Over the Limit: The Case for Increased Regulation of Credit Cards for College Students

WAYNE JEKOT[†]

I. INTRODUCTION

Credit card use among college students is a social problem in need of a legal solution. College students' credit card use has increased dramatically in recent years.[1] As a result, young people are increasingly dropping out of college, suffering health problems, and experiencing family conflicts, bankruptcies, job rejections due to poor credit histories, loan denials, inability to rent apartments, rejections from professional schools, and suicides.[2] Such costs are largely ignored by credit card companies which instead focus on the profitability of the campus credit card market.

Banks aggressively market credit cards to college students. From the moment college students get to campus, they are inundated with credit card offers. Credit card applications are in books and bookstore bags, on campus bulletin boards, and in e-mail and mail.[3] Credit card companies set up tables on campus and give away t-shirts, water bottles, and other gifts to entice students to fill out applications.[4] Recent regulatory and industry changes have encouraged banks to use such techniques to market and issue credit cards to college students.[5]

College students appear to be a poor credit risk because most have no regular job, little credit history, and a modest income. Yet banks are willing to issue credit cards to such students because from the perspective of a credit card company, a college student is a perfect customer: someone with little or no income who carries a balance from month to month.[6] Such customers are the most profitable for credit card companies.[7] In contrast, those customers who pay their entire balance each month, essentially

[†] Juris Doctor candidate, University of Connecticut School of Law, 2006.

[1] *See infra* Part II.B.

[2] ROBERT D. MANNING, CREDIT CARD NATION 160 (2000); *see also* Patrick McGeehan, *Soaring Interest Compounds Credit Card Pain for Millions*, N.Y. TIMES, Nov. 21, 2004, at 5 (discussing the impact of credit card debt on credit scores).

[3] U.S. GENERAL ACCOUNTING OFFICE, COLLEGE STUDENTS AND CREDIT CARDS, GAO-01-773 19, 23, 26, 29 (2001) [hereinafter GAO].

[4] *Id.* at 27 n.30; *see also In re* Ellingsworth, 212 B.R. 326, 331 (Bankr. W.D. Mo. 1997) (stating that "[c]redit card companies flood college campuses with sign-up tables to hook customers early in adulthood. It is not unusual for college students with no income at all to accumulate 10 to 15 cards while in college").

[5] MANNING, *supra* note 2, at 167–68.

[6] *Id.* at 5.

[7] *Id.*

getting interest-free loans, are viewed negatively by credit card companies; in fact, in the industry they are known counter-intuitively as "deadbeats."[8]

Credit card companies also gain from being the first to issue a credit card to a college student. Market research indicates that college students are likely to use their first credit card to make seventy-seven percent of their monthly purchases and that students are likely to keep that card long after graduation.[9] The profitability of campus credit cards extends far into the future and has had a significant impact on the banking industry. In fact, penetration into the college student market has helped pull the banking industry out of a serious financial crisis and transform credit cards into the most profitable division for banks.[10]

This article discusses the problems of, and solutions to, the campus credit card problem. Part II demonstrates the social costs of credit card use among college students. It also describes legal, regulatory, and industry changes that have contributed to the campus credit card problem. Part III discusses various proposed solutions to the problems of college student credit card use, including credit education, restricting credit card marketing, and regulating interest rates. Part IV proposes a legislative solution to the problem of college students and credit cards. Finally, Part V analyzes recent state and federal legislation intended to remedy the campus credit card problem.

II. BACKGROUND

Banks have benefited by penetrating the college student market, but such benefits have not been without high social costs. Anecdotal and statistical evidence suggest that credit card use by young people has recently increased. Such evidence also shows the costs of campus credit card use.

A. *Where Plastic Meets Flesh and Blood*

Consider the story of Sean Moyer as reported in *U.S. News & World Report*.[11] Moyer was a National Merit finalist who received a full scholarship to the University of Texas at Dallas.[12] Soon after he started

---

[8] *Id.*

[9] *Ellingsworth*, 212 B.R. at 331; *see also* David F. Snow, *Cheers for the Common Law? A Response*, 74 AM. BANKR. L.J. 161, 170 (2000) (arguing that "[f]rom a practical standpoint college or graduate students are excellent credit card prospects. The relationship established through the card may carry over for years after the student leaves school and enters the workforce").

[10] MANNING, *supra* note 2, at 167, 299–300.

[11] Margaret Mannix, *The Credit Card Binge*, U.S. NEWS & WORLD REP. (Sept. 6, 1999), *available at* http://www.usnews.com/usnews/issue/archive/990906/19990906001825_brief.php; Press release, Consumer Federation of America, Credit Card Debt Imposes Huge Costs on Many College Students, 3 (June 8, 1999), *available at* http://www.consumerfed.org/ccstudent.pdf [hereinafter CFA].

[12] CFA, *supra* note 11, at 4.

college, he got his first credit card, and by the time he was twenty-one, he had twelve credit cards and was $10,000 in debt.[13] He could no longer afford to live in Dallas, so he moved in with his parents and enrolled at the University of Oklahoma.[14] He revealed his financial situation to his parents, but they did not have the money to pay his debts.[15] He told his mother that he felt his plans to go to law school were doomed because no loans would be available to him.[16] He also told her that he thought of himself as a failure at age twenty-two.[17] A week later, Sean killed himself.[18] His mother later said that "he was so bright about many things but so stupid when it came to managing his money—he just couldn't do it."[19]

Mitzi Pool, another student, also committed suicide because of her credit card debt.[20] Pool was a freshman when she committed suicide.[21] She had entered college with a part-time job.[22] Within three and a half months, Pool had applied for, received, and maxed out three credit cards.[23] She also lost her job during that time.[24] She telephoned her mother one evening, crying and upset over her financial situation.[25] Her mother assured her that they would work out her problems the following weekend. That night, Pool committed suicide.[26] She did not leave a note, but her checkbook and credit card bills were found spread out on her bed.[27]

Clearly, not all students who have credit card debt commit suicide; nonetheless, there are costs to such debt. Consider another student's story, this one from *BusinessWeek Online*.[28] Jason Britton, a student at Georgetown University, racked up $21,000 in debt on sixteen credit cards in four years.[29] When he started using credit cards, he figured that he would pay off his debts when he graduated; however, he soon realized that he could not make even the minimum payments.[30] He was forced to work

---

[13] *Id.* at 3, 5.
[14] *Id.* at 5.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.* at 3.
[19] *Id.* at 4.
[20] *Id.* at 3.
[21] *Id.*
[22] *Id.* at 6.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.* at 3.
[27] *Id.*
[28] Marcia Vickers, *A Hard Lesson on Student Credit Cards*, BUSINESSWEEK ONLINE (Mar. 15, 1999), *available at* http://www.businessweek.com/1999/99_11/b3620134.htm.
[29] *Id.*
[30] *Id.*

three part-time jobs.[31] Instead of studying or socializing, Jason spent his time worrying about bills and working to pay them.[32] Jason's situation illustrates the high opportunity costs of the campus credit card problem: students are forced to pass up other opportunities because they are beholden to their debt and to credit card companies.

B. *Statistical Evidence of the Campus Credit Card Problem*

In addition to the anecdotal evidence of the social costs of campus credit cards, statistical evidence suggests that credit card use among college students has increased dramatically in recent years. According to a 2001 study of students who applied for credit-based loans with Nellie Mae, a non-profit student-loan provider, 83% of undergraduate students aged eighteen to twenty-four and attending four-year institutions have at least one credit card, up from 78% of undergraduates holding a card in 2000 and 67% in 1998.[33] Furthermore, 47% of students with credit cards have four or more cards, up from 32% in 2000 and 27% in 1998.[34]

The Nellie Mae study used data from credit reports, but this sample was limited only to those students who applied for student loans.[35] Another study conducted in 2000 by The Education Resources Institution and Institute for Higher Education Policy (TERI/IHEP) sampled a wider population of students but relied on self-reporting.[36] Such self-reporting possibly produces inaccurate results because respondents may incorrectly report unflattering data.[37] For example, a respondent may underreport debt levels because of the stigma associated with large indebtedness. The TERI/IHEP study concluded that 64% of full-time college students polled had at least one credit card, compared to 83% in the Nellie Mae study.[38] Furthermore, 55% of such students acquired their first credit card during their freshman year,[39] and about one-quarter of students acquired their cards through on-campus solicitation.[40]

Another study conducted at the University of Maryland and Georgetown University also relied on self-reporting. The study concluded that approximately 50% of polled undergraduates were revolvers; that is,

---

[31] *Id.*
[32] *See id.*
[33] Marie O'Malley, *Educating Undergraduates on Using Credit Cards*, Nellie Mae, *available at* http://nelliemae.com/library/cc_use.html (last visited Oct. 11, 2004).
[34] *Id.*
[35] GAO, *supra* note 3, at 15.
[36] *Id.*
[37] *Id.* at 16.
[38] *Id.*
[39] *Id.*
[40] *Id.*

they carried a balance from month to month.[41] The study also showed that nearly half of the students received a free gift with their credit card application.[42] Moreover, 47% of respondents had at least one credit card, and 38% had more than one card.[43]

This study also indicated differences in credit card use among rich and poor students. Sixty-two percent of the students at Georgetown University reported household incomes of greater than $94,000, but only 28% of students fell within that range at the University of Maryland.[44] Approximately 70% of the University of Maryland students were revolvers compared to only 43% of Georgetown students.[45] Overall, the study suggests that the relatively poorer students at the University of Maryland had more debt, more credit cards, and used their cards for cash advances more often than more affluent Georgetown students.[46]

C. Legal, Regulatory, and Industry Changes

Related to the campus credit card problem is the larger problem of consumer debt. College students are not alone in their increased use of credit cards. When first introduced to consumers, credit cards were a status symbol for the wealthy, but now credit cards are the payment method of choice for consumers of all income levels and ages.[47] The current widespread availability of credit cards is the result of interrelated legal, regulatory, and industry changes. Such changes have resulted in increased consumer debt and bankruptcies.

1. Consumer Bankruptcies

The National Bankruptcy Review Commission (NBRC), created by an act of Congress,[48] concluded in 1997 that there had been a staggering increase in bankruptcy filings in the United States over the previous twenty years.[49] In 1978, there were 182,000 consumer bankruptcies.[50] By 1997, that number had increased to 1.3 million—over a 600% increase from 1978.[51] For the same period, the population grew by only 21%, but total consumer debt increased by over 700%.[52] The NBRC concluded that

---

41 MANNING, *supra* note 2, app. 6 at 316.
42 *Id.*
43 *Id.*
44 *Id.* app. 6 at 315–16.
45 *Id.*
46 *See id.*
47 *See generally* MANNING, *supra* note 2 (giving historical overview of credit cards).
48 Bankruptcy Reform Act of 1994, 11 U.S.C. §§ 101–702 (1994).
49 NAT'L BANKR. REV. COMM'N, FINAL REPORT, at ii (1997) *available at* http://govinfo.library.unt.edu/nbrc/reportcont.html (last visited Jan. 9, 2006).
50 *Id.*
51 *Id.*
52 *Id.*

"[b]ankruptcy is largely a function of debt."[53] As consumer debt increased, so did the number of consumer bankruptcy filings.[54]

Young people have greatly contributed to the increase in consumer bankruptcies. One report tallied chapter 7 bankruptcy cases closed during 2000.[55] Those aged twenty-five to twenty-nine accounted for 15.2% of the filings.[56] The only age group with a higher percentage was the forty to forty-four year olds at 16.3%.[57] College-aged filers accounted for only 5.4% of all filers,[58] but those students may have been unaware of how to declare bankruptcy and may have turned to more drastic solutions, such as suicide. In fact, the low bankruptcy rate of college-aged individuals could be a further indication of the lack of financial sophistication of young people. Moreover, many of the twenty-five- to twenty-nine-year-old filers could have acquired debt and poor personal finance habits while in college. Recent college graduates, when saddled with student loans, large credit card debts, and unexpectedly low salaries, may be using bankruptcy to solve their financial difficulties.

2. Legal Developments

The rapid increase in credit card debt and bankruptcy among all age groups was caused in part by a number of Supreme Court decisions. Those decisions made credit cards more profitable for national banks, thus giving the banks an incentive to issue greater numbers of credit cards. In 1978, the Supreme Court decided *Marquette National Bank v. First of Omaha Service Corp.*[59] At the time, Minnesota had a usury statute capping the interest rate credit card companies could charge consumers.[60] When a Nebraska bank charged Minnesota credit card customers the higher interest rate permitted in Nebraska, a Minnesota bank sought an injunction and claimed that the Nebraska bank was violating the Minnesota usury statute.[61] The Court held that the Minnesota usury statute was preempted by the National Bank Act of 1864.[62] Thus, the Nebraska bank could

---

[53] *Id.* at 86.

[54] The Bankruptcy Abuse and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23, makes substantial changes to the Bankruptcy Code and other bankruptcy related statutes. The changes may make it more difficult to file for bankruptcy but do little, if anything, to address the problem of increasing consumer debt. *See generally* ALAN N. RESNICK & HENRY J. SOMMER, THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005: A SECTION-BY-SECTION ANALYSIS (2005) (summarizing the Act's changes to existing laws).

[55] Gordon Bermant & Ed Flynn, *Bankruptcy by the Numbers, Filers Most Likely in 25–44 Age Range*, 20-10 AM. BANKR. INST. J. 28 (Dec. 2001/Jan. 2002).

[56] *Id.* at 29 tbl.2.

[57] *Id.*

[58] *Id.*

[59] 439 U.S. 299 (1978).

[60] *Id.* at 304.

[61] *Id.* at 305–06.

[62] *Id.* at 319.

charge out-of-state customers the higher interest rate permitted in its resident state.

This decision permitted national banks to "shop" for a resident state that allowed high interest rates on credit cards in order to circumvent other states' usury laws. For example, Citigroup, a leading issuer of credit cards, moved its headquarters to Sioux Falls, South Dakota in 1981, after negotiating with South Dakota to repeal the state's usury laws.[63] The net effect of the Court's decision was to allow an individual state's usury laws to trump any other state's laws. By allowing banks to export interest rates from one state to another, the decision made credit cards more profitable, increased credit card issuance, and contributed to larger consumer credit card debt.

Consumer credit card debt also increased in the wake of another Supreme Court decision. In *Smiley v. Citibank*, the Supreme Court held that a national bank could export credit card late-payment fees.[64] The Court found again, as in *Marquette*, that a state law was preempted by the National Bank Act.[65] The Court interpreted the term "interest," as found in the Act, to include late-payment fees.[66] Also, because of the earlier *Marquette* decision, a bank could charge those fees to an out-of-state customer even if those fees were illegal in the customer's resident state.[67] This decision further compounded the credit card debt problem by allowing a national bank to charge both interest and late-payment fees according to its resident state's laws.

3. *Regulatory and Industry Changes*

In *Smiley*, the Court gave its imprimatur to the Office of the Comptroller of the Currency's (OCC) interpretation of the National Bank Act. The OCC is responsible for administering the Act.[68] In recent years, rather than cooperate with local and state authorities in regulating credit card companies, the OCC has challenged their claim to jurisdiction.[69] In 1994, the OCC declared itself the sole regulator of all national banks, stating that "[a]s the sole regulator of national banks, the OCC is in a unique position to take action on behalf of national bank customers, no matter what state they happen to live in."[70]

---

[63] MANNING, *supra* note 2, at 88–89.
[64] 517 U.S. 735 (1996).
[65] *Id.* at 744.
[66] *Id.* at 746–47.
[67] *Id.* at 737.
[68] *Id.* at 739.
[69] *Frontline: Secret History of the Credit Card* (PBS television broadcast, Nov. 23, 2004). Transcript *available at* http://www.pbs.org/wgbh/pages/frontline/shows/credit/etc/script.html (last visited Jan. 24, 2005) [hereinafter *Frontline*].
[70] Press Release, Comptroller of the Currency, Combating Abusive Lending (Jan. 7, 2004), *available at* http://www.occ.treas.gov/Consumer/combat.htm.

This announcement alarmed the Attorneys General of all fifty states.[71] For example, Eliot Spitzer, Attorney General of New York, stated that the OCC "is actively engaged in undercutting the role of state regulators in ensuring that banks fairly serve the needs of all customers."[72] In 2002, the OCC directed banks to consult with the OCC regarding the applicability of state laws to national banks.[73] As a result, banks are increasingly refusing to deal with any enforcement authority except the OCC.[74]

The OCC's unwillingness to allow state and local authorities to have jurisdiction over national banks, coupled with its reluctance to regulate them, has contributed to the credit card debt crisis.[75] Consumers cannot turn to state consumer protection departments when dealing with credit card issuers, and the OCC has not been diligent in responding to customer complaints. The OCC claims that it has been effective in regulating the credit card industry, but the evidence suggests otherwise.[76]

For example, in the late 1990s, the Consumer Protection Unit of the San Francisco District Attorney's Office began investigating Providian Financial, a bank that specialized in issuing credit cards to the riskiest customers.[77] There were many complaints about Providian's questionable offers, policies, procedures, and operations.[78] Instead of assisting the DA in its investigation, the OCC issued a challenge, stating that the DA's efforts were preempted by those of the OCC.[79] But the OCC was not responding to the complaints and was trying to stop local authorities from doing so.[80] Aggrieved consumers were without recourse until the news media started widely reporting the story.[81] Eventually, as a result of the negative press, a joint investigation conducted by local authorities and the OCC resulted in a $300 million settlement.[82]

---

[71] *Frontline*, *supra* note 69.

[72] Eliot Spitzer, Att'y Gen., N.Y. Att'y Gen. Office, Address Before the Assembly Standing Committee on Banks Regarding the Office of the Comptroller of the Currency's Preemption of State Consumer Protection Laws (Apr. 16, 2004), *available at* http://www.oag.state.ny.us/press/statements/occ_testimony.html.

[73] COMPTROLLER OF THE CURRENCY, 2002-9 ADVISORY LETTER 1, Letter from Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Currency, to Chief Executive Officers of All National Banks, Department and Division Heads, and All Examining Personnel (Nov. 25, 2002) (transcript *available at* http://www.occ.treas.gov/ftp/advisory/2002-9.txt).

[74] *Frontline*, *supra* note 69.

[75] *See generally* Jill Schachner Chanen, *Consumer Complaints: Customers Worry About Loss of Privacy when Businesses Share Credit Information*, 90 A.B.A. J. 50, 54–55 (2004) (reporting that the OCC has recently issued regulations that no longer require a national financial institution to disclose certain information to national banking customers).

[76] *See generally Frontline*, *supra* note 69.

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] *Id.*

The lack of regulatory oversight by the OCC is the most recent instance of bank deregulation. Other forms of deregulation came earlier, at a time when the banks needed it most. Banks were in serious financial trouble in the 1970s and 1980s.[83] Inflation was soaring, rising to a high of 18.9% in 1981, but a federal regulation, Regulation Q, limited the interest rate banks could offer to savings account customers.[84] For example, in 1979, banks could offer only 5.25% on such accounts, but inflation was over 12%.[85]

Regulation Q was phased out over a six-year period by the Depository Institutions Deregulation and Monetary Control Act of 1980.[86] As a result of the long phase-out period, customers moved from savings accounts to higher-interest-bearing certificates of deposit and money market accounts.[87] This caused bank profits to drop sharply and caused banks to look for new markets on which to build corporate profitability.[88] In particular, banks expanded into the consumer financial services market and began mass-marketing credit cards to middle- and working-class families.[89] When those markets became saturated in the late 1980s, banks turned to new, riskier markets, such as college students.[90] In the early 1990s, credit card companies dropped the industry practice of requiring parents to cosign credit card contracts for those under twenty-one.[91] Banks also started aggressively marketing credit cards to college students at that time.[92] As a result, credit cards are now a pervasive fixture on college campuses.

III. ALTERNATIVE SOLUTIONS

Credit cards appear to be a necessity in today's world, and college students use credit cards much like other credit card holders. Credit cards are required for online purchases, airline tickets, and many other transactions. Moreover, the use of a credit card builds a credit history and credit score which are required to qualify for other types of credit such as a mortgage or a car loan.

Even so, building credit is not difficult. A college student can easily build credit after graduating when he or she has a job and a steady income.

---

[83] MANNING, *supra* note 2, at 79.
[84] *Id.*
[85] *Id.*
[86] *Id.*; 12 U.S.C. § 3501 (1980). In addition to repealing Regulation Q, the DIDMCA brought about other major changes in the banking industry. *See* Monetary Control Act of 1980, Pub. L. No. 96-221, 94 Stat. 132.
[87] MANNING, *supra* note 2, at 79.
[88] *Id.* at 79, 167.
[89] *Id.* at 167.
[90] *Id.*
[91] *Id.* at 168.
[92] *Id.*

In addition, the "need" for credit cards is not as great as many assume. For instance, a student can pay for hotel rooms in advance with cash. Also, debit cards are readily accepted in lieu of credit cards; a student can use his or her debit card in place of a credit card when making online purchases, for example.

Nonetheless, many have argued for reforms that do not directly restrict college students' access to credit cards. Instead, some have proposed reforms such as credit education, limiting credit card marketing, and regulating interest rates.

A. Credit Education

Some have argued that because of the need for credit cards today, instead of restricting access to credit cards by students, credit education reforms should be implemented to prevent credit card abuse.

Proponents of credit education blame credit card abuse by young people on financial illiteracy.[93] Evidence suggests that students are in fact ignorant of the costs of credit. For example, Jump$tart Coalition, a Washington-based non-profit organization, conducted a survey of high school seniors (some of whom would be enrolling in college the following year) from across the United States.[94] The survey tested students on their knowledge of personal finance basics, including credit use.[95] Only 10.2% of the students scored a "C" or better on the exam.[96] Another study conducted by the U.S. Public Interest Research Group showed that only 20% of college students knew how long it would take to pay off a credit card if they made only the monthly minimum payment.[97] As a result of their ignorance, "'more and more young people are falling victim to credit card abuse and turning to bankruptcy as a means to relieve their oppressive debts.'"[98]

In response, at least one court has implemented a credit education program for young people. In November 2002, the U.S. Bankruptcy Court for the Western District of New York started the Credit Abuse Resistance Education Program (CARE).[99] CARE presentations are given to students

---

[93] John C. Ninfo II, *Credit Education for Young People Works*, 23-5 AM. BANKR. INST. J. 32 (2004).

[94] Dara Duguay, *Bankruptcy Rates Linked to Financial Literacy*, 17-8 AM. BANKR. INST. J. (1998).

[95] *Id.*

[96] *Id.*

[97] U.S. PUB. INT. RES. GROUP, *The Campus Credit Card Trap* (1998), *available at* http://www.pirg.org/student/consumer/credit98/page2.htm.

[98] Ninfo, *supra* note 93, at 32 (quoting Chief Judge John Walker of the United States Second Circuit Court of Appeals).

[99] *Id.*

by bankruptcy judges, attorneys, and court staff members.[100] The students are encouraged to have a single credit card and pay the balance off every month, to have and follow a budget that is developed with an understanding of needs versus wants, to understand the costs of credit and the difficulties of paying off debt, to have savings for an emergency, to understand the problems of living above your means, to understand that making minimum payments is not the same as being able to afford the debt, and to be aware of the consequences of credit card abuse.[101]

Some statistical evidence suggests that there is a connection between financial literacy and low consumer bankruptcy rates. The Jump$tart Coalition survey concluded that the students from states with low consumer bankruptcy rates (below one-half of 1% of households) scored higher on the test than students from states with high consumer bankruptcy rates (above 1.5% of households). The students from the high bankruptcy rate states scored 55.6% on the test, compared to 70.3% for those students from states with lower bankruptcy rates. Of course, in general, the students taking the test are not those who are filing for bankruptcy, so direct causation cannot be shown. Still, the authors concluded that the general level of financial literacy in a state impacted that state's bankruptcy rates.[102]

At the same time, the study concluded—surprisingly—that experience in managing finances does not improve financial literacy. "[S]tudents who use credit cards do not know anything more about them in terms of fee penalties, for example, than students who do not use them."[103] This conclusion was based on the finding that 69.6% of students who had no credit card knew that paying only the minimum amount each month will result in the greatest dollar amount in finance charges per year.[104] Thus, "[e]xperience proved to be an inadequate teacher in this case."[105] If anything, the study showed that students without credit cards were financially literate—not that students who had them did not learn from the experience of using a credit card. The study failed to directly compare the scores of students with credit cards to those without them to determine who was more financially literate—those experienced in managing their personal finances or those inexperienced in doing so.

Although there are proponents of credit education, others have shown the limited effectiveness of such education in lowering consumer debt and bankruptcy levels. The arguments for credit education assume that people

---

[100] *Id.*
[101] *Id.*
[102] Duguay, *supra* note 94.
[103] *Id.*
[104] *Id.*
[105] *Id.*

are unable to pay their bills because they are ignorant about the true costs of credit. But people who are financially sophisticated are sometimes unable to pay their bills for other reasons, such as loss of income or unexpected medical expenses.[106] Those people do not need credit education—they need a new job or health insurance.[107] For example, Mitzi Pool, the student who committed suicide because of her credit card debt, got into financial trouble only after she lost her part-time job.[108]

Furthermore, credit education programs that teach financial literacy do little to change basic economic values. A one-day course about the true costs of credit may not deter a potential credit card user, just as repeated warnings by the Surgeon General do not deter smokers. Credit education programs would need to be more like "Gamblers Anonymous" meetings to change the underlying behavior that gets consumers into trouble.[109]

> To prevent people from overspending, they somehow must be taught to believe that (1) it is important to engage in economically responsible behavior, even if that means delaying the immediate gratification of purchasing whims; (2) you should feel guilty when you cannot pay your bills; and (3) you should make personal sacrifices in order to dig yourself out of debt.[110]

College students in particular would need to be taught that college requires many short-term sacrifices for long-term benefits. It is difficult to see how a credit education program that focuses on the costs of credit could instill such deeply seeded values.

Credit education programs target the consumer, but consumers are encouraged to overspend by credit card companies. Credit card companies are unwilling "to voluntarily curtail the number of credit offers they extend to already over-extended Americans."[111] Credit card companies refer to those who use credit responsibly as "deadbeats" because such customers are not profitable.[112] To be profitable, credit card companies make socially irresponsible lending decisions, including issuing credit cards to college students with little or no income. Thus, credit card companies are at least partially to blame for the campus credit card problem, and no amount of credit education will change that.

---

[106] A. Mechele Dickerson, *Can Shame, Guilt, or Stigma Be Taught? Why Credit-Focused Debtor Education May Not Work*, 32 LOY. LA. L. REV. 945, 947 (1999).
[107] *Id.*
[108] *See supra* Part II.A.
[109] *Id.*
[110] Dickerson, *supra* note 106, at 959.
[111] *Id.* at 960.
[112] *See supra* Part I.

B. Regulating Credit Card Marketing

Proponents of credit education assume that consumers, not banks, are primarily responsible for the campus credit card problem. But the financial decisions and habits of college students are strongly influenced by credit card marketing. Students are given gifts for filling out credit card applications.[113] Students are also the targets of massive direct-marketing campaigns.[114] In general, credit card marketing seeks to change consumers' spending habits. Marketing efforts have included well-known advertising campaigns such as "There are some things money can't buy. For everything else there's MasterCard," and "VISA, it's everywhere you want to be," and "American Express, don't leave home without it." Advertising campaigns associate credit cards with "heartwarming family reunions, father-son bonding sessions at baseball games, romantic husband-wife evenings at the opera, long-overdue anniversary vacations, money for travel emergencies, and even solutions to currency exchange problems during overseas excursions in unfamiliar locales."[115]

Such credit card advertising downplays disclosures required by the Truth in Lending Act[116] and instead emphasizes promotional materials. For example, the required disclosures are often printed in a smaller typeface than the promotional language in card applications.[117] The promotional materials include celebrity endorsements, offers of prizes, gifts, discounts, and language underscoring the benefits of owning a credit card. Use of such tactics to market credit cards has been criticized because it seems to take unfair advantage of relatively unsophisticated college students, most of whom are between eighteen and twenty-one years old.[118] Further, marketing to college students has been likened to stealing candy from a baby and perhaps is unconscionable.[119] Thus, some have called for limitations on how credit cards are marketed to college students.[120]

But even if the marketing of credit cards to college students were restricted through legislation, college students would still be subject to the larger credit card marketing campaigns, such as television and print advertising. Moreover, restrictions on marketing would not restrict the issuance of credit cards to college students. Students could still get credit

---

[113] *See supra* Part I. The University of Connecticut's Co-Op bookstore bags contain credit card applications. An application for the Citi Credit Card for Students contained the advertising slogan "[a] prerequisite for a well-built credit history."

[114] Laurie A. Lucas, *Integrative Social Contracts Theory: Ethical Implications of Marketing Credit Cards to U.S. College Students*, 38 AM. BUS. L.J. 413, 413–14 (2001).

[115] MANNING, *supra* note 2, at 293.

[116] 15 U.S.C. §§ 1601–1667(f) (2005).

[117] Lucas, *supra* note 114, at 424.

[118] *Id.* at 440.

[119] *Id.* at 428.

[120] *See also supra* Parts V.A and V.B.

cards and incur the social costs of credit. In addition, students who have never before been responsible for their own finances would still incur the financial costs of credit at a time when they have little or no income.

C. Regulating Interest Rates

The financial costs of credit have prompted some to look to solutions in the form of interest rate regulation. This has spurred debate revolving around economic concepts such as the "free market" and "supply and demand." Opponents of interest rate regulation argue that such regulation would cause economic inefficiencies.[121] The credit card market is highly competitive: various credit cards are issued by a multitude of national banks. Thus, consumers have many options in choosing a credit card, each with its own particular set of terms and conditions. Because the credit card market is highly competitive, regulation is unnecessary to prevent abuses and promote economic welfare.[122] The free market for credit cards ensures that there is no monopoly pricing in interest rates.[123] By comparison, a monopoly market might require increased regulation to protect consumers.[124]

Furthermore, interest rate controls could be economically harmful by, for example, causing an artificial contraction in the supply of credit.[125] This decrease in supply would cause a corresponding increase in the demand for credit cards.[126] This would allow some issuers to have more control over the market.[127] Moreover, other more expensive and less convenient forms of credit would replace the decreased supply of credit cards.[128] The more expensive forms of credit would come from a shrinking pool of creditors because interest rate regulation would reduce the supply of credit card issuers.[129] In the end, interest rate regulation would result in consumers having fewer choices in the credit market. The people who were supposed to be helped would actually be hurt.

The economic arguments against interest rate regulation are problematic, however. The free market arguments ignore the irrational nature of consumer culture, promote a limited view of what is good social and economic policy, and confer special benefits on credit card

---

[121] Christopher C. DeMuth, *The Case Against Credit Card Interest Rate Regulation*, 3 YALE J. ON REG. 201, 201 (1986).
[122] *Id.* at 221.
[123] *Id.*
[124] *Id.*
[125] *Id.* at 201.
[126] *Id.* at 237.
[127] *Id.* at 238.
[128] *Id.* at 239.
[129] *Id.* at 241.

companies.[130]

First, those with credit cards are not the rational consumers of the language of economics.[131] To begin with, consumers are insensitive to changes in interest rates.[132] For example, consumers care more about fees than interest rates even though interest rates are more costly.[133] Also, consumers do not know or are unwilling to admit how often they borrow money with credit cards.[134] The percentage of accounts incurring interest charges is substantially higher than the percentage of consumers who say they carry balances. Consumers have difficulty distinguishing between needs and wants and use their credit cards to live outside of their means. "Shopping is even regarded by a substantial portion of the American population as entertainment."[135] In general, the behavior of consumers does not indicate the presence of a rational market for credit cards.

Second, free market arguments against interest rate regulation have a limited view of social and economic benefits and ignore many of the costs. For instance, those who are saddled with debt are prime candidates for exploitation.[136] Debt causes socially destabilizing concentrations of wealth and the accumulation of money or wealth without an investment of labor.[137] Moreover, the desire to consume and acquire is not the sole factor in achieving happiness and satisfaction.[138] Free market arguments assume purely economic values, but such models are unrealistic in the face of experience.

Third, free market arguments do not take into account that the lack of interest rate regulation confers most benefits to banks at the expense of consumers. Banks profit greatly from the credit card market.[139] Large amounts of credit in the form of credit cards are available to a broad spectrum of the population.[140] Credit cards are expensive compared with other forms of credit.[141] Also, despite the high cost, consumers using credit cards still borrow because of the cards' availability and ease of use.[142] The costs of issuing credit cards are relatively low in relation to the enormous returns such cards bring to credit card companies.[143] Finally, the

---

[130] Vincent D. Rougeau, *Rediscovering Usury: An Argument for Legal Controls on Credit Card Interest Rates*, 67 U. COLO. L. REV. 1, 3 (1996).
[131] *But see id.* at 28.
[132] *Id.* at 19.
[133] *Id.* at 21.
[134] *Id.* at 21.
[135] *Id.* at 33.
[136] *Id.* at 25.
[137] *Id.*
[138] *Id.* at 29.
[139] *Id.* at 22.
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.*

profitability of credit cards depends on consumers not paying off their balances each month. Customers who do not carry a balance are unprofitable to banks. Higher interest rates result in higher balances that are more difficult to pay off.

The arguments for regulating credit card interest rates apply equally to college students as they do to the general population. First, college students are sometimes less sophisticated than other consumers regarding the consequences of irresponsible use of credit. Many are inexperienced in financial matters and are unaware of the possible repercussions of credit card use. College students often use their credit cards merely as "spending money."[144] Second, while the relative economic benefits of using credit are low, the social costs to young people are high.[145] Students gain the ability to spend conveniently in the short term while being saddled with debt in the long term. Because of their lack of financial sophistication, they are easily exploited by the national credit card companies. Third, the lack of interest rate regulation benefits banks at the expense of college students.[146] The college student market is constantly replenished each year with matriculating freshmen, thus providing credit card companies with new customers, even when other markets have become saturated. More importantly, college students who lack an income are more likely to carry a balance, incur interest, and provide profits for banks.

IV. REGULATING THE ISSUANCE OF CREDIT CARDS TO COLLEGE STUDENTS

Access to credit cards by college students should be restricted for the same reasons that interest rates should be regulated: college students who use credit cards are not the rational consumers of economics; credit card use by students has negative social consequences; and banks, not college students, benefit most from issuing credit cards to young people.

Even if some or all the proposed solutions are implemented—credit education for young people, restricting the marketing of credit cards, and regulating interest rates—college students will still have access to credit cards. To solve the campus credit card problem, the issuance of credit cards to those under twenty-one, except in certain circumstances, must be prohibited. The negative costs and consequences of college student credit card use pose a greater threat to students than "alcohol or sexually transmitted diseases."[147] At one time, banks recognized the risks and refused to issue credit cards to those under twenty-one without a parent or

[144] *Id.* at 35.
[145] *See supra* Part II.A.
[146] *See supra* Part I.
[147] CFA, *supra* note 11, at 3.

guardian cosigner. However, once banks realized that those who could not afford credit cards were the most profitable credit card customers, banks dropped the cosigner requirement.[148] Thus, to protect young people from the predatory lending practices of credit card companies, Congress must pass legislation restricting college student access to credit cards.[149]

The results of such legislation would be decreased college student indebtedness, fewer bankruptcies among young people, and reductions in the social problems caused by student credit card debt. Although a decrease in the profitability of credit cards for banks is possible, banks would nonetheless remain profitable.[150] At the same time, the overall benefits to young people would outweigh the costs to banks. In 2000, there were about 15.1 million college students,[151] most of who had credit cards.[152] On balance, the general interests of the millions of potentially impecunious students outweigh the economic interests of a handful of lucrative banks and their shareholders. Initially, there may be negative market reactions to such legislation, but banks would inevitably find other, perhaps less socially costly ways to make a profit.

In regulating the issuance of credit cards to young people, Congressional legislation should include the following specific provisions. First, credit card issuers should be prohibited from granting credit to those under twenty-one who are full-time college students. Credit grantors would need to implement stricter underwriting requirements when reviewing applications of those under twenty-one to determine who is a full-time student. To do this, credit histories, employment history, and enrollment records could be used. As a result, credit card issuers should also be prohibited from marketing credit cards to college students and on college campuses.

Second, even if an applicant is not a full-time student, credit card applicants under twenty-one should be required to provide proof of income. Credit card issuers should be prohibited from granting credit to those who do not have an independent means to repay debts. Merely having enough income to pay the minimum payment should not be sufficient in calculating credit limits; instead, credit limits should be

---

148 *See supra* Parts I, II.C.3.

149 *See generally*, Ford Elsaesser, *Legislative Update*, 15-8 AM. BANKR. INST. J. 6 (1996) (arguing that "[t]he demographic changes in credit card underwriting, especially among lower income borrowers or new borrowers with no credit histories (e.g., students) should be carefully reconsidered and reversed, if possible").

150 Citicorp reported a record profit of $9.9 billion in 1999, of which $1.2 billion was from credit cards. Thus, credit card profits represented just twelve percent of total profits, and college student credit card profits were just a portion of that. MANNING, *supra* note 2, app. 2 at 313.

151 U.S. DEP'T. OF ED., GETTING READY FOR COLLEGE PAYS OFF: A REPORT FOR NATIONAL COLLEGE WEEK OCTOBER 16–20, 2000, at 6, (2000), *available at* http:www.edgov/officees/OPE/News /collegeweekpdf.pdf.

152 *See supra* Part II.B.

consistent with a borrower's ability to repay the entire loan.

Third, credit card issuers could issue credit cards to those under twenty-one, even if such students are full-time students or do not have sufficient income, so long as those students have a parent, guardian, or other responsible party cosigner with sufficient income. This would permit young people from families that have the financial means to repay debts to have a credit card, while preventing credit card companies from taking advantage of students from less affluent families.

Fourth, before granting credit to anyone under the age of twenty-one, a credit card issuer should require proof that the applicant has completed an accredited credit counseling course. States require a person to pass a driving test before issuing a driver's license because driving has the potential to cause great harm. Similarly, credit cards also have the potential to cause significant harm, and as a condition of their issuance, some form of credit education should be required. This by itself would not be enough to prevent credit card abuse, but it would help ameliorate the problem.

Such provisions would severely limit the number of persons under twenty-one who have credit cards while still allowing those who can afford credit cards to have access to them. For example, a part-time student with proof of sufficient income could still get a credit card. In addition, those under twenty-one who work and are not students could get a credit card. Also, those under twenty-one from affluent families could still have credit cards. Overall, such legislation would protect those who need it most: full-time college students who have little or no income or ability to repay credit card debt.

The credit card issuers downplay the social consequences of issuing credit cards to young people. Nancy Judy of the American Bankers Association stated "[w]e are talking about adults, not kids . . . . At eighteen or older, college students are adults, and although a few get too many cards and get in trouble, the others should not be denied the benefits of credit."[153] But the evidence says otherwise. "[W]e lose more students to credit card debt than to academic failure," stated one college administrator.[154] Both anecdotal and statistical evidence suggest that, as a group, college students are not benefiting from credit cards; rather, banks are benefiting from them. Furthermore, society does not always treat those over the age of eighteen as adults. For instance, states prohibit those under twenty-one from drinking alcohol. Credit cards have the same—if not greater—potential for harm as alcohol consumption.

---

[153] Gene Tharpe, *Students: Beware the Credit Card Trap*, ATL. J. & CONST., Sept. 27, 1998, at R8.

[154] CFA, *supra* note 11, at 2.

Any arguments opposing legislation either from the banking industry or its representatives are suspect because legislation that includes the suggested provisions would impact the profitability of credit card issuers. By looking at objective sources, it is clear that there is a need for restrictions on the issuance of credit cards to those under twenty-one years old.

V. State and Federal Legislation

There have been legislative efforts to implement some of the suggested solutions to the campus credit card problem, including restricting the issuance of credit cards to those under the age of twenty-one. Some of the state proposals have become law, but none of the Congressional bills has made it out of committee.

A. State Legislation

During the period from 1999 to 2001, at least twenty-four states either proposed or enacted legislation related to credit cards on college campuses.[155] State legislation has included bans on the use of incentives to entice college students to apply for credit cards;[156] requirements that a student's parent or legal guardian give written consent to the student's credit card application;[157] provisions to protect parents of college students from the debt collection actions of credit card issuers;[158] requirements that credit card issuers register with the college or university before soliciting on campus;[159] requirements that credit card issuers, universities, or organizations provide debt education materials or a program for students;[160] provisions that colleges, universities, or education departments set policies and procedures for controlling credit card solicitation on campus;[161] and prohibitions against the dissemination of information on students to credit card issuers or extenders of credit.[162]

Even though states have attempted to regulate the marketing and issuance of credit cards to those under twenty-one, courts have found that some types of state regulation of credit are preempted by federal laws. In *American Bankers Ass'n v. Lockyer*, the District Court for the Eastern

---

[155] GAO, *supra* note 3, app. II at 53–66; *see also* Robert D. Manning, *State Legislative Proposals*, *available at* http://www.creditcardnation.com/state_proposals.html (last visited Jan. 24, 2005) (listing eighteen states that either proposed, studied, or enacted legislation to regulate credit cards for those under twenty-one).

[156] GAO, *supra* note 3, at 54–57, 61–66.

[157] *Id.* at 55, 60–61.

[158] *Id.* at 56–58, 60–62, 66.

[159] *Id.* at 54–56, 61–63, 66.

[160] *Id.* at 54–66.

[161] *Id.* at 54–55, 57, 59, 63–64.

[162] *Id.* at 55–59, 63–66.

District of California granted a permanent injunction prohibiting state officials from enforcing a state statute against federally chartered banks and credit unions.[163] The state statute attempted to regulate the language and information contained in credit card statements.[164] The court held that the state statute was preempted by federal laws,[165] including the National Bank Act,[166] the Home Owners' Loan Act of 1933,[167] the Federal Credit Union Act,[168] Office of the Comptroller of the Currency regulations,[169] and National Credit Union Administration regulations.[170]

In his brief, the defendant Attorney General of California contended "that low and middle-income households, as well as college students, are 'bearing the brunt' of [a national] debt crisis . . . . [D]ata indicat[ed] that low- and middle-income households hold higher credit card debt-to-income ratios than others"[171] and that credit card issuers had a "major incentive . . . to target low and middle-income households, due to the fact that the issuers make the majority of their profits from these populations."[172] In addition, the data showed that college students were graduating with increasingly large amounts of credit card debt.[173] The legislation was passed to help remedy the ignorance many consumers had about credit. Specifically, "lower-income and college-aged individuals are less likely to understand the consequences of making only minimum monthly payments on their credit cards while continuing to accrue additional charges."[174] Despite those arguments, the court held that the state statute was preempted by federal legislation. To avoid such challenges in the future, any such legislation should come from Congress, not from the states. Moreover, because of case law allowing a bank to export one state's banking laws to other states,[175] an individual state's laws would be ineffectual in regulating national banks.

B. Proposed Federal Legislation

In addition to state legislation, there have been a number of recent legislative proposals put forth in Congress to regulate the marketing and issuance of credit cards to college students. None of those efforts have

---

[163] Am. Bankers Ass'n v. Lockyer, 239 F. Supp. 2d 1000, 1022 (E.D. Cal. 2002).
[164] *Id.* at 1002.
[165] *Id.* at 1020.
[166] 12 U.S.C. § 21 (2005).
[167] 12 C.F.R. § 500.1(a) (2005).
[168] 12 U.S.C. § 1751 (2005).
[169] 12 U.S.C. §§ 1, 26–27, 481 (2005).
[170] 12 C.F.R. § 701.21(b) (2005).
[171] *Am. Bankers Ass'n*, 239 F. Supp. 2d at 1005.
[172] *Id.*
[173] *Id.*
[174] *Id.*
[175] *See supra* Part II.C.2.

passed. Most recently, Senator Christopher Dodd of Connecticut, a member of the Senate Banking Committee, introduced the Credit Card Accountability Responsibility and Disclosure Act of 2004.[176] The bill would have required that credit card issuers, prior to granting credit to persons under the age of twenty-one, ensure that their new customers have one of the following: a co-signature of a parent, guardian, or other responsible party; an independent means of financial support for repaying the debts they incur; or the completion of a certified credit counseling course.[177] The bill specified requirements for the credit counseling course.[178] The bill also included a provision prohibiting the issuance of affinity cards to those under twenty-one.[179] This legislation, if enacted, would still allow students under twenty-one to get credit cards simply by completing a credit counseling course. The bill should be amended to close that loophole in light of the limitations of credit education outlined in Part II.A.

Another bill entitled the College Student Credit Card Protection Act was introduced in 2004 by Representative Louise Slaughter of New York to increase regulation of credit card issuance to college students.[180] This legislation would have "amend[ed] the Consumer Credit Protection Act to prevent credit card issuers from taking unfair advantage of full-time, traditional-aged, college students, to protect parents of traditional college student credit card holders, and for other purposes."[181] Provisions of the house bill would have limited credit lines to the greater of (1) twenty percent of a student's annual income without a cosigner; or (2) $500 per year for each year in school to a maximum of $2000.[182] The bill would have also required parents to agree in writing to increases in the credit limit of cards to which they had cosigned, would have allowed students to have no more than one credit card, and would have prohibited banks from issuing credit cards to students with no income.[183]

The house bill is superior to the one introduced by Senator Dodd in that it closes the credit education loophole. However, the house bill would potentially apply to all full-time students, not just those under the age of twenty-one. The bill defines those affected as those "whose age falls within the age cohort defined by such institution of higher education as the

---

[176] S. 2755, 108th Cong. (2004).

[177] *Id.* § 411.

[178] *Id.* § 411(C).

[179] *Id.* § 413. An affinity card is defined as a credit card offered pursuant to an agreement between the creditor and an institution of higher learning. *Id.*

[180] H.R. 5060, 108th Cong. (2004).

[181] *Id.*

[182] *Id.* § 2(h)(2).

[183] *Id.* § 2(3)–(4).

age cohort of traditional-aged students."[184] Such a definition could be problematic in that it would prevent a full-time student over the age of twenty-one from getting a credit card. This is inconsistent with other laws on minors, such as the drinking age, and is inconsistent with the credit industry's prior practice of requiring those under twenty-one to have a cosigner.

An earlier bill introduced by former Representative John LaFalce of New York entitled the Consumer Credit Card Protection Amendments Act of 1999 would have imposed various disclosure requirements on credit card issuers, restricted the issuance of credit cards to students, and expanded consumer protections in connection with unsolicited credit cards.[185] Provisions of the bill would have prohibited credit card companies from soliciting applications from those under twenty-one; instead, a person under twenty-one would have been required to request a credit card in writing.[186] Furthermore, those under twenty-one would have been allowed a credit card only with a parent or guardian cosigner or by demonstrating an independent means to repay any financial obligations.[187] Also, the bill included specific language requiring specific rate, minimum monthly payment, and "teaser-rate" disclosures in connection with Internet-based solicitations for credit card accounts.[188] Although this bill contained some useful provisions, it never made it out of the House Banking Committee.

VI. CONCLUSION

Credit card use among college students has grown in recent years as a result of legal, regulatory, and industry changes. The increased use of credit by students has had negative financial and social consequences and costs. Such problems call for a legislative solution. Because of preemption and jurisdictional issues, such a legislative solution must come not from the states but from Congress. Any such legislation should include provisions limiting the issuance of credit cards to college students under the age of twenty-one. Other solutions, including credit education and interest rate regulation, could help fix the problem but by themselves are not enough.

---

[184] *Id.* § 2(h)(1)(B)(ii).
[185] H.R. 900, 106th Cong. (1999).
[186] *Id.* § 7.
[187] *Id.*
[188] *Id.* §§ 2–3, 5.