consumer Financial Protection Bureau,

> [The Bureau] think[s] it is appropriate to ask whether [the Act] has had its intended effects and how the credit card marketplace has changed. Where there are clear causal links, we need to draw them out. And where the connections are more tenuous, we need to keep asking questions and analyzing data.[13]

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credit card borrowing"); Joshua M. Frank, *Credit Card Clarity: CARD Act Reform Works* (Center for Responsible Lending, Working Paper, Feb. 16, 2011), *available at* http://ssrn.com/abstract=2000416 (evaluating the CARD Act's effects on interest rates and direct mail offers); THE PEW HEALTH GROUP, TWO STEPS FORWARD: AFTER THE CREDIT CARD ACT, CREDIT CARDS ARE SAFER AND MORE TRANSPARENT—BUT CHALLENGES REMAIN (2010), *available at* http://www.pewtrusts.org/our_work_report_detail.aspx?id=60075 (reporting the findings of a survey of credit card issuer practices, but only devoting fifty-seven words to the young consumer provisions). The Consumer Financial Protection Bureau held a conference on the one-year anniversary of the CARD Act's provisions entering into force and emphasized the need to measure the Act's effects, but none of the key findings presented at the conference related to the young consumer provisions. *See* Consumer Financial Protection Bureau, *CARD Act Conference: Key Findings*, http://www.consumerfinance.gov/credit-cards/credit-card-act/card-act-conference-key-findings (last visited Sept. 24, 2012) (describing the February 22, 2011 conference and its key findings) (on file with the Washington and Lee Law Review).

11. *See* Williams & Emley, *supra* note 9, at 1419 ("Early indications suggest that the CARD Act has been successful in eliminating some of the more controversial practices of card issuers."); Frank, *supra* note 10, at 4 (arguing that the CARD Act has not made credit cards more expensive or less accessible).

12. 156 CONG. REC. H660 (daily ed. Feb. 23, 2010) (statement of Rep. Ralph Hall).

13. Elizabeth Warren, Special Assistant to the President & Special Advisor to the Sec'y of the Treasury on the Consumer Fin. Prot. Bureau, The CARD Act: One Year Later (Feb. 22, 2011), http://www.consumerfinance.gov/speech/the-card-act-one-year-later (last visited Sept. 24, 2012) (on file with the Washington and Lee Law Review).

This Article offers the first empirical measurement of the effects of the CARD Act's young consumer provisions. To capture information about the Act's effects, I conducted a series of surveys over a two-year period that asked more than 500 college students about their experiences with credit card companies. Also, I examined 300 agreements between credit card companies and colleges over two years, evaluating the terms of those agreements and any changes that had occurred since the CARD Act's implementation.

The results are surprising. Contrary to the predictions of the Act's sponsors, the Act's restrictions on credit card companies' activities have not substantially decreased the number of students reporting instances of credit card marketing. Similarly, provisions that require credit card issuers to evaluate young consumers' ability to repay their debt have not prevented over-indebtedness among students. I offer data that demonstrate how students are using other forms of debt to qualify for their credit card debt. The starkest outcome of my research is the finding that requiring credit card issuers to disclose the terms of their agreements with colleges has had almost no effect on the number of agreements between issuers and colleges or on the terms of those agreements.

In addition to measuring the CARD Act's effectiveness, information from the surveys and study calls into question some important rationales that academics and policymakers used for intervening in this market, while confirming other justifications for the Act. First, the low levels of student credit card indebtedness reported in the student surveys undermine the claim that the CARD Act was necessary to stop students from becoming overly indebted to credit card companies. Second, information from the agreements between issuers and colleges reveals that the claims that colleges are being incentivized to trap students in debt have been overstated. But, on the other hand, the agreements are primarily aimed at moving students into credit card accounts, a finding that confirms the suspicions of policymakers seeking disclosures.

By revealing the flaws in some of the justifications for the CARD Act and the ways that the Act has failed to live up to its potential, this Article hopes to guide policymakers as they consider amending the Act. In addition to informing potential amendments to the CARD Act itself, this Article's data may prove useful to the Consumer Financial Protection Bureau as it considers how to regulate student credit cards.[14] The Bureau's architect initially proposed restricting all marketing to college students,[15] and this Article can inform the discussion of that suggestion. Finally, this Article contributes to the academic debate about student credit cards. Before this Article, the social science literature on student credit cards had only documented the effects of credit education as a means of affecting student credit card behavior.[16] This Article adds to that literature by studying the effectiveness of the CARD Act as an example of legal intervention into the student credit card market.

Part II outlines my empirical approach, discussing how I conducted my two-year survey and my study of college–issuer agreements. I present information about the nature and limitations of my survey and study as well as some background information from the findings of these projects.

Part III uses the results of these efforts to assess the rationales that proponents of the CARD Act offered in its support. In describing the CARD Act's young consumer provisions, I use existing empirical and theoretical research to explain why proponents of the Act believed its young consumer provisions were important. Then, using the data from my survey of students and study of college–issuer agreements, I evaluate those justifications, finding some of them sound and others, including the most important justification for the Act, deeply flawed.

In Part IV, I offer an empirical measurement of the effects of each of the CARD Act's young consumer provisions. For the ability-to-repay provision, I describe how the loopholes Regulation Z created around the ability-to-pay requirement have engulfed the rule. The survey data reveal the extent to which

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14. *See* Dodd–Frank Wall Street Reform and Consumer Protection Act § 1002(12), 12 U.S.C. § 5481(12) (2012).

15. *See* Elizabeth Warren, *Unsafe at Any Rate*, DEMOCRACY, Summer 2007, at 8, 18 (predicting the Bureau would discourage "marketing targeted at college students or people under age 21").

16. *See, e.g.*, Troy Adams & Monique Moore, *High-Risk Health and Credit Behavior Among 18- to 25-Year-Old College Students*, 56 J. AM. C. HEALTH 101, 101 (2007) (discussing the factors that various social science studies have researched and linked to credit card usage among students).

students are using other forms of debt, such as student loans, to qualify for credit card debt. For the marketing provisions, I explain that the number of students reporting instances of credit card marketing remains high even after the Act's effective date, but I use the data obtained over the two years I conducted the surveys to illustrate how the Act appears to be having its intended effect of decreasing marketing efforts aimed at students. Finally, the study of college–issuer agreements reveals that the Act's disclosure requirements have had little effect on the relationships between issuers and college-related organizations.

In Part V, I conclude by suggesting lessons that the CARD Act offers to regulators who are crafting consumer credit regulation.

II. Empirical Strategy for Measuring the Effect of the CARD Act's Young Consumer Provisions

This Part describes the novel approaches I took to understand how the CARD Act is affecting students and the relationship between credit card issuers and colleges or college-related organizations. In addition to laying out the methodology I followed and the limitations of my approaches, I also describe some of the background findings that inform the remainder of the Article.

A. College Student Survey Methodology

To obtain information from students about their experiences with credit card marketing, I surveyed 527 students at two different universities over the course of two years.[17] The bulk of the students were undergraduate students at the University of Houston. The University of Houston is a large, urban public school.[18] In November 2010, I surveyed 338 students in three

17. All of the surveys were conducted under the approval of the University of Houston's Institutional Review Board.

18. *See* Univ. of Hous., *UH at a Glance*, http://www.uh.edu/about/uh-glance (last visited Sept. 24, 2012) ("Founded in 1927, the University of Houston is the leading public research university in the vibrant international city of Houston. Each year, we educate more than 39,800 students in more than 300

different history classes. In November 2011, I changed the survey instrument slightly to reflect a new year and surveyed 79 students in another history class.[19] In addition to these students at the University of Houston, in January 2012, I also surveyed students at Baylor University, a private, religiously affiliated university located in Waco, Texas.[20] At Baylor, I surveyed 110 students in an introductory geology class.

In all of the classes, the response rate was very high with a large majority filling out the surveys. I calculated the exact response rate in two classes by comparing the number of people marked present in the class and the number of surveys I received back. In both of these classes, the response rate was close to 90%. I estimate a similar response rate in the other classes. While it may be ideal to have an exact response rate in every class, similar surveys of students relating to credit card use often do not report any response rates at all,[21] so the reported rate of responses goes beyond the standard reflected in other studies.

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undergraduate and graduate academic programs . . . . UH is located in Houston, Texas, the nation's fourth-largest city . . . .") (on file with the Washington and Lee Law Review).

19. The updated survey is presented in Appendix A.

20. *See* Baylor Univ., *Get to Know Us*, http://www.baylor.edu/about (last visited Sept. 24, 2012) ("Baylor University in Waco, Texas, is a private Baptist university . . . [w]ith more than 15,000 students working toward degrees in 151 areas of study . . . .") (on file with the Washington and Lee Law Review).

21. *See, e.g.*, Sheri Lokken Worthy et al., *Sensation-Seeking, Risk-Taking, and Problematic Financial Behaviors of College Students*, 31 J. FAM. ECON. ISSUES 161, 165 (2010) (discussing the survey questions, the survey process, and the respondents but not the response rate); Jill M. Norvilitis & Michael G. MacLean, *The Role of Parents in College Students' Financial Behaviors and Attitudes*, 31 J. ECON. PSYCHOL. 55, 57 (2010) (discussing the survey method, including the composition of the body of respondents, but not mentioning the response rate); Jill M. Norvilitis et al., *Personality Factors, Money Attitudes, Financial Knowledge, and Credit-Card Debt in College Students*, 36 J. APPLIED SOC. PSYCHOL. 1395, 1402 (2006) [hereinafter *Personality Factors*] (stating that the refusal rate is unknown and the response rate therefore cannot be reported confidently); Jill M. Norvilitis et al., *Factors Influencing Levels of Credit-Card Debt in College Students*, 33 J. APPLIED SOC. PSYCHOL. 935, 938 (2003) [hereinafter *Factors Influencing Debt Levels*] (explaining that it is impossible to know how many refused to take the survey form but reporting the response rate of those who actually took a survey form); James A. Roberts & Eli Jones, *Money Attitudes, Credit Card Use, and Compulsive Buying Among American College Students*, 35 J. CONSUMER AFF. 213, 222 (2001) (discussing the study and the sample set but not the response rate).

The high level of responses should dispel any concerns about self-selection bias.[22] Other studies like this one that stated a response rate reported much lower rates than the rate in this Article's study.[23]

When compared to other surveys studying students and credit cards, this study generally has a higher number of subjects.[24] Additionally, many other similar studies only survey

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22. *See* Michael E. Staten & John M. Barron, *College Student Credit Card Usage* 11 (Georgetown Univ. McDonough Sch. of Bus. Credit Research Ctr., Working Paper No. 65, 2002), *available at* http://faculty.msb.edu/prog/CRC/pdf/WP65.pdf (criticizing two studies about student card use because they did not report response rates and, therefore, it was impossible to determine the level of self-selection bias).

23. *See* Celia Ray Hayhoe et al., *Differences in Spending Habits and Credit Use of College Students*, 34 J. CONSUMER AFF. 113, 118 (2000) (reporting a 16% response rate); Celia Ray Hayhoe et al., *Discriminating the Number of Credit Cards Held by College Students Using Credit and Money Attitudes*, 20 J. ECON. PSYCHOL. 643, 648 (1999) (reporting a response rate of 17%); Angela C. Lyons, *A Profile of Financially At-Risk College Students*, 38 J. CONSUMER AFF. 56, 63 (2004) (reporting a response rate of 34%); Carl A. Markovich & Sharon A. DeVaney, *College Seniors' Personal Finance Knowledge and Practices*, 89 J. FAM. & CONSUMER SCI. 61, 62 (1997) (reporting a 49.8% response rate); Kay M. Palan et al., *Compulsive Buying Behavior in College Students: The Mediating Role of Credit Card Misuse*, 19 J. MARKETING THEORY & PRAC. 81, 86 (reporting a 47.3% response rate); Cliff A. Robb & Deanna L. Sharpe, *Effect of Personal Financial Knowledge on College Students' Credit Card Behavior*, 20 J. FIN. COUNSELING & PLAN. 25, 29 (2009) (reporting a 24% response rate).

24. *See* Emma Davies & Stephen E.G. Lea, *Student Attitudes to Student Debt*, 16 J. ECON. PSYCHOL. 663, 667 (1995) (pulling data from a survey of 140 students); Hayhoe et al., *Differences in Spending Habits and Credit Use of College Students*, *supra* note 23, at 118 (using a sample of 480 students); Hayhoe et al., *Discriminating the Number of Credit Cards Held by Students Using Credit and Money Attitudes*, *supra* note 23, at 648–49 (reporting survey responses from 426 students and using 359 surveys for analysis); Jeff Joireman et al., *Concern with Immediate Consequences Magnifies the Impact of Compulsive Buying Tendencies on College Students' Credit Card Debt*, 44 J. CONSUMER AFF. 155, 162 (2010) (surveying 249 students); So-hyun Joo et al., *Credit Card Attitudes and Behaviors of College Students*, 37 C. STUDENT J. 405, 406 (2003) (using data from 242 surveys); Ali Kara et al., Credit Card Development Strategies for the Youth Market: The Use of Cojoint Analysis, 12 INTERNATIONAL J. OF BANK MARKETING 30 (1994) (using a sample of 229 surveys); Lokken Worthy et al, *supra* note 21, at 165 (using data from 450 students); Phylis M. Mansfield et al., *Self-Control and Credit-Card Use Among College Students*, 92 PSYCHOL. REP. 1067, 1072 (2003) (analyzing 165 surveys); Markovich & DeVaney, *supra* note 23, at 62 (using a sample of 236 surveys); Norvilitis et al., *Personality Factors*, *supra* note 21, at 1400 (surveying 448 students); Norvilitis & MacLean, *supra* note 21, at 57 (surveying 173 students); Palan et al., *supra* note 23, at 86 (analyzing a sample of 260 surveys); Roberts &

students at a single school,[25] so including a public and a private school suggest the results of this survey have a greater potential to be more representative,[26] although the results are geographically located within a single state.

All of the information from the surveys was entered into and analyzed using Stata software. The students in the sample ranged from freshmen to students who had been in college for more than four years. Table 1 provides details of the sample.

Table 1: Sample Demographic Information

	Univ. of Houston N = 417	**Baylor Univ.** N = 110	**Total**[27] N = 527
Years in School			
1	49.16%	58.18%	51.04%
2	25.18%	25.45%	25.24%
3	13.43%	9.09%	12.52%
4	6.47%	6.36%	6.45%
More than 4	5.76%	.91%	4.74%

Jones, *supra* note 21, at 222 (using a sample of 406 college students).

25. *See* Davies & Lea, *supra* note 24, at 667 (University of Exeter students); Joo et al., *supra* note 24, at 406 (students from "the College of Human Sciences of one large university in a southwestern state"); Mansfield et al., *supra* note 24, at 1072 (students of "a public college in the northeastern United States"); Markovich & DeVaney, *supra* note 23, at 62 (Purdue University students); Norvilitis & MacLean, *supra* note 21, at 57 (students of "a medium-sized state university in the United States"); Palan *et al.*, *supra* note 23, at 86 (students at "a major public [M]idwestern university"); Robb & Sharpe, *supra* note 23, at 29 (students at "a large Midwestern university in the United States"); Roberts & Jones, *supra* note 21, at 222 (students of "a private university with an enrollment of 13,000 students in Texas").

26. *Cf.* Todd Starr Palmer et al., *College Students' Credit Card Debt and the Role of Parental Involvement: Implications for Public Policy*, 20 J. PUB. POL'Y & MARKETING 105, 108 (2001) ("In collecting data, the researchers deliberately sought a mix of public and private schools . . . .").

27. The percentages do not add up to 100% because the responses of 1.52% of students were either missing or impossible to interpret.

Race			
Non-Hispanic White	26.38%	80.00%	37.57%
Non-Hispanic Black/African American	17.99%	2.73%	14.80%
Latino	26.14%	10.00%	22.77%
Asian	19.90%	2.73%	16.32%
Other	8.15%	2.73%	7.02%
Gender			
Male	48.92%	29.09%	44.78%
Female	51.08%	70.00%	55.03%
Age			
Under 21	73.38%	84.55%	75.71%
Over 21	26.62%	15.45%	24.29%

The distribution of men and women roughly approximates the ratios at the University of Houston,[28] but women are overrepresented in the sample from Baylor University.[29] Similarly, in the sample from Baylor, Non-Hispanic White students are slightly overrepresented, and Asians and Non-Hispanic African Americans/Black students are slightly underrepresented in the sample.[30] In the University of Houston

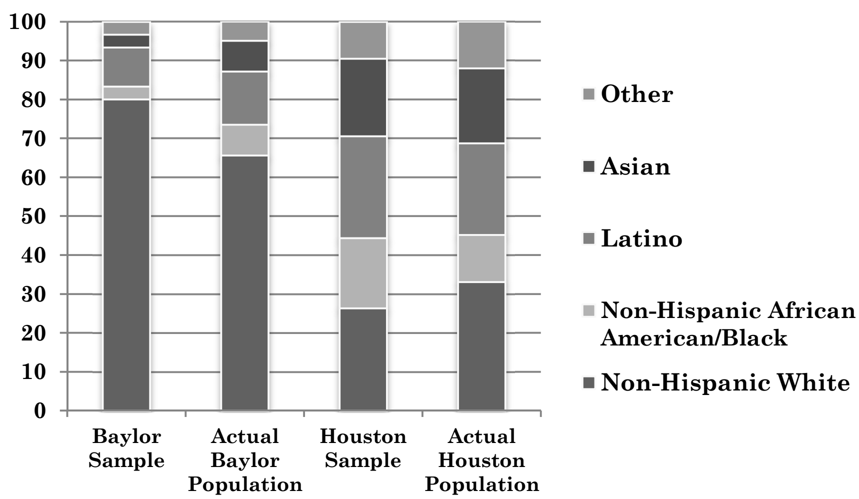
28. *See* Univ. of Hous., *Facts and Figures*, http://www.uh.edu/about/uh-glance/facts-figures/index.php#distribution (last visited Sept. 24, 2012) (providing figures from which one can calculate that 50.17% of students at the University of Houston are men and 49.83% are women) (on file with the Washington and Lee Law Review).

29. *See* BAYLOR UNIV., PROFILE OF UNDERGRADUATE STUDENTS FALL 2010 AND FALL 2011 2 (Sept. 9, 2011), http://www.baylor.edu/content/services/document.php/151566.pdf (reporting 42.1% of Baylor's fall 2011 students are men and 57.9% are women).

30. *See id.*, at 3 (stating that 7.9% of Baylor's fall 2011 students are African American, 7.9% are Asian, 13.6% are Latino, 65.6% are white, and 5% are other (including Alaskan Native/American Indian, Pacific Islander, Multiracial, and

sample, Non-Hispanic African Americans/Black students are slightly overrepresented, and Non-Hispanic White students are slightly underrepresented.[31] These differences in racial background are likely of no significance because existing research indicates race does not affect rates of credit card ownership.[32] Research has also found that attitudes toward credit are not affected by gender.[33] The samples were purposefully skewed to include more freshmen and sophomores than the general university populations. Figure 1 compares the racial backgrounds of the sample and general student populations.

Figure 1: Comparison of Racial Backgrounds of Sample Groups and Actual Populations



As with any study, this type of survey-based study has several limitations. First, the data are all based on answers from

Not Specified/Unknown)).

31. *See* Univ. of Hous., *supra* note 28 (stating that 12.1% of the University of Houston's 2011 students are African American, 19.3% are Asian American, 23.5% are Hispanic, 33.1% are White/Other, and 12% are Hawaiian/Pacific Islander, International, Multiracial, Native American, or Unknown).

32. *See* Robb & Sharpe, *supra* note 23, at 26 (citing evidence to support the assertion that "there is little difference in terms of credit card ownership based on college students' ethnicity").

33. *See* Joo et al., *supra* note 24, at 415 (finding that gender was not a significant factor affecting credit attitudes).

the students, and I could not and did not undertake any steps to verify that the responses were true. Some researchers contend that students may underreport levels of credit card use or debt because of the social desirability bias;[34] others note that self-reports are not longitudinal so they do not account for credit card debts that have been paid off by student loans;[35] and others claim students may simply misremember information about their experiences with credit cards.[36] Alternative approaches, however, would be very expensive, so surveys offer a plausible method for capturing information about students' experiences with credit card marketing.[37] Almost every study of student credit cards employs this strategy, so this limitation comports with established standards.[38]

Second, the samples are not nationally representative, so I can only make claims about the universities I studied. This limitation is also present in virtually all studies of student cards,[39] and nothing indicates that these particular public and private schools are atypical.

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34. *See* Mansfield et al., *supra* note 24, at 1076–77 (acknowledging and discussing the "potential social desirability bias associated with the balances reported"); Wayne Jekot, Note, *Over the Limit: The Case for Increased Regulation of Credit Cards for College Students*, 5 CONN. PUB. INT. L.J. 109, 112 (2005) (suggesting that self-reporting could produce inaccurate results "because respondents may incorrectly report unflattering data" (citation omitted)).

35. *See* Robert D. Manning & Ray Kirshak, *Credit Cards on Campus: Academic Inquiry, Objective Empiricism, or Advocacy Research?*, 35 J. STUDENT FIN. AID 39, 45 (2005) (stating that "credit card debt statistics tend to be underestimated by respondents and do not include past credit card debts that were paid with student loans, family loans, or other bank consolidation loans").

36. *See* U.S. GEN. ACCOUNTING OFFICE, GAO-01-773, CONSUMER FINANCE: COLLEGE STUDENTS AND CREDIT CARDS 16 (2001) (noting that reliance on memory is a limitation on the accuracy of reports that are based on student-reported information).

37. *See* Michael E. Staten & John M. Barron, *Usage of Credit Cards Received Through College-Marketing Programs*, 34 J. STUDENT FIN. AID, no. 3, 2004 at 7, 20–21 (criticizing data based on self-reporting but noting that "survey responses are a unique source of information on such questions as how and when students first receive their credit cards and their general attitudes toward card usage").

38. *See supra* notes 21–25 and accompanying text (providing numerous examples of studies using self-reporting).

39. *See supra* note 25 and accompanying text (providing numerous examples of studies that drew their entire sample from a single school).

Finally, the sample was a purposive sample, so it is non-random. This approach, however, was necessary to obtain a higher number of responses from freshmen, sophomores, and students under the age of twenty-one. The limitations of this purposive sample were mitigated by selecting classes that were part of the general degree requirements and by surveying at both public and private schools.[40]

B. College–Card Issuer Agreement Study Methodology

The study of college–issuer agreements made use of agreements that the CARD Act compelled issuers to disclose.[41] The Federal Reserve Board has posted all of these agreements on the Internet and has published reports about some aspects of them.[42] My goal in the study of college–issuer agreements was to code information about a representative sample of these agreements and to determine what changes occurred within agreements after the CARD Act went into effect.

In 2009, there were 1,044 agreements between credit card issuers and universities or related organizations.[43] To obtain a representative sample of these agreements, I exceeded established precision levels where the confidence level is 95% and P = 0.5 by evaluating 300 agreements.[44] To ensure that I sampled

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40. *See* Palmer et al., *supra* note 26, at 111 (noting that a purposive sample, rather than a random sample, is a drawback, but that such a sample was necessary to ensure better response rates and less bias, and the selection of both public and private schools and students with different majors attempted to minimize the harm).

41. *See infra* Part III.C (discussing these agreements in greater detail).

42. *See* Bd. of Governors of the Fed. Reserve Sys., *College Credit Card Agreements*, http://www.federalreserve.gov/collegecreditcardagreements (last visited Sept. 24, 2012) (providing a tool to browse or search the full text of college credit card agreements) (on file with the Washington and Lee Law Review).

43. *See* Bd. of Governors of the Fed. Reserve Sys., *College Credit Card Agreements, 2009 Full Data Spreadsheet*, http://www.federalreserve.gov/boarddocs/rptcongress/creditcard/2010/downloads/college_credit_card_agreements_data.xls (last visited Sept. 24, 2012) [hereinafter *FRB 2009 Full Data Spreadsheet*] (providing information about all college credit card agreements for 2009) (on file with the Washington and Lee Law Review).

44. *See* Glenn D. Israel, *Sampling the Evidence of Extension Program Impact* (2009), http://edis.ifas.ufl.edu/pd005 (last visited Sept. 24, 2012)

a random collection of the 1,044 agreements when I selected the 300 to review, I used a web-based True Random Number Generator to generate a list of numbers between 1 and 1,044 by using atmospheric noise to produce the results.[45] Thus, the data discussed in this Article are representative of the entire universe of agreements between college-related entities and card issuers.

Three research assistants obtained and entered information about the college–issuer agreements. I developed a written protocol that they followed after receiving training. After the results were entered and the study was complete, I reviewed the data for anomalies.

For each agreement, we obtained thirty different data points. We pulled statistical data from the Federal Reserve's compilation of information about the agreements, such as the annual payments by the issuer and the number of accounts opened. We then obtained information about whether the entities were part of public or private institutions and the precise types of association. The most significant coding work involved reading the agreements and recording information about (1) the obligations of the collegiate entities under the agreement, such as requirements to provide mailing lists, to exclusively promote the issuer, and to provide advertising help to the issuer; (2) the rights of collegiate entities, such as the right to approve advertisements and the right to royalties; (3) the terms of the credit cards issued pursuant to the agreement, including whether they had annual fees and how much interest is charged; and finally, (4) any changes in the agreement between 2009 and 2010, the period during which the CARD Act went into effect. All of this

(discussing techniques to ensure random sampling) (on file with the Washington and Lee Law Review); Glenn D. Israel, *Determining Sample Size* (1992), http://edis.ifas.ufl.edu/pd006 (last visited Sept. 24, 2012) (providing a table to help determine the proper sample size based on population size, precision level, and confidence level) (on file with the Washington and Lee Law Review).

45. The random number generator was found on the Internet. *See* Mads Haahr, *Random Sequence Generator*, http://www.random.org/sequences (last visited Sept. 24, 2012) (providing a tool to generate random sequences of integers) (on file with the Washington and Lee Law Review). The website explains the theory and mechanics of how the generator works. *See* Mads Haahr, *Introduction to Randomness and Random Numbers*, http://www.random.org/randomness (last visited Sept. 24, 2012) (describing random number generators and explaining how the site's own random number generator works) (on file with the Washington and Lee Law Review).

information was entered into a custom-designed Excel spreadsheet and imported into Stata for analysis.

Most of the agreements came from a single issuer, a characteristic that also dominates the aggregated data reported by the Federal Reserve. Table 2 breaks the sample down by the credit card issuer.

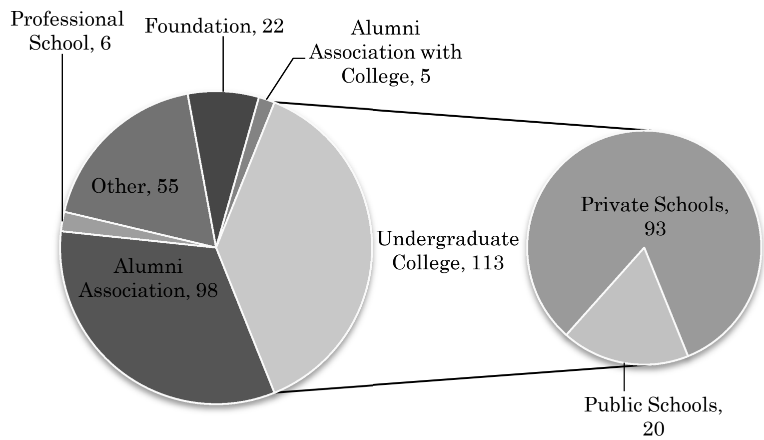
Table 2: Issuers in Sample

Issuer	**Percentage**	**Number**
FIA Card Services, N.A.	86.67%	260
U.S. Bank National Association ND	5.33%	16
Chase Bank USA, N.A.	3.00%	9
Pennsylvania State Employees Credit Union	3.00%	3
UMB Bank, N.A.	3.00%	3
INTRUST Bank, N.A.	3.00%	3
GE Money Bank	0.33%	1
USAA Savings Bank	0.33%	1
First National Bank of Omaha	0.33%	1
Barclays Bank Delaware	0.33%	1
Capital One Bank (USA), N.A.	0.33%	1
Commerce Bank, N.A.	0.33%	1

In terms of the university-related organizations with whom the issuer contracted, Figure 2 depicts that 37.67% of the agreements were between credit card issuers and undergraduate colleges, 32.67% were with alumni associations, 7.33% were with foundations, 2.00% were with professional schools, and 1.67% were with alumni associations and universities together. Entities that did not fall within one of the other categories made up

18.67%.[46] Of the agreements with undergraduate colleges, 17.70% of the institutions were public and 82.30% were private.[47]

Figure 2: Types of Institutions with Issuer Agreements



The agreements describe the interest rates for a variety of types of credit accounts. For the basic credit card in each agreement, the rates ranged from 6.15% to 19.9%, with a median rate of 13.15%.[48] The agreements also contain information about royalties provided to the college-related organization for different aspects of the credit card accounts, such as royalties for each account opened, royalties for each annual fee paid, and royalties for accounts remaining open at the end of the year. Account-opening royalties ranged from $0.80 to $50 for each account opened, with a median royalty of $1. Annual-fee royalties ranged from $1 to $20 for each annual fee paid, with a median royalty of $1. Remaining-open royalties ranged from $1 to $6.10 for each

46. This information is provided in the Federal Reserve's spreadsheet aggregating data disclosed by issuers. *See FRB 2009 Full Data Spreadsheet*, *supra* note 43 (providing the information about each agreement).

47. We obtained this information by doing Internet searches about each of the undergraduate institutions.

48. To determine the interest rates for agreements with multiple possible rates for the basic card, I always picked the highest listed rate. Twenty-one percent (n=63) of the agreements did not include an interest rate in the agreement.

account remaining open at the end of the year, with a median royalty of $1.

The vast majority of the agreements, 97.67%, required the college to promote exclusively the issuer's credit card.[49] The agreement between MBNA America Bank, N.A. (MBNA America) and Alabama State University (ASU) provides a good example of such a provision:

> ASU agrees that during the term of this Agreement it will endorse the Program exclusively and that neither ASU nor any ASU Affiliate shall, by itself or in conjunction with others, directly or indirectly: (i) sponsor, advertise, aid, develop, market, solicit proposals for programs offering, or discuss with any organization (other than MBNA America) the providing of, any Financial Service Products of any organization other than MBNA America; (ii) license or allow others to license the Trademarks in relation to or for promoting any Financial Service Products of any entity other than MBNA America; and (iii) sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its mailing lists or information about any current or potential Members in relation to or for promoting any Financial Service Products of any entity other than MBNA America. Notwithstanding anything else in this Agreement to the contrary, ASU may accept print advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by ASU of said financial institution or the advertised Financial Service Product.[50]

In addition to these terms, which serve as a backdrop for understanding the arrangement between issuers and colleges, the other terms of the agreements are discussed at length in Parts III and IV.

One limitation of my approach is that interrater reliability was not assessed. But, because the data we gathered was based on relatively objective criteria, interrater reliability should not be a significant factor in the validity of the study.

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49. Six agreements lacked any term about exclusivity, and one agreement explicitly stated the agreement was not exclusive.

50. Alabama State University Affinity Agreement, Ala. St. Univ.-MBNA Am. Bank, N.A., § 2, Oct. 30, 2001, *available at* http://www.federal reserve.gov/credit cardagreementscontent/collegeagreement_29.pdf.

III. Understanding the CARD Act's Young Consumer Provisions and Assessing the Act's Rationales

This Part briefly introduces the changes the CARD Act made to the laws governing young consumer and student credit cards. For each change, I outline the most significant theoretical and empirical academic research that animated the changes, and I describe the arguments made in the U.S. House of Representatives and Senate in support of the law. In Part III.C, I use the findings of my study of college–issuer agreements to assess the rationales that proponents of the disclosure provision offered in support of it. Some of the concerns policymakers and academics had about these agreements were proven to be accurate by my study, such as concerns that these agreements were aimed at students specifically and that they require college-related organizations to provide private information to issuers and provide forums to market to students. Other rationales, however, including one of the most prominent, related to the extent to which these agreements engender high credit card utilization, appear to have been based on faulty, albeit understandable, predictions about what these previously secret agreements contained.

The Part concludes by applying the findings of my student survey to dispute the central rationale for the CARD Act—excessive student credit card indebtedness. I argue that a pivotal series of studies about student cards conducted by Sallie Mae over the last decade have been repeatedly misused by many academics offering student-card policy prescriptions and by members of Congress who promoted the young consumer provisions of the CARD Act. This argument is not intended to imply that the Act should not have been passed or should be repealed. Rather, it is meant as a call to policymakers and academics to establish an accurate view of student credit card usage and debt levels.

In its provisions on young consumers, the CARD Act makes four changes to the Truth in Lending Act (TILA)[51] and one

51. *See* Consumer Credit Protection Act §§ 101–45, 15 U.S.C. § 1601 (2008). For discussion of these changes, see *infra* Part III.A and Part III.B.

change to the Fair Credit Reporting Act (FCRA).[52] These statutory changes are clarified by administrative rules in Regulation Z.

A. Ability to Pay

The Act's most substantial change to the TILA is its requirement that companies evaluate young consumers' ability to repay debts incurred before extending credit to them.[53] Consumers can demonstrate an ability to repay either by getting a cosigner who can repay or by showing an "independent means of repaying any obligation arising from the proposed extension of credit."[54]

Although this appears to establish a strict standard, Regulation Z's implementation of the provision reveals otherwise. First, under Regulation Z, young consumers who are applying for themselves must only have the ability to repay the minimum balance due each month on the account, not the outstanding balance.[55] Paying one's minimum balance does little to extricate most people from their debt because the minimum balance is a small fraction of the overall debt owed.[56] Second, the Federal Reserve has been clear that students can use any income or assets to show an ability to pay the minimum balance. In explaining why it rejected suggestions to limit the income a student can rely on to show earned income, the Federal Reserve stated that it believed a lower standard "will provide sufficient protection for consumers less than twenty-one years old without

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52. *See* Fair Credit Reporting Act §§ 601–29, 15 U.S.C. § 1681 (2008). For discussion of this change, see *infra* Part IV.B.1.

53. *See* 15 U.S.C. § 1637(c)(8) (2012) (establishing requirements that a consumer under age twenty-one must satisfy before being given an open end consumer credit plan).

54. *Id.*

55. *See* 12 C.F.R. § 226.51(a) (2012) (stating that the issuer must consider the ability of the consumer "to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations").

56. *See* Julia Lane, Note, *Will Credit Cardholders Default over Minimum Payment Hikes?*, 18 LOY. CONSUMER L. REV. 331, 346 (2006) (stating that the minimum monthly payment is generally 2% or 3% of the total balance on a credit card).

unnecessarily impinging on their ability to obtain credit and build a credit history."[57]

Regulation Z also clarified the statute's provision on cosigners. Cosigners can be either primarily liable on the account or serve as guarantors.[58] It states that authorized users are not covered by the statute.[59] Although several commentators have argued that students need credit cards for purchases such as airplane tickets, Regulation Z provides young users an easy way to reap many of the benefits of having a credit card by allowing students to be authorized users. Finally, Regulation Z explains that the cosigner's liability can terminate at age twenty-one for all debt incurred after the young consumer turns twenty-one.[60] In addition to these changes in Regulation Z, TILA itself was amended to require that cosigners agree in writing to any increases in a young consumers' credit limit.[61]

The central rationale for requiring that students demonstrate an ability to repay their debts was a concern that students were amassing substantial debt that had negative consequences for their own lives and for society. As Part III.D discusses in detail, members of Congress and academics repeatedly cited high debt loans and high degrees of credit card use as perverse outcomes from lax credit standards for young consumers.[62] Several high profile, tragic instances of students committing suicide because of debt fueled alarm about mounting

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57. Truth in Lending, 75 Fed. Reg. 7658, 7722 (Feb. 22, 2010) (to be codified at 12 C.F.R. pt. 226).

58. *See* 12 C.F.R. § 226.51 (2012) (stating that cosigners can either be jointly liable or secondarily liable).

59. *See id.* (stating that the statute does not apply to individuals who are under twenty-one and who are added to the account of another).

60. *See id.* (allowing an issuer to provide that a cosigner will not be liable for debts incurred by the consumer incurred after the consumer reaches the age of twenty-one).

61. *See* 15 U.S.C. § 1637(p) (2012) (stating that a credit limit cannot be raised on the cosigned account of an individual under twenty-one, unless the cosigner approves the increase in writing and accepts the joint liability for the additional amount); 12 C.F.R. § 226.51(b)(2) (2012) (stating that, for an individual under twenty-one who has a cosigned credit card account, the credit limit cannot be raised before the individual reaches age twenty-one "unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase").

62. *See infra* notes 113–39 and accompanying text.

debt levels.[63] Academics posited that excessive debt prevented graduates from getting loans and sometimes jobs,[64] and that it causes great stress and poor financial well-being.[65] One school official stated that his school lost more students because of excessive indebtedness than any other reason.[66] These concerns are particularly acute as other means for financing education provide the most aid to the richest students.[67] Part III.D assesses this rationale.

In addition to concern about student debt loads, the Act's provisions relating to cosigners may be a response to parents' complaints about harassment from creditors even when the parents did not cosign for the debt.[68] Members of Congress expressed concern that parents ended up being unofficially liable for their children's debt when credit card companies allowed students to be overextended.[69]

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63. *See* Kimberly M. Gartner & Elizabeth R. Schiltz, *What's Your Score? Educating College Students About Credit Card Debt*, 24 ST. LOUIS U. PUB. L. REV. 401, 401–02 (2005) ("Observers have expressed concern about burgeoning credit card debt loads which, when combined with already-high student loan burdens, can force students into quitting college, declaring bankruptcy, and even, in a few tragic cases, suicide." (citations omitted)); Jekot, *supra* note 34, at 110–11 (giving examples of students who committed suicide because of credit card debt).

64. *See* MANN, *supra* note 8, at 158 ("News reports explain, for example, that high credit card debt by recent graduates often inhibits their ability to obtain credit (for car loans or the like) and in some instances even impairs their employability." (citation omitted)).

65. *See* Norvilitis et al., *Personality Factors*, *supra* note 21, at 1396 ("High levels of debt are related to a decreased sense of ability to manage one's money and lower self-esteem, as well as a decreased sense of financial well-being and higher levels of overall stress." (citations omitted)).

66. *See Small CLAIMS*, 13 COM. L. BULL., Nov.–Dec. 1998, at 6, 7 ("The Chicago Tribune quoted Indiana University administrator John Simpson: 'This is a terrible thing. We lose more students to credit card debt than academic failure.'").

67. *See* Michael A. Olivas, *State College Savings and Prepaid Tuition Plans: A Reappraisal and Review*, 32 J.L. & EDUC. 475, 502–03 (2003) (describing state college payment plans as "a remarkable and remarkably aggressive redistribution of state resources to the wealthy").

68. *See* MANNING, *supra* note 8, at 168 ("Second, and more disconcerting, were the harassment and even lawsuits against parents of students in default on their credit cards—even if they had not cosigned the loan agreement. Significantly, both of these practices persist and are major complaints of students and their parents." (citations omitted)).

69. *See, e.g.*, 155 CONG. REC. S5488 (daily ed. May 14, 2009) (statement of

B. Restrictions on Marketing to Young Consumers

In addition to general concerns about students being unable to pay their credit card debts, the CARD Act also responded to problems that members of Congress observed about how credit cards were being marketed to students. The Act contains provisions about sending credit card offers to students and handing out tangible gifts on college campuses.

1. Prescreened Mail Offers

Through an amendment to the FCRA, the CARD Act attempts to discourage credit card companies from mailing young consumers credit card offers by forbidding credit reporting agencies from providing issuers credit reports for people under twenty-one, unless the young consumer consents.[70] The Act does not directly forbid sending credit card offers, but instead it attempts to stop the practice indirectly by choking off a source of information for credit card companies.

Before the CARD Act, academic research had established that college students frequently received credit card offers. Indeed, the "preferred marketing technique for potential customers was direct mail."[71] One study found that 69% of students surveyed reported receiving a credit card offer in the mail in the prior week;[72] another claimed that students receive

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Sen. Claire McCaskill) ("They send these cards to kids because they know their parents, if they are in college, don't want them to get into trouble and they will bail them out if they get in too deep.").

70. *See* 15 U.S.C. § 1681b(c)(1)(B)(iv) (2012) (stating that, for transactions not initiated by the consumer, a consumer reporting agency cannot furnish a consumer report for use in extending credit or insurance if the report shows the consumer is under twenty-one, unless the consumer consents).

71. *See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 36, at 6.

72. *See* Norvilitis et al., *Factors Influencing Debt Levels*, *supra* note 21, at 941 ("In the week prior to the survey, 69% . . . of students received at least one credit-card offer."). Other studies found lower levels, such as one study's finding that only 37% of student cardholders received their applications in the mail. *See* Jacquelyn Warwick & Phylis Mansfield, *Credit Card Consumers: College Students' Knowledge and Attitude*, 17 J. CONSUMER MARKETING 617, 621 (2000) (finding that 37% of respondents with credit cards received the application through direct mail).

twenty-five to fifty card solicitations a semester.[73] High credit card utilization was directly caused, studies reported, by aggressive marketing: "The majority of college students who own credit cards do not actively seek them out, but are aggressively pursued through the mail and on-campus by credit card issuers."[74] Another study found:

> Financially at-risk students are more likely than other students to acquire their credit card(s) through a mail application, at a retail store, and/or at a campus table. These findings suggest that aggressive marketing practices by credit card companies to target college students (i.e., mass mailings, retail store discounts, and credit card representatives on campus) have likely contributed to the recent rise in credit card debt on college campuses putting some students at more financial risk than others.[75]

Credit card companies have a strong incentive to capture the student credit card market because students tend to continue using the account they opened in college,[76] and academics have raised the concern that allowing students to have credit cards normalizes and routinizes paying with credit.[77]

Members of Congress were outraged that young consumers received credit card offers in the mail. For instance, Senator Menendez pointed out that he knew a two-year-old child who had received an offer for a credit card and that his own children received an "incredible number of preapproved credit cards."[78]

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73. *See* Wood, *supra* note 9, at 163 ("This heavy marketing is demonstrated by the twenty-five to fifty credit card solicitations students receive per semester." (citation omitted)).

74. Warwick & Mansfield, *supra* note 72, at 623.

75. Lyons, *supra* note 23, at 73.

76. *See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 36, at 4, 35 (stating that some issuers "marketed to college students because they viewed them as good customers who would continue using the issuers' credit cards in a responsible way" and that many college students will earn higher incomes and be profitable credit card customers after they graduate).

77. *See* MANN, *supra* note 8, at 45–49 (describing the psychology of payment with credit cards as compared with other payment methods).

78. *See* 155 CONG. REC. S5410 (daily ed. May 13, 2009) (statement of Sen. Robert Menendez) (recalling seeing his children, "when they were in college and studying but not working, get an incredible number of preapproved credit cards" and mentioning his "State director's 2-year-old who got a preapproved credit card"); *see also* 155 CONG. REC. S5548 (daily ed. May 18, 2009) (statement of Sen. Byron Dorgan) (criticizing companies for offering cards to very young

Similarly, a Representative reported his thirteen-year-old son had received credit card offers.[79]

2. Tangible Gifts on Campus

In addition to changing the FCRA, Congress amended the TILA to forbid issuers from offering tangible gifts to students on or near campus or at student events in exchange for filling out a credit card application.[80] The Federal Reserve has offered a variety of clarifications to this simple rule, explaining that on or near campus means within 1,000 feet of the campus; that a "tangible item includes any physical item" but not "non-physical inducements such as discounts, rewards points, or promotional credit terms;" that issuers can give tangible gifts as long as they also give them to those not filling out applications;[81] and that the prohibition applies to consumers under twenty-one and those over twenty-one if they are students.[82]

Academics have expressed concern that colleges have permitted and even endorsed credit card marketing.[83] One study demonstrated that students who obtained a credit card through

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consumers).

79. *See* 155 CONG. REC. H4964 (daily ed. Apr. 29, 2009) (statement of Rep. Keith Ellison) ("Let me say that I knew that we had a problem in America when my 19-year-old son . . . kept getting solicitations for credit cards; but I was quite convinced . . . when my 13-year-old son . . . started getting credit card solicitations.").

80. *See* 15 U.S.C. § 1650(f)(2) (2011) (prohibiting card issuers and creditors from offering 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," whether on campus, near campus, or at a school-sponsored event).

81. *See* 12 C.F.R. § 226.57(c) (2012) (clarifying the terms "tangible item," "inducement," "near campus," and "related event," requiring that the creditor take steps to determine whether someone is a student, and making clear that mailings are included in the prohibition).

82. *See* Truth in Lending, 75 Fed. Reg. 7658, 7756 (Feb. 22, 2010) (to be codified at 12 C.F.R. pt. 226) (stating that the definition of college student "is intended to be broad and would apply to students of any age attending an institution of higher education and applies to all students, including those enrolled in graduate programs or joint degree programs").

83. *See* MANN, *supra* note 8, at 157 ("[I]t is plain that in many cases the marketing proceeds with the approval of the university administrators, who voluntarily permit issuers to implement card-issuance programs directly on university campuses." (citation omitted)).

on-campus marketing had higher debt-to-income ratios and that students often believed that their college had screened creditors who were allowed to market on campus.[84] Academics argued that young consumers are more responsive to truthful-but-incomplete advertising[85] and that college credit card marketing tactics overshadowed the TILA disclosures.[86]

Members of Congress have echoed the fears of academics, stating that gifts preyed on "vulnerable" college students[87] and that issuers aggressively preyed on students.[88] One member of Congress went even further than researchers and claimed that

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84. *See* Norvilitis et al., *Factors Influencing Debt Levels*, *supra* note 21, at 941 (finding that students who received credit cards from the student union had higher debt-to-income ratios than those who got credit cards elsewhere, and that most students believed the school evaluated companies soliciting students in the union).

85. *See* Laurie A. Lucas, *Integrative Social Contracts Theory: Ethical Implications of Marketing Credit Cards to U.S. College Students*, 38 AM. BUS. L.J. 413, 422–23 (2001) (discussing what qualifies as deceptive advertising and arguing that college students "lack sophistication and therefore deserve special protection in relation to credit").

> [Additionally], most of the concern about college credit cards is not about credit terms that rise to this level of deception or unfairness. Rather, the concern is about offering credit to people who might not understand the dangers of such credit at a time in their lives when they are unlikely to currently have sufficient income to keep the debt from escalating at high interest rates.

Gartner & Schiltz, *supra* note 63, at 410.

86. *See* Lucas, *supra* note 85, at 414–15 (describing an increased emphasis on promotional disclosures instead of on TILA disclosures).

> [T]he specific practice of target marketing to U.S. college students using credit card solicitations . . . de-emphasize[s] the disclosures required under the Truth in Lending Act (TILA). Many such solicitations instead emphasize other promotional materials—like celebrity endorsements or offers of prizes, gifts or discounts—and have reduced the size of the required disclosures, or included them in inserts, in order to fit the promotional material in the text of the solicitation . . . .

87. *See* 155 CONG. REC. H5011 (daily ed. Apr. 30, 2009) (statement of Rep. Steve Cohen) ("College students are most vulnerable and shouldn't be lured to credit cards at an early age and put into even more debt than student loans do by offering prizes and gifts.").

88. *See* 155 CONG. REC. E1033 (daily ed. Apr. 30, 2009) (statement of Rep. John Lewis) ("Credit card companies aggressively prey on our young college students who are not yet working. These companies rove college campuses and entice students with gifts, with the intent of collecting interest payments as the student ravels herself in debt.").

the marketing techniques were deceptive.[89] Like the ability-to-repay requirement, however, the fundamental concern about marketing both through mailed offers and campus advertising was the high level of student debt that these practices ultimately created.[90]

C. College–Issuer Marketing Agreements

In addition to restrictions on who can obtain credit cards and how issuers can market those cards, the CARD Act also took aim at the relationship between credit card companies and colleges and organizations related to colleges. This subpart describes this part of the CARD Act and uses the study of college–issuer agreements to empirically evaluate the justifications offered for it.

1. The Provision and Its Rationale

The CARD Act requires institutions of higher education to "publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card."[91] In addition to colleges publicly disclosing these agreements, credit card companies are required to provide to Congress any agreements they have with colleges.[92] This obligation requires disclosure of agreements beyond just those that market cards to young consumers, as long as students are possible targets. The Federal Reserve has clarified: "An agreement may qualify as a college credit card agreement even if marketing of cards under the agreement is targeted at alumni,

89. *See* 155 CONG. REC. S5474 (daily ed. May 14, 2009) (statement of Sen. Sherrod Brown) ("[M]any credit card companies flood campuses with deceptive advertising and hidden fees and penalties and unscrupulous practices.").

90. *See* Nelson, *Young Consumer Protection*, *supra* note 9, at 375 (describing the CARD Act as a recent effort by lawmakers "to address young consumers' escalating indebtedness"); *id.* at 396–97 (stating a great concern of lawmakers enacting the CARD Act was the "detrimental consequences due to . . . accumulation of credit card debt" by college students).

91. 15 U.S.C. § 1650(f)(1) (2011).

92. *See id.* § 1637(r)(2) (requiring each creditor to submit an annual report describing all college agreements and explaining the details of such reports).

faculty, staff, and other nonstudent consumers, as long as cards may also be issued to students in connection with the agreement."[93]

Several academics have argued that agreements between colleges and credit card companies have engendered students' debt problems. Because of the financial incentives credit card issuers offer to schools and university officials, academics have argued that college administrations were willing to lead their students into debt to capture the issuers' incentives.[94] As Robert Manning argues:

> This Faustian pact includes sponsoring school programs, funding student activities, renting on-campus solicitation tables, and paying "kickbacks" for exclusive marketing agreements such as college or alumni affinity credit cards. As a result, rather than protecting the economic and educational interests of their students, college administrators are playing an active and often disingenuous role in promoting the societal acceptance of consumer debt as well as the prominence of credit cards in college life.[95]

From the college's perspective, some researchers argued, it is better for students to be in debt.[96] Similarly, members of Congress believed that the relationship between credit card companies and universities led to perverse incentives to facilitate debt.[97]

Members of Congress also emphasized the importance of this provision to provide "transparency in university marketing deals with credit card issuers."[98] Senator Feinstein went further,

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93. Truth in Lending, 75 Fed. Reg. 7658, 7756 (Feb. 22, 2010) (to be codified at 12 C.F.R. pt. 226).

94. *See* MANNING, *supra* note 8, at 162 ("[M]any college administrators are willing to sacrifice the long-term interests of their students and their institutions for the short-term financial inducements of the credit card industry." (citation omitted)).

95. *Id.* at 192.

96. *See* Roberts & Jones, *supra* note 21, at 234 (describing how a school earns money from credit cards on campus and stating that "it is now in the school's best interest for its students to be in debt").

97. *See* 155 CONG. REC. H5020 (daily ed. Apr. 30, 2009) (statement of Rep. Jeff Duncan) ("[M]any universities . . . have entered into deals with credit card companies, and now they are not only encouraging students to incur huge student loan debts, they're encouraging students to incur credit card debts.").

98. 155 CONG. REC. S5493 (daily ed. May 14, 2009) (statement of Sen.

arguing that requiring transparency may "act as a deterrent to deals with highly unfavorable terms for students."[99] Part IV.C uses my study of 300 of these college–issuer agreements to evaluate whether this prediction materialized. The CARD Act's disclosure requirement is a significant change because attempts to obtain information about these agreements were stymied in the past because the agreements forbid the parties from disclosing their terms.[100]

2. Assessing the Rationale for the College–Issuer Disclosures

Because the CARD Act requires issuers and college-related entities to disclose their agreements, we now have the information needed to see whether this disclosure requirement was justified in the first place. The information we obtained from our sample of 300 agreements suggests that some of the concerns animating the disclosure requirement were justified. On the other hand, our findings suggest that other concerns appear to be overstated.

First, concerns about college-related entities promoting student use of credit cards are well-founded. The agreements envision, for the most part, students obtaining credit cards because of the agreements. Of all the agreements, 72.67% include student cards, while the remaining 27.33% are aimed exclusively at alumni or other groups.

In addition, the agreements create an easy mechanism for issuers to use to reach students. Many of the agreements, 68.33%, require that the college-related entity provide a list of mailing addresses for students. This percentage is significantly higher than information reported before the CARD Act disclosures.[101] An

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Dianne Feinstein); *see also* 155 CONG. REC. E1035 (daily ed. Apr. 30, 2009) (statement of Rep. Thomas Petri) ("Despite the fact that hundreds of schools throughout the country have such arrangements, very little is known about them . . . . This bill simply seeks greater transparency by requiring credit card companies to report these arrangements.").

99. 155 CONG. REC. S5493 (daily ed. May 14, 2009) (statement of Sen. Dianne Feinstein).

100. *See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 36, at 30 (describing how attempts to uncover information about credit card college–issuer agreements failed because alumni association officials stated that "their contracts with the credit card issuers precluded disclosure of the terms and conditions").

101. *See* CHERYL HYSTAD & BRAD HEAVNER, GRADUATING INTO DEBT: CREDIT

agreement between Dickinson College (DC) and MBNA America provides a common, albeit circuitous, provision. It states: "Upon the request of MBNA America, DC shall provide MBNA America with [m]ailing [l]ists free of any charge."[102] Mailing lists are defined as "updated and current lists and/or magnetic tapes (in a format designated by MBNA America) containing names, postal addresses and, when available, telephone numbers of [m]embers segmented by zip codes or reasonably selected membership characteristics."[103] The definition of "members" explicitly includes students: "'Member' means undergraduate students, graduate students, alumni of Dickinson College and/or other potential participants mutually agreed to by DC and MBNA America."[104] Thus, while the agreement does not come out and say so, it requires the college to provide students' addresses to the credit card issuer.

In addition to student mailing lists, the agreements provide issuers with other advertising rights. Around half of the agreements, 47.33% (n=142), did not list any specific advertising the entity would provide or participate in. For the other half, Table 3 outlines the specific advertising arrangements between issuers and college-related entities.

CARD MARKETING ON MARYLAND COLLEGE CAMPUSES 8–9 (2004), *available at* http://www.marylandconsumers.org/LinkClick.aspx?fileticket=x4_rQermn7Y%3d&tabid=72 (reporting two of twelve schools interviewed admitted they sold student information to credit card companies and three of twelve schools surveyed sold a student list in some form).

102. Credit Card Agreement, Dickinson C.-MBNA Am. Bank, N.A., § 2(e), Aug. 6, 1996, *available at* http://www.federalreserve.gov/CreditCardAgreements Content/CollegeAgreement_253.pdf.

103. *Id.* § 1(e).

104. *Id.* § 1(f). In the other 31.67% of the agreements, the addresses on mailing lists are limited to nonstudents. Alabama State University's (ASU's) agreement, for instance, states:

> ASU shall provide the initial [m]ailing [l]ist, containing at least thirty thousand (30,000) non-duplicate alumni names (of persons at least eighteen years of age) as well as additional names of donors and parents of students, with corresponding valid postal addresses and, when available, telephone numbers and e-mail addresses of Alumni Members as soon as possible but no later than thirty (30) days after ASU's execution of this Agreement.

Alabama State University Affinity Agreement, *supra* note 50, § 2(e).

Table 3: Advertising Arrangements Between Issuers and College-Related Entities

	Percentage of Agreements with Advertising Details[105]	**Number of Agreements (n=158)**
Issuer permitted to advertise on entity's website	90.51%	143
Issuer permitted to solicit customers and/or have advertisements at sporting events or other major events	29.11%	46
College-related entity will send e-mails recommending the issuer	8.86%	14
College-related entity will include credit card applications in organization magazines, newspapers or e-newsletters	3.80%	6
Issuer will provide credit education on campus (e.g., in student welcome kits, at orientation events, in the student newspaper or in the campus book store)	2.53%	4

In addition to the arrangements in Table 3, two agreements stated that the college-related entity would place banner advertisements for issuers, two stated that the issuer would be promoted in materials at the alumni office or at alumni meetings, and one stated that the issuer could place information in store publications. Yale University's agreement with Chase Bank USA provides an example of the two most common provisions:

> Yale shall prominently place a jpeg image with an associated hyperlink above the fold on the homepage, and shall use

105. These percentages add up to more than 100% because some agreements provided issuers with multiple advertising rights.

> reasonable efforts to obtain placement on the checkout or point-of-sale pages, if any, of the Association of Yale Alumni (AYA) Web site (www.aya.yale.edu), and shall prominently place a link on the sponsor page of the Yale Athletics Web site . . . .[106]
>
> Consistent with Schedule 3(a), Yale shall also provide or cause to be provided to Chase, at no cost to Chase, with access to each Yale home athletic event identified on Schedule 3(a) to market the Program . . . . Yale shall provide a location that is prominent with respect to visibility and pedestrian foot traffic.[107]

Based on the fact that most agreements are aimed at putting credit cards in the hands of students and that most agreements actively involve the school in distributing the means for advertising those cards, policymakers' concerns about the entanglement of college-related entities and credit card issuers appear justified.

Yet, in some ways, the agreements are not as problematic as people imagined. First, the terms outlined in the agreements do not have the most abusive characteristics critics associate with credit cards. For instance, none of the 300 agreements we reviewed created cards with teaser rates, a common credit card snare that consumer advocates and academics criticize.[108] Additionally, the rates established by the agreement are not extremely high considering the nonexistent credit histories of many students. The median rate in our sample was 13.15%, but most credit cards have much higher effective rates, especially for poor credit risks.[109]

Second, the agreements do, for the most part, give the school the right to approve of any advertising the issuer does pursuant to the agreement. Again, Alabama State University's affinity

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106. Affinity Bankcard Agreement, Chase Bank USA, N.A.-Yale U, § 4(b), Aug. 19, 2007, *available at* http://www.federalreserve.gov/CreditCardAgreementsContent/CollegeAgreement_1009.pdf.

107. *Id.* § 4(c).

108. Teaser rates are short-term introductory interest rates. *See generally* Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373, 1392–93 (2004).

109. *See* MANN, *supra* note 8, at 190 (stating that higher-risk, higher-default-rate borrowers often have higher interest rates); MANNING, *supra* note 8, at 218 (citing some examples of credit card interest rates, including 19.8 APR and 21.9 APR).

agreement provides a common example: "ASU shall have the right of prior approval of all [p]rogram advertising and solicitation materials to be used by MBNA America, which contain ASU's [t]rademark; such approval shall not be unreasonably withheld or delayed."[110] Most of the agreements, 96.00% (n=288), contained a provision giving the school-related entity the right to approve ads, while the remaining 12 agreements simply did not address approval of advertising. As long as college-related entities exercise strong judgment in approving advertisements, these provisions provide a check on abusive marketing behavior.

Third, and most importantly, the relatively small amount of money paid to each college-related entity undermines one of the key rationales behind requiring disclosures by colleges. Prior research, which did not have the benefit of the disclosures required by the CARD Act, appears to have overstated the extent to which colleges have benefitted from marketing agreements. Based on the Federal Reserve System's aggregation of the data provided by issuers in 2009,[111] 604 of the college-related entities, or 57.85%, made less than $10,000 under their agreements with issuers, with 219 making less than $1,000 and 99 making no money at all. The median payment amount was $5,891. Thus, for most organizations, their agreement with the issuer had a negligible effect on their bottom line. If it is true that credit card debt causes students to withdraw from school and cease paying tuition,[112] it seems most schools have a lot more to lose if students are over-indebted than they have to gain by encouraging students to use credit cards.

For a small minority of entities, however, the agreements were lucrative. In 2009, 143 entities made more than $100,000 from their arrangement with issuers, and 25 entities obtained even more than $1,000,000. For these schools, it appears there may be an incentive to encourage credit card use. Overall,

110. Alabama State University Affinity Agreement, *supra* note 50, § 2(d).

111. The figures in the remainder of this section are all based on my analysis of the Federal Reserve's spreadsheet. *See FRB 2009 Full Data Spreadsheet*, *supra* note 43.

112. *See Small CLAIMS*, *supra* note 66, at 7 ("This is a terrible thing. We lose more students to credit card debt than academic failure." (quoting an Indiana University administrator)).

however, the data from the Federal Reserve indicate that the link between college–issuer agreements and over-indebtedness is not as clear as prior research had supposed.

Along these same lines, it appears that most agreements did not result in a substantial number of credit card accounts being opened. Of all the agreements, 87.36% (n=912 of 1044) of the agreements resulted in fewer than 100 new credit card accounts being opened. The median number of cards opened pursuant to an agreement was 14. These data demonstrate that the idea that these agreements were causing students at most schools to open accounts and take on excessive debt is not true. The next section takes up the other key rationale behind the CARD Act—excessive student credit card debt.

D. Misplaced Reliance on Credit Card Usage and Debt Levels

The primary motivating factor behind each of the young consumer provisions was the belief that students were incurring substantial debt loads that caused them to experience financial distress. A large part of the basis for this concern is a series of studies[113] by Sallie Mae, a financial services organization focused on education,[114] and Nellie Mae, a Sallie Mae subsidiary, which

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113. Nellie Mae began producing reports in 1998, but then Sallie Mae took over. Together, they have produced five reports. For the most recent report, see SALLIE MAE, HOW UNDERGRADUATE STUDENTS USE CREDIT CARDS: SALLIE MAE'S NATIONAL STUDY OF USAGE RATES AND TRENDS 2009 [hereinafter SALLIE MAE STUDY], *available at* http://www.salliemae.com/NR/rdonlyres/0BD600F1-9377-46EA-AB1F-6061FC763246/10744/SLMCreditCardUsageStudy41309FINAL2.pdf.

114. *See id.* at 2 (describing Sallie Mae); *see also* Sallie Mae, *Corporate Overview*, https://www1.salliemae.com/about/corp_leadership (last visited Sept. 24, 2012) ("Sallie Mae (NASDAQ: SLM) is the nation's No. 1 financial services company specializing in education . . . . Sallie Mae turns education dreams into reality for its 25 million customers.") (on file with the Washington and Lee Law Review).

> Sallie Mae is the nation's leading provider of saving- and paying-for-college programs. The company manages $180 billion in educational loans and serves 10 million student and parent customers. Through its . . . affiliates, the company also manages more than $17.5 billion in 529 college-savings plans, and is a major, private source of college funding contributions in America with 10 million members and more than $475 million in member rewards.

SALLIE MAE STUDY, *supra* note 113, at 2.

focuses on student loans.[115] This subpart outlines the findings of the Sallie Mae/Nellie Mae studies, focusing on the most recent study, and explores how academics, the press, and policymakers commonly misused those findings.

The concern over the Sallie Mae/Nellie Mae studies might appear parochial or merely interesting to academics only, but it is not. Every day when a member of Congress argued for the CARD Act's young consumer provisions, they appealed to the figures in these studies[116] (except one instance when the young consumer provisions were just mentioned in passing).[117] It is hard to overstate the extent to which these reports have been misused.

Although there are some differences, the most recent Sallie Mae study is similar in most ways to the prior reports from Nellie Mae.[118] In the most recent study, Sallie Mae pulled data from 1,200 credit bureau reports of students who had applied for private student loans with Nellie Mae or Sallie Mae.[119] The Sallie Mae study finds that many students who apply for private loans have credit cards and that many of these students have high debt loads:

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115. *See* SALLIE MAE STUDY, *supra* note 113, at 2 ("Since 1982, Nellie Mae has focused exclusively on providing education financing for undergraduate and graduate students and families, through the Federal Family Education Loan Program and through privately funded loans . . . . Nellie Mae is a wholly-owned subsidiary of SLM Corporation, commonly known as Sallie Mae."); *see also* Nellie Mae, *About Us*, http://nelliemae.com/aboutus (last visited Sept. 24, 2009) (providing background on the company) (on file with the Washington and Lee Law Review).

116. *See* 155 CONG. REC. S5469 (daily ed. May 14, 2009) (statement of Sen. Byron Dorgan) (citing to statistics from the Sallie Mae/Nellie Mae study); 155 CONG. REC. S5411 (daily ed. May 13, 2009) (statement of Sen. Christopher Dodd) (citing to statistics from the study); 155 CONG. REC. S5316 (daily ed. May 11, 2009) (statement of Sen. Christopher Dodd) (citing to statistics from the study); 155 CONG. REC. H5020 (daily ed. Apr. 30, 2009) (statement of Rep. Louise Slaughter) (citing to statistics from the study); 155 CONG. REC. S3552–53 (daily ed. Mar. 19, 2009) (statement of Sen. Patrick Murray) (citing to statistics from the study and introducing into the record a newspaper article that discussed similar figures); 155 CONG. REC. S175 (daily ed. Jan. 7, 2009) (statement of Sen. Herb Kohl) (citing to statistics from the study).

117. *See* 155 CONG. REC. S5549 (daily ed. May 18, 2009) (statement of Sen. Byron Dorgan) (discussing the young consumer provision in 112 words).

118. *See* SALLIE MAE STUDY, *supra* note 113, at 4 (explaining the differences between the current and prior reports).

119. *See id.* at 19 (explaining the study's methodology, including the sample group).

> Eighty-four percent of this student population overall have credit cards, an increase of approximately 11 percent since the fall of 2004, the last time the undergraduate study was conducted . . . . Data collected in March 2008 show that the average (mean) amount of debt carried by undergraduate student cardholders increased from 2004 by 46 percent to $3,173. During the same time period, median debt increased by 74 percent to $1,645. The average number of cards carried per cardholder, those carrying four or more cards, and those with balances in the $3,000 to $7,000 range also increased.[120]

Based on these numbers, the study concludes that "[i]n this time of credit crunch and economic downturn, college students are relying on credit cards more than ever before."[121]

There are two problems with how the Nellie Mae/Sallie Mae data are commonly used, the first of which has been suggested by other researchers and the second of which I raise here for the first time.[122] First, as others have noted, the Nellie Mae/Sallie Mae studies only reflect a small, unique group of students, not college students generally.[123] The studies used the credit reports of students who applied for private student loans, not even the government-subsidized loans to which most students turn first to finance their education.[124] It is not a stretch to think that this group would have higher debt loads than the general population of college students because students apply for private student loans when government-subsidized loans are insufficient.[125] A

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120. *Id.* at 5.

121. *Id.* at 3.

122. These studies have been significantly misused, but this misuse does not reflect negatively on the Nellie Mae/Sallie Mae studies themselves, which note the methodological limitations. *See, e.g.*, *id.* at 5 ("Eighty-four percent *of this student population* overall have credit cards . . . ." (emphasis added)).

123. Staten & Barron, *supra* note 22, at 11 n.17.

> Although the Nellie Mae study was based on actual credit report data for its sample of students, the sample itself was biased. Students in the sample were applying for a special type of student loan because they did not qualify for more conventional student loans due to either excessive debt or incomes that exceeded qualifying thresholds.

124. *See* SALLIE MAE & GALLUP, HOW AMERICA PAYS FOR COLLEGE 42 (2010), *available at* https://www1.salliemae.com/NR/rdonlyres/D5D78A1C-BBB8-4D97-AE9B-7EC35558AD5F/13388/SLMGallupReportHowAmericaPaysforCollege810 10FINAL.pdf (noting that 28% of students pay for college with federal student loans but only 13% pay using private student loans).

125. *See* Staten & Barron, *supra* note 22, at 11 n.17 ("Students in the

separate study Sallie Mae and Gallup conducted, which was representative of all college students, found that only 13% of students borrowed using private student loans.[126] More significantly, students borrowing private loans reported "a higher average cost of attendance compared to other borrowers,"[127] and all students who borrowed "were more likely to attend four-year schools."[128] Both of these characteristics of private borrowers increase the pressure to pay for expenses with credit cards.

This pressure to use credit cards to pay higher education expenses is revealed by the average amount of credit card debt used to pay for two-year versus four-year colleges. Student credit cards accounted for $70 of the debt for two-year public schools, $86 of the debt for public four-year colleges, and $200 of the debt for private four-year colleges.[129] Thus, it is very likely that Sallie Mae's student debt levels are higher than the typical college student's debt levels, thereby reflecting only a small subset of college students, not students generally.

A second concern that has escaped the attention of prior commentators is that Nellie Mae and Sallie Mae include together all debt that the student and any cosigners owe in "student debt levels," not just the debt that the student individually owes. If a parent adds a student to one of the parent's existing credit card accounts when the student leaves for college, the Nellie Mae/Sallie Mae studies would count the parent's entire credit balance on that card as a "student debt" in its study because that debt shows up on the student's credit report as a current obligation.[130]

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sample were applying for a special type of student loan because they did not qualify for more conventional student loans due to either excessive debt or incomes that exceeded qualifying thresholds.").

126. *See* SALLIE MAE & GALLUP, *supra* note 124, at 42.

127. *Id.*

128. *Id.*

129. *See id.* at 26 tbl.2c.

130. *See* e-mail from Patricia Christel, Vice President, Corporate Commc'ns, Sallie Mae, to Jim Hawkins, Assistant Professor of Law, Univ. of Hous. Law Ctr. (Jan. 3, 2011) (explaining the process by which the study's credit card debt figures are taken directly from students' credit reports and stating that these figures are generally higher than the debt levels self-reported by students) (on file with the Washington and Lee Law Review).

The exact effect of including cosigner debts is not known, but we do know that some parents deal with student credit cards by adding students to the parents' accounts.[131] If a parent with a $15,000 balance on a credit card adds a new student to the account, most people would not consider the student's credit card debt load to be $15,000, but that is how the Nellie Mae/Sallie Mae studies characterize the debt. Like using a subset of college students who applied for private loans, this inclusion of cosigner debts has the potential to artificially inflate student debt levels in the studies.

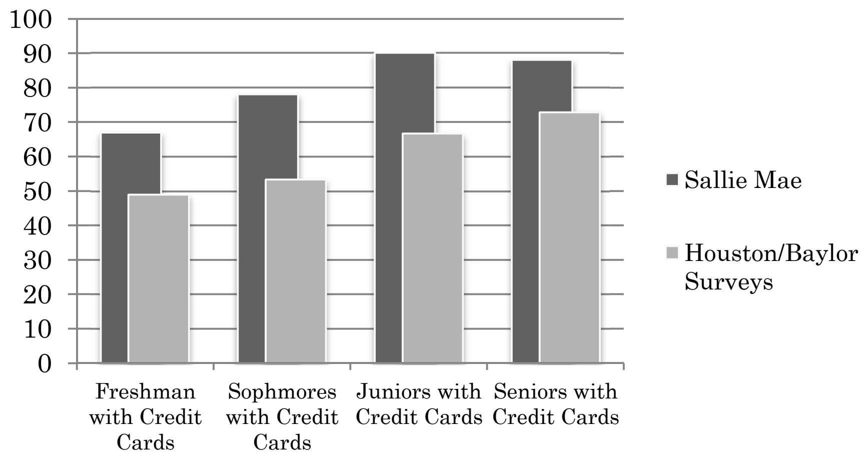
The surveys I conducted at the University of Houston and Baylor University yielded very different results than the Nellie Mae/Sallie Mae studies. My study did not attempt to be nationally representative,[132] so it also does not offer definitive proof about levels of credit card use or debt among all college students.[133] Still, the fact that my study, which drew from all undergraduate students, generated such divergent results indicates that the driving factor behind Sallie Mae's high credit card use and debt levels is a limited sample. Figure 3 contrasts the number of students with a credit card in the Sallie Mae study with the Houston/Baylor surveys.

131. *See, e.g.*, Gabe Albarian, *How Can College Students Avoid Credit Hassles? Expert Reveals Secrets to Establishing and Keeping Good Credit*, MARKETWIRE (Sept. 15, 2011), http://www.marketwire.com/press-release/how-can-college-students-avoid-credit-hassles-1561884.htm (last visited Sept. 24, 2012) (suggesting that students should be added to parents' accounts until the students can accumulate sufficient credit history) (on file with the Washington and Lee Law Review).

132. *See supra* Part II.A (describing the study's sample).

133. In another nationally representative study, however, Troy Adams and Monique Moore found that "[o]nly 8.2% and 5% [of more than 45,000 students] had a credit card balance of $1,000 to $2,999 or a balance of $3,000 or more, respectively." Adams & Moore, *supra* note 16, at 103.

Figure 3: Comparison of Number of Students with Credit Cards Between Sallie Mae and Houston/Baylor Surveys



Similarly, Table 4 compares Sallie Mae's data about debt levels with the data from the Houston/Baylor study.

Table 4: Comparison of Credit Card Debt Levels Between Sallie Mae and Houston/Baylor Studies

	Sallie Mae[134]	**Totals from Houston/Baylor Survey**	**Univ. of Houston**	**Baylor Univ.**
Freshman Credit Card Debt	Median debt was $939	91.04% had $0–$500 in debt	92.20% had $0–$500 in debt	90.47% had $0–$500 in debt
Average Debt of Seniors Who Carry Credit Card	$4,100	45.76% (n=27) had $0–$500 in debt and 15.25% (n=9) had over $3,000 in debt	43.14% (n=22) had $0–$500 in debt and 13.73% (n=7) had over $3,000 in debt	62.50% (n=5) had $0–$500 in debt and 25.00% (n=2) had over $3,000 in debt

These results are consistent with the observation that students at private schools are more likely to have credit cards

134. The data in this table has been compiled from the Sallie Mae report. *See* SALLIE MAE STUDY, *supra* note 113, at 3, 8 (providing the median freshman credit card debt and the average debt of graduating seniors who are cardholders).

and higher debt loads.[135] But, in every case, my survey found significantly lower debt levels than Sallie Mae's report.

Academics, the media, and consumer advocates have repeatedly misused the data when making arguments in favor of specific regulatory reforms. More alarming, however, is the fact that every time a member of Congress mentioned the Sallie Mae study in conjunction with arguments for the CARD Act's young consumer provisions, the member inappropriately used the findings as representative of all college students.[136]

This chronic misuse of the Nellie Mae/Sallie Mae studies needs to be corrected to ensure that optimal student-card policies are enacted. By pointing out the inaccuracies in the ways that academics and legislators currently use the studies, I do not intend to show that student credit cards are benign. Indeed, I have argued at length elsewhere that credit cards cause financial

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135. *See* Manning & Kirshak, *supra* note 35, at 41 ("The highest proportions [of students with credit cards] are at more affluent, private universities and the lowest in predominantly minority colleges and public universities that enroll high percentages of students from lower income households."). *But see* Norvilitis et al., *Personality Factors*, *supra* note 21, at 1404 (reporting students in that study at state schools had higher debt loads than students at private schools).

136. To locate instances where members of Congress used the Nellie Mae/Sallie Mae studies in conjunction with the CARD Act, I searched Westlaw's "Congressional Record" database using the follow search command on January 21, 2012: "(sallie-mae or nellie-mae) /50 credit-card". It generated twenty-six results, but only five results involved the CARD Act; the other twenty-one were about other issues. In each case, the member of Congress misrepresented the studies' findings. *See* 155 CONG. REC. H5814 (daily ed. May 20, 2009) (statement of Rep. Earl Blumenauer) ("A recent Sallie Mae survey indicated that 84% of undergraduates had at least one credit card and that, on average, students have 4.6 credit cards."); 155 CONG. REC. S5493 (daily ed. May 14, 2009) (statements of Sen. Dianne Feinstein) (stating a number of figures from the Sallie Mae report as though they represent all students and using them as evidence of a need for Congress to take action); 155 CONG. REC. S5316 (daily ed. May 11, 2009) (statement of Sen. Christopher Dodd) ("According to Sallie Mae, college students graduate with an average credit card debt of more than $4,000. That is up from $2,900 just 4 years ago. Nearly 20 percent of college students have credit card balances of over $7,000."); 155 CONG. REC. H5020 (daily ed. Apr. 30, 2009) (statement of Rep. Louise Slaughter) (stating a number of Sallie Mae statistics as though they represent all students and rationalizing credit card debt as a reason for an increase in bankruptcy filings among young people); 155 CONG. REC. E1026 (daily ed. Apr. 30, 2009) (statement of Rep. Patrick Murphy) (blaming college credit card agreements for students' "racking up debts that can take years to pay off," and citing a "recent Sallie Mae study" as proof that graduating seniors have, on average, "more than $4,100 in credit card debt").

distress.[137] Yet, if we really want to protect students who use credit cards, we need to use the information appropriately. Also, if legislators have incorrect beliefs about the sources of student debt problems, they may enact policies aimed at the wrong credit vehicles. For instance, perhaps if legislators had better data on the true amount of credit card debt, they would focus more attention on reforming student loans.[138] Additionally, with a better understanding of debt loads, policymakers might be able to determine the average optimal amount of credit card debt for students and enact rules that limit balances at those levels.[139]

IV. Measuring the Effectiveness of the CARD Act's Young Consumer Provisions

The prior Part explored the pre-CARD Act era—the reasons for the CARD Act's young consumer provisions, the flaws in those rationales, and the provisions themselves. This Part looks at the world after the CARD Act and reports data that measure the effects of the CARD Act for each of its provisions.

A. The Effects of the Ability-to-Pay Provision

The provisions requiring credit card companies to evaluate young consumers' abilities to repay their debt have generated a variety of predictions. Some people have claimed that the CARD Act will eliminate access to credit because its ability-to-repay

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137. *See generally* Jim Hawkins, *Regulating on the Fringe: Reexamining the Link Between Fringe Banking and Financial Distress*, 86 IND. L.J. 1361 (2011) (surveying the evidence that links credit cards and financial distress).

138. *See* Tamar Lewin, *Student Loan Default Rates Rise Sharply in Past Year*, N.Y. TIMES, Sept. 12, 2011, at A14 (detailing an increase in student loan default rates from 7% to 8.8% in a single year).

139. Congresswoman Louise Slaughter offered an amendment to the CARD Act with caps on the amount of debt students could accumulate, but these amendments did not make it into the final Act. *See* Bill Swindell, *House Close To Passage Of Maloney Credit Card Measure*, NAT'L JS. CONGRESS DAILY, Apr. 30, 2009, at 6 (describing Maloney's and Slaughter's proposed amendments, and explaining that Slaughter's amendment would set standards for underwriting student cards, including limiting the available credit to the greater of 20% of income or $500 per month).

standard is too strict.[140] Others, however, have asserted that the Act will not stop anyone who wants a credit card from obtaining one because the standards are too lenient.[141] This section analyzes these and other predictions with the findings of my student surveys. My research resolves this apparent contradiction in the current literature on ability to repay by revealing how the CARD Act's standards appear strict but actually contain many loopholes that students have discovered and exploited. I discovered that students have found creative ways to avoid the strictures of the independent-ability-to-pay provisions, although they have not enlisted peers as cosigners as many observers expected.

According to the survey results, not many students under the age of twenty-one had applied for a card since the beginning of the school year, creating a relatively small sample size in this limited demographic. Of the total sample of students under twenty-one, 11.05% (n=44) had applied for a card in the semester before the survey was taken. Three students erroneously failed to complete the detailed questions about their application, leaving forty-one students. Of those forty-one students, 56.09% (n=23) applied by themselves, and 43.90% (n=18) applied with a cosigner. Although the sample size is small, the results are interesting and touch on many of the empirical questions debated among the CARD Act's opponents and proponents.

1. Qualifying as an Individual

Scholars raised a variety of concerns about loopholes around the provisions requiring young consumers to show an

140. *See* Schwartz, *supra* note 9, at 424 ("The upshot is that independently wealthy eighteen-year-olds, or those whose parents are willing and able to accept joint liability, will still be able to obtain a credit card. But poor and middle-income applicants may not." (citation omitted)); Wood, *supra* note 9, at 172–74 (arguing that the standards for ability to repay are more stringent on those under twenty-one than on those over twenty-one and, therefore, this will prevent young consumers from building credit histories).

141. *See* Nelson, *Young Consumer Protection*, *supra* note 9, at 402–03 ("Considering the likelihood that young consumers will have little trouble meeting the CARD Act's eligibility requirements as interpreted by the Federal Reserve Board, the door remains open for college-aged consumers to continue amassing significant amounts of debt.").

independent ability to repay the debt if they apply by themselves, and responses to my survey indicate those concerns were valid. Part of the problem is that the concept of a student's "income" eludes simple definition.[142] For instance, several sources have suggested the possibility that young consumers could use loan proceeds as income to obtain a credit card, although none of these sources offer evidence of this phenomenon.[143] In my survey, I found that 27.27% (n=6) of students under twenty-one who were applying by themselves listed loans as part of their income to qualify for the credit card. If we also include students over twenty-one, 30.56% (n=11) listed loan proceeds as part of their income. While the number of students in this category is small, this finding demonstrates that concerns about using one type of debt to qualify for another type of debt are plausible.

Another problem I discovered through the surveys was the extent to which students used money from their family as their income or assets to qualify for a credit card. Of the students under twenty-one who applied by themselves, 34.78% (n=8) listed money from relatives as income. For those who hoped the CARD Act would ensure young consumers could pay their debts on their own, this number is troubling.

Finally, in general, students did not use earned wages as income as often as proponents of the Act had hoped. Of the students under twenty-one applying for a card on their own, 68.42% (n=13)[144] reported having income below $10,000 a year, and only 45.45% (n=10) listed income as the sole means for obtaining a card. More surprising, only 52.27% (n=12) stated that they used earned income at all to qualify for the card, with the remainder relying on other sources.

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142. *See* Joo et al., *supra* note 24, at 418 ("College students' income is hard to measure because the definition of income varies from student to student.").

143. *See* Nelson, *Schoolhouse to Poorhouse*, *supra* note 9, at 28 ("Moreover, if this incoming student takes out student loans to fund his or her educational expenses, these loans can be treated as 'income' to independently qualify for a card—a disconcerting practice that some student consumers have already begun to implement." (citation omitted)); Susan Tompor, *Credit Card Offers Still Contain Trouble Spots for Consumers*, DETROIT FREE PRESS, Sept. 30, 2010, at B4 (noting that "students [are] reporting a college loan as 'income' and some card issuers [are] accepting that claim").

144. Some respondents did not answer this question, which changes the number and percentage ratios.

Overall, these statistics paint a disturbing picture of the effectiveness of the ability-to-pay provision. The lenient requirements set up through Regulation Z have provided numerous ways to qualify for credit outside of actually being able to repay the debt.

2. Cosigning

Several news stories,[145] academic articles,[146] and a participant at an FDIC advisory meeting[147] have raised the concern that the CARD Act would cause students to seek peer cosigners, but no data exist to confirm or refute this apprehension.[148] Unlike fears about the inroads around the income or asset requirement, this fear appears misplaced, at least among the students I surveyed. Of the students under twenty-one who applied for a new card within the few months before completing the survey, 94.44% (n=17) used a parent as their

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145. *See* David Migoya, *College Students Duck New Credit-Card Law with Friends*, LOWELL SUN (MASS.), Sept. 8, 2010 (discussing college students' cosigning for one another in order to get credit cards after the new law); *see also* John C. Ninfo II, *Commentary: An 18-Year-Old Needs a Credit Card?*, DAILY REC. (ROCHESTER, N.Y.), Jan. 26, 2010 ("Another concern is that parents, family members or friends will not stop and think twice before co-signing for a credit card for a young person who cannot meet the 'independent means' test . . . ."); Tompor, *supra* note 143, at B4 ("[S]ome college students who are 18 or 19 are asking friends twenty-one or older to co-sign their credit card applications.").

146. *See* Nelson, *Schoolhouse to Poorhouse*, *supra* note 9, at 32 ("[O]lder students, who may already have student loan and/or credit card debt, are permitted to sign if they meet the issuers' requirements. There have already been reports of some college students paying older students and friends to serve as cosigners." (citations omitted)); Schwartz, *supra* note 9, at 427 ("Some eighteen- to twenty-year-old students . . . simply 'ask classmates or fraternity brothers to co-sign' their credit card application, 'sometimes for a small fee.'"(citations omitted)).

147. *See* Ted Beck, President & CEO, Nat'l Endowment for Fin. Educ., statement at the Federal Deposit Insurance Corporation Meeting of the Advisory Committee on Economic Inclusion to Discuss Children's Savings and Underserved Studies (Nov. 16, 2010) ("[W]e just did a survey, and 61 percent of parents don't want to co-sign their credit card. So what we're finding—and I don't have a statistic for this—but young adults are going to their friends and saying, 'Would you co-sign for me?' who are over 21.").

148. *See* Migoya, *supra* note 145 ("There are few hard numbers on how the trend is developing, but enough anecdotal evidence that it's beginning to creep upward.").

cosigner, while one student had a sibling cosign. No students under the age of twenty-one reported having a friend or someone other than a parent or sibling cosign for them.

One benefit of the CARD Act's qualifications for young consumers is that it may have helped formalize the surety relationship that existed implicitly between many parents and their children. Of the students under twenty-one that I surveyed, 31.33% (n=104) expected someone else, most likely their parents, to pay their credit card debt. Prior to the CARD Act's requirements about young consumers having cosigners, parents may have been informally drafted into the debtor-creditor relationship. Indeed, several members of Congress expressed this concern when debating the CARD Act's young-consumer provisions,[149] and one academic has criticized the practice of credit card companies "exploiting familial ties to reach into the pockets of those with whom there is no formal contract."[150] Findings in a study conducted by the Education Resources Institution and Institute for Higher Education Policy showed that 63% of students obtained their first card without a cosigner.[151] That number is slightly higher than my study, in which 56.09% of students applied on their own, perhaps suggesting that the CARD Act is making cosigning more common. Although it is impossible to draw out any causal inferences with my survey's data, the high number of parents listed as cosigners suggests that more parents will be formal, not merely informal, guarantors of student debt.

149. For instance, the CARD Act was originally introduced "to prevent credit card issuers from taking unfair advantage of college students *and their parents*." 155 Cong. Rec. S174 (daily ed. Jan. 7, 2009) (statement of Sen. Herb Kohl) (emphasis added) (proposing to amend the TILA for the purpose of preventing this exploitation).

150. Adam Benforado, *Don't Blame Us: How Our Attributional Proclivities Influence the Relationship Between Americans, Business and Government*, 5 ENTREPRENEURIAL BUS. L.J. 509, 528 (2010).

151. *See* EDUC. RES. INST. & INST. HIGHER EDUC. POLICY, CREDIT RISK OR CREDIT WORTHY? COLLEGE STUDENTS AND CREDIT CARDS 9 (1998) ("A majority of students, 36%, received their credit cards by applying on their own.").

3. Access to Credit

One persistent criticism of the CARD Act's restriction of access to credit cards has been that it will prevent those under twenty-one from getting credit cards,[152] starting small businesses,[153] establishing a credit history,[154] or having access to an important source of credit.[155] Also, some research suggests that borrowers may turn to alternative financial service providers if credit is unavailable.[156]

In my survey, I asked whether students thought they needed a credit card to make purchases while they were in college. Students were less likely than some academics to think they needed credit cards. For students under twenty-one, only 38.85% (n=155) answered that they thought they needed a credit card. For students over twenty-one, the number jumped to 50.78% (n=65), but the CARD Act's ability-to-repay requirements do not apply to that latter group.

I did not ask about whether students had turned to fringe bankers for credit, but some evidence indicates that students are turning to these lenders. In general, fringe lenders have gained business because of the tightening of credit and stricter regulations.[157] More pointedly, one fringe lender has stated in a

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152. *See* Brian Burnsed, *New Rules Place Barriers Between Students, Credit Card Issuers*, U.S. NEWS (Feb. 19, 2010), http://www.usnews.com/education/articles/2010/02/19/new-rules-place-barriers-between-students-credit-card-issuers (last visited Sept. 24, 2012) ("Peter Garuccio, a spokesman for the American Bankers Association, a banking lobby group, says, 'It's pretty clear that it will be tougher for people in this group to get credit cards. I think that you'll probably see a decline in the number of cards in this segment.'") (on file with the Washington and Lee Law Review).

153. *See* Schwartz, *supra* note 9, at 432 ("By categorically withholding credit cards from eighteen- to twenty-year-olds, section 301 seriously impedes their ability to start up a business.").

154. *See* Wood, *supra* note 9, at 175 (stating that young people must build credit before they can buy cars or houses, and therefore, by preventing access to credit cards, the Act "hampers the ability of . . . eighteen- to twenty-one-year-olds to become fully independent adult consumers").

155. *See* Williams & Emley, *supra* note 9, at 1421–22 (noting that the rules could prevent a spouse from opening a credit card because of a lack of personal income or assets, even if the other spouse had substantial income and assets).

156. *See* Schwartz, *supra* note 9, at 430–31 (listing possible alternatives to credit cards but also pointing out some problems with them).

157. *See* Jessica Silver-Greenberg, *Payday Lenders Go Hunting*, WALL ST. J.,

public securities filing that the CARD Act has increased demand for its product:

> In some cases we believe regulatory changes have resulted in a constriction of the availability of unsecured credit for consumers with poor or no credit history (for example, the Card Accountability Responsibility and Disclosure Act of 2009, which, among other things, disallowed the issuance of a credit card to anyone under 21 without a co-signer or proof of ability to repay and also curtailed the amount of fees that banks can assess on cardholders). The Company believes that this constriction in available sources of credit has resulted in, and will continue to result in, an increased demand for our services, which has produced a corresponding growth in our fee and interest income, as well as an increase in our need for employees and opportunities for opening new stores.[158]

Whether this is a harmful or salutatory development is, of course, highly debatable, but it is worth noting that fringe credit products are generally much less likely than credit cards to cause borrowers to become over-indebted.[159] Thus, if the Act is leading students to alternative financial service providers, it may be doing them a favor.

B. The Effects of Restrictions on Marketing to Young Consumers

As I mentioned in the introduction, legislators are proud of the effects that they think the CARD Act's provisions on marketing are having. This subpart discusses data from my surveys about offers students had recently received and credit card marketing they had observed. I found that the number of students receiving offers through the mail and being subjected to

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Dec. 24, 2010 ("Payday lenders like Advance America are pushing hard to lure away customers from traditional banks. The effort is getting a boost from the industry's loan crunch, especially for borrowers with blemished credit, and toughened regulation of fees and interest rates charged by the nation's 7,760 banks and savings institutions.").

158. TMX Fin., LLC, Registration Statement under the Securities Act of 1933 (Amendment No. 2 to Form S-4), at 30 (Apr. 19, 2011), *available at* http://www.sec.gov/Archives/edgar/data/1511966/000119312511102503/ds4a.htm (on file with the Washington and Lee Law Review).

159. *See* Hawkins, *supra* note 137, at 1399–1402 (arguing that the structure of fringe credit transactions makes them difficult to link to financial distress).

marketing remains high. The number appears, however, to have decreased in the two years since the CARD Act was enacted.

To understand the effects of the CARD Act's provision on credit card marketing, I did not ask questions that tried to indict companies for breaking the law. For some provisions of the Act, this would be impossible because I could not measure how often, for instance, credit reporting agencies were giving information about young consumers to companies.[160] More importantly, the real purpose of the Act was to decrease harmful advertising and student over-indebtedness, so the real measure of its effectiveness requires a larger consideration of its effects than mere compliance or noncompliance with the technical requirements of the law.

1. Prescreened Mail Offers

Commentary on the CARD Act has praised it for "protect[ing] students from insidious pre-screened offers with which they are consistently bombarded."[161] The truth, however, is much more nuanced. While it appears that the number of students reporting credit card offers has dropped, it remains quite high.

I asked students whether they had "received any credit card offers in the mail since the beginning of" either 2010 or 2011, depending on the year I administered the survey. Overall, 68.92% (n=275) of students under twenty-one reported receiving credit card offers in the mail during the preceding year. Thus, a large majority of students were still subjected to marketing through mailed offers, despite the CARD Act going into effect in February 2010. The number of students reporting offers, however, did decrease between 2010 and 2011. Of the students under twenty-one, 76.13% (n=185) reported having received an offer in 2010, but only 57.69% (n=90) indicated they had received an offer in 2011.

The fact that students are still receiving card offers does not necessarily indicate that credit reporting agencies or credit card companies are violating the CARD Act. Instead, credit card

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160. For a description of this provision, see *supra* Part III.B.
161. Wood, *supra* note 9, at 170.

companies are likely obtaining information for consumers who are under twenty-one from sources other than credit reporting agencies, such as "commercial mailing lists through memberships to music or book clubs, magazine subscriptions, or by completing sweepstakes entry cards."[162] As the study of agreements between college-related entities and credit card issuers in this Article found, 68.33% of such agreements require that the college-related entity provide the issuer with student addresses.[163] Issuers do not rely exclusively on credit bureaus for student addresses, which undermines the successfulness of the CARD Act's attempt to cut off offers. The CARD Act's approach was purposefully indirect, but its circularity appears to have undermined its effectiveness.

2. Marketing on and off Campus and Marketing Using Gifts

To measure the effectiveness of the CARD Act's provision forbidding issuers from offering tangible gifts to students, I asked about whether students had seen any credit card marketing on campus and off campus and not just about the specific marketing prohibited by the Act of offering tangible gifts. I asked the following questions:

> During your time in college, have you seen any credit card companies advertising ON or NEAR campus or at a student event?
>
> During your time in college, have you seen any advertising by credit card companies OFF campus that appears to be directed at college students?
>
> During your time in college, have you seen any credit card companies offering a gift (like a T-shirt or food) if you sign up for a credit card?

I focused on marketing efforts in general because prior research indicates credit cards draw in students for a variety of reasons. In reporting on his extensive groundbreaking qualitative research, Robert Manning describes the reasons his interviewees were attracted to their credit cards. None of his interviewees report that gifts were important to cards' appeal. Often just the

162. Warwick & Mansfield, *supra* note 72, at 621.
163. *See infra* Part IV.C.

advertisements were sufficient,[164] and the motivation for some students was credit issuers' appeals to responsible uses of open-ended credit.[165] Tangible gifts were "unnecessary."[166] Thus, I wanted to measure the overall effect of the Act on marketing activities, not a single subset of student marketing.

I asked about whether students had seen credit card companies offering tangible gifts at all and not just offering tangible gifts on campus because I wanted to capture what effect the Act was having on tangible gifts whether on or off campus. First, issuers could easily evade regulations without having any meaningful effect on students' experiences by offering gifts 1,001 feet from campus.[167] Second, issuers can reach students on campus with offers of tangible goods through electronic sources like e-mail or social media. Companies cannot mail offers of tangible goods,[168] but because an e-mail address does not have a physical location, credit card companies can send solicitations offering tangible gifts to students sitting in their college dorm rooms on their school ".edu" e-mail addresses.[169]

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164. *See* MANNING, *supra* note 8, at 172 ("Jeff's first credit card was an impulsive response to a Citibank advertisement 'that was hanging on the wall in the dorm.'"); *id.* at 178 ("'I saw advertisements in the [student] newspaper, sign-up tables [in the student center], and applications [inserted] with my textbooks [from the bookstore].'"); *id.* at 181 ("Citibank Visa advertisements 'were plastered all over the university . . . .'").

165. *See id.* at 175 ("He is most angered about how the credit card companies' marketing literature on campus praises the benefits of 'responsible use' but neglects to inform impressionable and inexperienced students about the downside, such as the impact of poor credit reports on future loans and even potential employment.").

> In order to stretch her limited resources, Kristin decided to get her own credit card, since she no longer had access to her parents' plastic. The slogan "It pays to Discover" was appealing because the "no annual fee," "build your own credit history," and "cash back bonus" features satisfied her need for financial control.

Id. at 188–89.

166. *Id.* at 190.

167. *See* 12 C.F.R. § 226.57(c)(3) (2012) ("A location that is within 1,000 feet of the border of the campus of an institution of higher education, as defined by the institution of higher education, is considered near the campus of an institution of higher education.").

168. *See id.* § 226.57(c)(4) (clarifying the prohibition on inducement by stating that it includes mailing tangible goods to locations on or near campus).

169. *See* Truth in Lending, 75 Fed. Reg. 7658, 7758 (Feb. 22, 2010) (to be codified at 12 C.F.R. pt. 226) ("An e-mail address does not physically exist

To measure the effect of the Act, I compared the responses to several questions about credit card marketing from students who had only been in college during the time the CARD Act was in effect with those who had been in college for at least some time before the Act's effective date.[170] If the CARD Act was being effective, I posited that students who had been in college only during the time in which the Act was in effect should report seeing credit card marketing at a substantially lower rate than students who had been in college both during the time the Act was in effect and the time it was not in effect.

Of students who had only been in college while the CARD Act was in effect, 22.37% (n=68 of 304 students) reported seeing credit card companies marketing on campus, while 49.10% (n=109 of 222 students) of students who had been in school while the Act was not in effect reported seeing on-campus marketing efforts. This result is a statistically significant difference under the chi-squared test.[171] Similarly, 67.21% (n=205 of 305 students) of students who had only been in college under the Act responded that they had seen credit card marketing off campus directed at students, while 81.07% (n=167 of 206) of those in school without the Act had observed this type of marketing.[172] Finally, 40.33% (n=123 of 305 students) of students in school under the Act reported seeing credit card companies giving gifts to students, while 59.71% (n=123 of 206 students) in school without the Act reported this conduct.[173]

These results are summarized in Figure 4:

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anywhere, and therefore, cannot be considered an address on or near campus.").

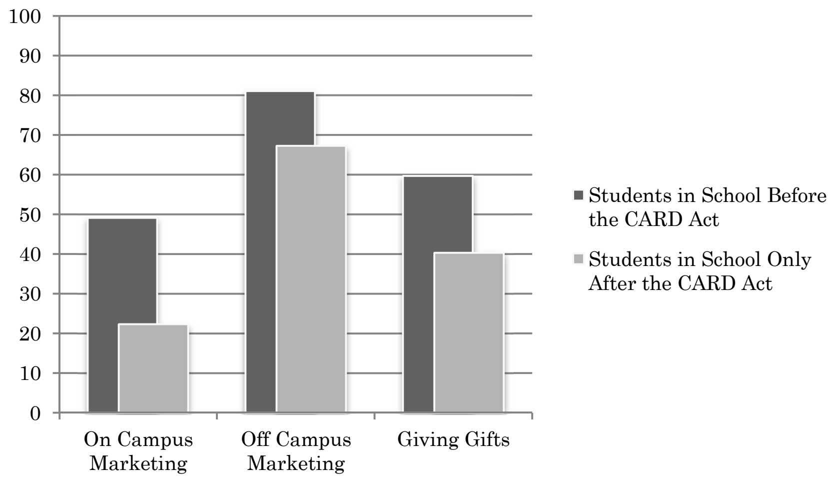
170. For the first year I conducted the survey, I compared freshmen versus all other students, and for the second year, I compared freshmen and sophomores versus all other students since the Act had been in effect for two years.

171. $\chi 2(1, N=524)=41.55$, $p < 0.001$, Cramér's V=0.28.

172. $\chi 2(1, N=524)=11.97$, $p < 0.001$, Cramér's V=0.15.

173. $\chi 2(1, N=524)=19.50$, $p < 0.001$, Cramér's V=0.19.

Figure 4: Percentage of Students Reporting Credit Card Marketing



In each case, it appears that the number of students observing marketing decreased by around 15–20% after the Act. This difference, however, could be attributed to being in school for a longer period of time and thus having more opportunities to see marketing activity than the effectiveness of the CARD Act's provisions. In the first year I conducted the survey, 43.30% of sophomores reported seeing credit card marketing on campus, while 71.11% of seniors reported seeing credit card marketing on campus. Each of those groups had been in school while the CARD Act was not in effect, yet their answers differed by 30%. The chi-squared test confirms that this difference between sophomores and seniors is unlikely to be a result of chance.[174] Thus, while the numbers appear to suggest the Act is having an effect, I think that effect is unlikely to be attributable to the Act.

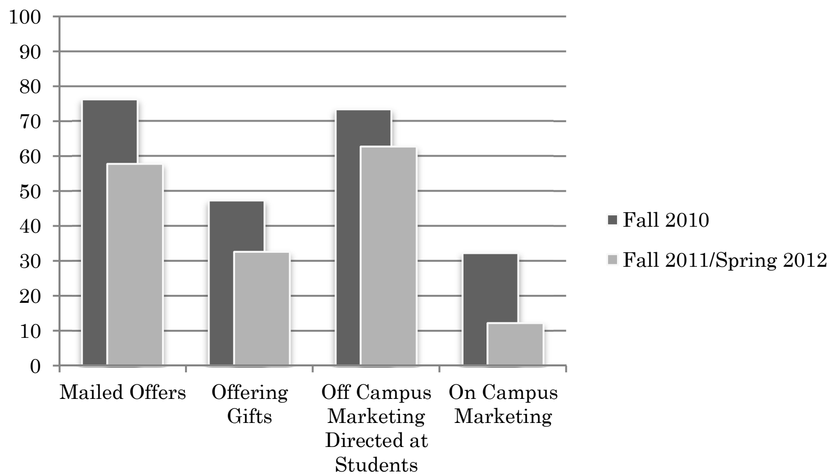
The survey data do indicate, however, a decrease from 2010 and 2011 in the marketing reported by respondents. Of all the freshmen surveyed in the first year I conducted the survey, 32.19% had seen credit card companies marketing on campus, while only 12.20% of freshmen in the second year observed that marketing. The difference between the first and second year is

174. $\chi 2(1, N=121)=5.84$, $p < 0.05$, Cramér's V=-0.22.

not attributable to adding a second school to my survey pool because the number of only University of Houston students reporting marketing on campus dropped to 15.25% in the second year of surveying. The number of freshmen reporting off-campus marketing dropped from 73.29% in the first year to 62.60% in the second year (or 64.41% if only University of Houston freshmen are included). Finally, the number of freshmen reporting companies handing out gifts decreased from 47.26% in the first year to 32.52% in the second year (or 25.42% if only University of Houston freshmen are included).

Together with the responses to the questions about mailed offers, I summarize these results in Figure 5:

Figure 5: Percentage of Freshmen Reporting Credit Card Marketing Over Two Years



As depicted in Figure 5, it appears that for all categories, credit card marketing directed at students is declining, and this decline is statistically significant for all categories except mailed offers.[175] Thus, while the level of students reporting credit card marketing remains higher than proponents of the CARD Act may have

175. The chi-square test yielded the following results: for reports of mailed offers ($X^2(1, N=266)=2.82$, $p < 0.1$, Cramér's V=0.10); for reports of gifts ($X^2(1, N=266)=5.7$, $p < 0.05$, Cramér's V=0.15); for reports of on-campus marketing ($X^2(1, N=266)=16.74$, $p < 0.001$, Cramér's V=0.25); for reports of off-campus marketing ($X^2(1, N=266)=4.49$, $p < 0.05$, Cramér's V=0.13).

predicted, the trend of fewer students reporting instances of marketing suggests the Act may be effectively, although slowly, curbing such marketing.

C. The Effects of the College–Issuer Marketing Agreements Provisions

A variety of sources predicted before the Act passed that forcing issuers to disclose their agreements with colleges would affect the terms of those agreements.[176] Others have since claimed that, in response to the Act, issuers are amending their agreements with organizations to remove marketing to students.[177] Based on my study of the agreements between issuers and college-related entities, however, it appears that these predictions are wrong.

The majority of agreements did not change at all between 2009 and 2010, despite the fact that the CARD Act was passed in 2009 and went into effect in February 2010. Of the 300 agreements I studied, 64.33% (n=193) remained exactly the same in 2010 as they were in 2009, and for many agreements, the same as they had been for years before that. Only 1% of the agreements were first signed in 2009 or 2010.

It does appear that more agreements were terminated or expired after the CARD Act went into effect, but it is impossible to tell whether this change is merely correlative or if the CARD

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176. *See* 155 Cong. Rec. S5493 (daily ed. May 14, 2009) (statement of Sen. Dianne Feinstein) (arguing that transparency might "act as a deterrent to deals with highly unfavorable terms to students"); *see also* Wood, *supra* note 9, at 171 ("Exposing the agreements will not only increase public awareness about these practices but may also deter the more unconscionable aspects of these agreements." (citation omitted)).

177. *See* James Goodman, *Credit Card Companies Adapt to College Rules*, ROCHESTER DEMOCRAT & CHRON., Nov. 1, 2010 (describing issuers' new focus on alumni rather than current students).

> Given such restrictions, and with student loan debt at an all-time high, credit card companies have shifted their focus to alumni. Betty Riess, Bank of America spokeswoman, said in the past several years the bank has been amending several agreements to eliminate marketing to students. The bank has about 700 "collegiate affinity" agreements, she said, and 98 percent of open accounts are "non-student."

Act caused companies or college-related entities to end the agreements. For the agreements that were in effect at the start of 2009, the study revealed that 24 of 300 were terminated or expired in that year, but in 2010, 63 were terminated or expired.

The mere fact that the number of terminations increased, however, obviously does not mean the CARD Act caused the change. It appears from the documents associated with the agreements that all of the relationships ended in a normal course of events, either because the agreement was set to expire (18 agreements) or the parties terminated the relationship pursuant to the agreement (45 agreements). Often, the issuer initiated the termination. Many of the termination letters followed this passage, taken from a letter from FIA Card Services to an organization, almost verbatim:

> I am writing to inform you that following a comprehensive review of the American Institute of Chemists, Inc. credit card program, FIA Card Services, N.A. (f/k/a MBNA America Bank, N.A.) ("FIA") has decided to terminate our Amended and Restated Affinity Agreement dated as of July 13, 1994, as the same may have been amended ("Agreement").[178]

Administrative reviews and decisions such as these seem to have little to do with increased regulation. More than 70% of the agreements that were terminated generated less than $5,000 in 2009 for the college-related entity, indicating a low activity level, and thus low profitability for the issuer.

In only two cases in all of the 300 agreements that I reviewed did I observe any mention of regulations influencing the decision to end the arrangement. In one example from March 2009, before the CARD Act was actually passed, an agent of the Tulane University Alumni Association terminated its agreement with Bank of America, explaining:

> We have enjoyed our seven year affiliation with Bank of America and we have been satisfied with our relationship with the bank and especially with you as our account executive. Our termination is rather a sign of the economic times, the

178. Letter from Alex J. McLaughlin, Vice President, FIA Card Servs., N.A., to Sharon Dobson, Exec. Dir., Am. Inst. of Chemists, Inc. (Apr. 15, 2010), *available at* http://www.federalreserve.gov/CreditCardAgreementsContent/CollegeAgreement_1174.pdf.

> increased projected scrutiny of university affinity programs and the mission-relatedness of these affinity arrangements.[179]

Similarly, in November of 2008, just after the CARD Act was first introduced, an alumni group associated with the University of Houston indicated that regulatory pressure was influencing its decision to end the agreement: "We believe this program is counter to our mission to contact, engage, serve, empower and acknowledge UHCL alumni. We also made this decision out of appreciation for the pressures of credit and the frustration of mailings."[180] The fact that only two agreements among 300 mention regulatory pressure suggests that based on outward appearances, the CARD Act has had a negligible effect on the number of agreement terminations.

Like the number of terminations, changes to the agreements demonstrate little salutary effects from the CARD Act. Figure 6 summarizes the changes that occurred in the 83 agreements that changed in 2010.

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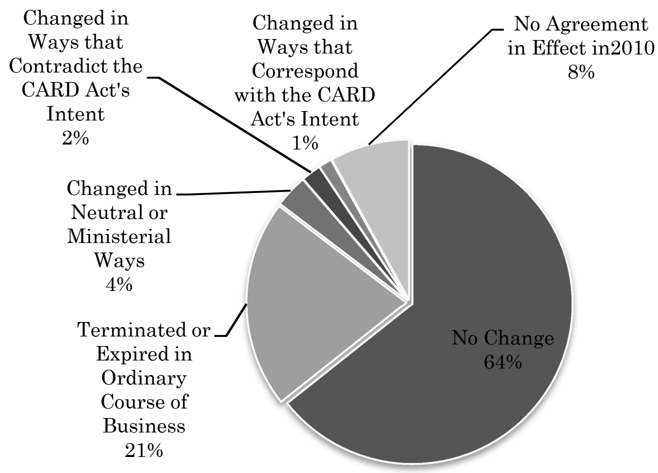
179. Letter from Charlotte B. Travieso, Dir., Office of Alumni Affairs, Tulane Alumni Ass'n, to Nazanin Rad, Bank of Am. Bus. Dev. (Mar. 9**,** 2009), *available at* http://www.federalreserve.gov/CreditCardAgreementsContent/CollegeAgreement_25.pdf.

180. Letter from Charity Ellis, Dir. of Alumni & Cmty. Relations, Univ. of Hous. Clear Lake, to Peggy Fullett, Vice President, Bank of Am. (Nov. 6, 2008), *available at* http://www.federalreserve.gov/CreditCardAgreementsContent/CollegeAgreement_784.pdf.

Figure 6: Changes in College–Issuer Agreements After the CARD Act Went into Effect



Twenty of the 300 agreements were amended in 2010. Of those 20 amendments, 60.00% (n=12) were ministerial or added provisions that likely have little effect on students' experiences with the agreements, such as establishing a web portal to access accounts, extending the life of the agreement, or making small changes to the royalties. For 25.00% of the amendments (n=5), the changes were in line with the hopes of the CARD Act's sponsors. For instance, in several agreements, students were omitted from the mailing lists that the college-related entity was obligated to provide or the issuer stopped paying any royalties for student accounts, taking away the incentive for the entity to promote them. For the other 15.00% (n=3) of the amendments, however, provisions were added that contradict the statute's intent. Several agreements, for example, added an obligation that the college-related entity advertise for the issuer on its website, and others added students to those persons covered by the agreements. Thus, based on the continued stability of the number of college–issuer agreements and the fact that very few agreements changed to protect students from abuses, it appears that the disclosure requirement has failed to meet its goals.

V. Conclusion: Lessons from the CARD Act's Young Consumer Provisions

The survey of students and study of college–issuer agreements in this Article have suggested that the CARD Act has not quelled marketing to young consumers or ensured that young consumers could repay their debts in the ways that proponents of the Act had hoped. Survey data demonstrate that students are using student loans to obviate the need to prove an ability to repay credit card debt. Responses to the survey also reveal that a high number of students are still receiving credit card offers in the mail and are still observing credit card issuers on and off campus targeting students with marketing, although the numbers appear to be declining. Similarly, requiring the disclosure of agreements between issuers and college-related entities has had almost no effect on either the number of those agreements or the terms of those agreements.

These results are significant if policymakers want more from the CARD Act than a political victory. The empirical work in this Article offers the first measurement of the Act's actual effects, and the reality is not as rosy of a picture as many of the predictions about the Act had painted. More work needs to be done to correct the inefficiencies in this market.

Future attempts to establish student credit card policies need to adapt based on the lessons learned through the CARD Act. Primarily, several provisions of the CARD Act failed because they did not directly regulate the behavior that concerned policymakers. For instance, the provision forbidding credit bureaus from giving addresses for consumers under the age of twenty-one did not have the desired effect of curtailing credit card offers in the mail because it only addressed the problem tangentially. Instead, if Congress really wants to prevent offers in the mail, it could directly regulate the conduct, like it did to prevent junk faxes.[181] If young consumers were given a private

181. *See* 47 U.S.C. § 227(b)(1)(C) (2011) (making it unlawful "for any person within the United States, or any person outside the United States if the recipient is within the United States—(C) to use any . . . device to send, to a telephone facsimile machine, an unsolicited advertisement" without meeting the narrow exceptions in the statute).

cause of action against issuers who violated this provision,[182] the number of students reporting instances of being mailed credit card offers would likely drop significantly.[183] In the same way, if members of Congress want to alter the terms of agreements between issuers and college-related organizations, they could do so directly, instead of relying on disclosures to incentivize the parties to change the agreements.[184]

A second way the CARD Act was misguided was its failure to appreciate and respond to the business incentive of establishing students as new credit card customers. Credit card companies have an enormous stake in gaining college students as customers.[185] The strength of this incentive causes issuers to seek creative ways for penetrating the student-card market despite new regulations. As we have seen in a variety of markets, creditors are nimble in avoiding unwanted regulation.[186] Because of this, a regulatory strategy that permits legitimate business purposes while minimizing harms to consumers is preferable. In the case of the CARD Act, the misuse of Sallie Mae's figures on student debt likely led Congress to regulate with a supposed—and inaccurate—harm in mind instead of legitimate harms.[187] Because the empirical work in this Article has removed this barrier, legislators should reconsider amendments to cap total balances on student cards. Such a regulation would allow issuers to pursue student customers and make credit cards available to students without the risk that students will be buried in debt.[188]

182. *See, e.g.*, *id.* § 227(b)(3) (setting out a private cause of action for violations of the junk fax statute).

183. *Cf.* MANN, *supra* note 8, at 154 (suggesting "a ban on marketing directed at minors and college-age persons").

184. *See, e.g.*, Jill M. Norvilitis & Phillip Santa Maria, *Credit Card Debt on College Campuses: Causes, Consequences, and Solutions*, 36 C. STUDENT J. 356, 361 (2002) (suggesting "changing how fees are paid to colleges or student organizations" and providing the example that "if student groups received a flat fee for sponsoring a table rather than an amount per completed application, there might be less pressure on students to complete applications").

185. *See* MANNING, *supra* note 8, at 167 (explaining the important role students play in maintaining credit card companies' market share).

186. *See, e.g.*, Jim Hawkins, *Credit on Wheels: The Law and Business of Auto Title Lending*, 69 WASH. & LEE L. REV. 535 (2012) (describing how title lenders have avoided usury rates to lend in many states).

187. *See supra* Part III.D.

188. *See supra* note 139 and accompanying text (discussing Rep. Slaughter's

The harms that financial distress and misguidance cause to young consumers are important and require a regulatory response. In order to shape that response, however, we need to evaluate the empirical claims behind policy prescriptions and learn from the failures of the CARD Act. As policymakers take on the student debt crisis, these lessons can help establish optimal student credit policies.

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proposed amendments to the CARD Act that would have limited student balances).

Appendix A: The CARD Act Student Survey[189]

Survey on the Effects of the CARD Act
Contact: Asst. Professor Jim Hawkins, 713-743-5018

Please circle your answer:

1. How many years have you been attending any college full-time?

A. This semester is my first year
B. This is my second year
C. This is my third year
D. This is my fourth year
E. I have been attending college for more than four years

2. Are you under 21? A. Yes B. No

3. What is your gender? A. Male B. Female

4. What is your race?

A. Non-Hispanic White
B. Non-Hispanic Black/African American
C. Latino
D. Asian
E. Other

5. During your time in college, have you seen any credit card companies advertising ON or NEAR campus or at a student event?
A. Yes
B. No

6. During your time in college, have you seen any advertising by credit card companies OFF campus that appears to be directed at college students?
A. Yes
B. No

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189. This survey is the version used in fall 2011 and spring 2012. The earlier version of the survey is identical except that the dates are changed and some of the language is aimed only at students at the University of Houston.

7. During your time in college, have you seen any credit card companies offering a gift (like a T-shirt or food) if you sign up for a credit card?

A. Yes
B. No

8. Have you received any credit card offers in the mail since the beginning of 2011?

A. Yes
B. No

9. How many credit cards do you currently have?

A. 0
B. 1
C. 2
D. 3
E. More than 3

10. Approximately how much do you currently owe on your credit cards?

A. 0–$500
B. $500–$1,000
C. $1,000–$2,000
D. $2,000–$3,000
E. More than $3,000

11. Do you expect to pay off these balances yourself or do you expect someone else will pay them off (like a parent)?

A. I expect to pay them off
B. I expect someone else will pay them off

12. Do you think you need a credit card to make purchases during your time in college?

A. Yes
B. No

13. Since you started school this Fall, have you opened a new credit card account?

A. Yes
B. No

ONLY ANSWER THE FOLLOWING QUESTIONS IF YOU HAVE OPENED A NEW CREDIT CARD ACCOUNT SINCE STARTING SCHOOL THIS FALL (I.E., YOU ANSWERED YES TO QUESTION 13).

14. Did you apply for the new credit card by yourself or with a cosigner?

A. By myself
B. With a co-signer
C. Not applicable

15. *If you had a cosigner*, who was your cosigner?

A. Parent
B. Spouse
C. Friend
D. Sibling
E. Other
F. Not applicable

16. *If you applied by yourself*, what is your approximate annual income?

A. Less than $10,000 a year
B. $10,000 - $20,000 a year
C. $20,000 - $30,000 a year
D. $30,000 - $40,000 a year
E. More than $40,000 a year
F. Not applicable

17. *If you applied by yourself*, circle all the answers that you used as part of your "income" when applying for the credit card:

A. Income from a job
B. Student loan proceeds
C. Money from parents/family
D. Other: ______________________________
E. Not applicable