MAXED OUT COLLEGE STUDENTS: A CALL TO LIMIT CREDIT CARD SOLICITATIONS ON COLLEGE CAMPUSES

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Introduction

Recognizing that entering college[1] students are the primary market for new credit card holders, credit card companies swoop down every fall on American[2] college campuses looking for freshmen or "fresh meat."[3] In a "carnival atmosphere" of blaring music and free

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1. Unless otherwise indicated, the words "university" and "college" are used interchangeably and also include technical and community colleges.

2. Campus marketing is not strictly a U.S. phenomenon, as a Canadian-based credit company plans "to offer solicitations to students whose applications are turned down by prime issuers." *Home Trust, First Data, CMS to Debut Secured Cards*, Credit Card News, Sept. 1, 2000, at 7. Similarly, studies in Hong Kong show that full-time college students are a disproportionately large percentage of credit card holders when compared with the general population. Ricky Yee-Kwong Chan, *Demographic and Attitudinal Differences Between Active and Inactive Credit Cardholders: The Case of Hong Kong*, 15 Int'l J. Bank Marketing 117, 119 (1997).

3. *See* Steve Young, *Credit Card Firms Aim Young with Marketing*, Argus Leader (Sioux Falls, S.D.), Mar. 24, 2002, (stating that Citibank, largest issuer of cards to college population, markets on college campuses because that is where potential customers are); Bill McDonald, *Easy Credit on Campus Puts Some Students in Financial Trouble*, The State (Columbia, S.C.), Aug. 24, 1998, 1998 WL 16333661 (stating that credit card companies market on campus "giving away school paraphernalia with brightly colored logos" even though students may have no jobs or permanent residences). Stuart Hunter, a co-director of The Freshman Year Experience orientation program at the University of South Carolina, believes the marketing practices of credit card companies are "almost seductive and almost unethical." *Id*. Forty of the top fifty general card providers (and sixty-five of the top one hundred) are now competing for the college market. Trudy Ring, *Issuers Face a Visit to the Dean's Office*, Credit Card Mgmt., Oct. 1997, at 34. Fully 75% of college students report having been approached by a credit card solicitor on campus. Press Release, Chubb Group of Insurance Companies, Weekly Credit Card Offers Expose Students and Their Parents to Risk (Sept. 18, 2002), *at* http://www.chubb.com/news/pr20020918.html [hereinafter Chubb Group, Weekly Offers].

food, the credit card companies set up tables spread with glossy promotional brochures and loaded with free t-shirts, frisbees, and other gifts to lure students into applying for credit cards.[4] Company representatives do not talk about the interest rates or fees associated with the cards. Presumably, that information is contained in the brochures.[5] Instead, the credit card vendors emphasize the free items and an easy way to buy clothes and books or pay for spring break vacations.[6] Credit card companies have been accused of using exces-

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4. *See* U.S. Gen. Accounting Office, College Students and Credit Cards 2 (June 2001) [hereinafter GAO Report] (investigators for GAO went on college campuses and "collected credit card applications and observed the solicitation of students at tables set up in student unions"), http://www.gao.gov/new.items/d01773.pdf (last visited Feb. 17, 2005). David L. Tan, Ctr. for Student Affairs Research, Univ. of Okla., Oklahoma College Student Credit Card Study 17 (Oct. 2003) [hereinafter OK Study] (stating that one of most important factors among students deciding to get credit card was gift), http://www.ou.edu/education/csar/credit_card/credit_card_report.pdf (last visited Feb. 17, 2005); Kate Fitzgerald, *Eventful Days for Event Marketing*, Credit Card Mgmt., Nov. 2, 2001, at 38 (credit card industry recognizes that giving away gifts is key to increasing response rates, with t-shirts and tote bags being most effective tools); Michael J. Weiss, *To Be About to Be*, Am. Demographics, Sept. 2003, at 33 (stating that representatives of credit card companies "set up tables on many campuses, handing out application forms and logo-covered hats, T-shirts and DVDs"); Laurie A. Lucas, *Integrative Social Contracts Theory: Ethical Implications of Marketing Credit Cards to U.S. College Students*, 38 Am. Bus. L.J. 413, 414–15 (2001) [hereinafter Lucas, *Ethical Implications*] (stating that credit card companies are increasingly using peripheral cues designed to attract audience's attention in their solicitations, such as "celebrity endorsements or *offers of prizes*, gifts or discounts," which may encourage consumers to make decisions without understanding all aspects of transaction) (emphasis added). The general use of these techniques seems largely unquestioned in modern American society. *See id.* at 422. While these advertisements are legal, studies show that most Americans do not approve of the practice. *Id.* at 433.

5. However, many students do not read credit card agreements carefully and do not notice that their interest rate may only be an introductory rate which increases dramatically after a certain period of time. *See* Sheila Cory, *Credit Cards: Slow Down, Read the Fine Print*, The Good Five Cent Cigar (Univ. R.I.), Sept. 20, 2002, 2002 WL 104691898; *see also* Sarah Rose, *Prepping for College Credit*, Money, Sept. 1998, at 157 (Marcia Waite, vice president of MarketIQ, a firm that tracks credit card solicitation mailing, estimates that interest rate offered to college students is about 20%); U.S. Pub. Interest Res. Group, The Campus Credit Card Trap: Results of a PIRG Survey of College Students and Credit Cards (1998) [hereinafter PIRG Study] (finding that 26% of students found introductory or teaser interest rates to be misleading, only 41% found credit card education materials helpful, and others were highly critical of "deceptive legalese") *at* http://www.pirg.org/consumer/campus/page2.htm (last visited Feb. 17, 2005). *But see Back to School: Students Must be Prepared to Use Debt Wisely*, Card News, Aug. 20, 2003, 2003 WL 8632239 (reporting that American Credit Counselors, non-profit credit counseling organization, encourages students to read fine print, understand all associated fees and interest rate, and investigative prepaid or debit cards which will not run up credit bills).

6. *See* Dmedit, *Rapacious Credit Card Marketers are Earning Themselves a Bad Name*, Charleston Daily Mail (W. Va.), Jan. 11, 2002, at 4A (stating that credit

sive marketing tactics[7] and using student organizations as on-campus solicitors to pressure other students into signing up for credit cards.[8]

College students are offered credit at unprecedented levels.[9] Entering college students are bombarded with an average of eight credit card offers during their first week of college.[10] Nearly half of all students receive credit card applications on a daily or weekly basis, and most receive applications at least a few times per month.[11] The majority of students obtain their first credit card in college, and by graduation, over half have multiple cards.[12]

Credit card usage has its advantages;[13] however, many parents, students, administrators, and lawmakers are concerned that on-campus credit card solicitors unfairly exploit and lure naive students into the

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card companies "offer potential suckers free T-shirts, CDs, and an easy way to pay for a spring break vacation"); OK STUDY, *supra* note 4, at 17 (among most attractive incentives offered for signing up for credit card were discounts on airline tickets).

7. *See* THE CREDIT CARD SOLICITATION TASK FORCE, CREDIT CARD SOLICITATION ON THE OHIO STATE UNIVERSITY COLUMBUS CAMPUS 2–4 (Dec. 2001) [hereinafter CREDIT CARD SOLICITATION TASK FORCE] (finding that on-campus marketing practices used by credit card companies often "strike many people in the campus community as particularly inappropriate"); Shannon Buggs, *Debt a Hard Lesson for College Students*, HOUS. CHRON., Feb. 4, 2002, at D1 (stating that students frequently complained about aggressive sales tactics used by credit card vendors, and some universities have adopted "codes of conduct" for on-campus solicitors); Lucas, *Ethical Implications*, *supra* note 4, at 413–14 (stating that due to increased competition, credit card vendors are increasingly setting up direct marketing tables to reach low-income groups, such as students, who may have little or no knowledge about appropriate way to handle credit); Tanya Schevitz, *The Wrong Kind Of Extra Credit*, S.F. CHRON., Dec. 23, 2001, at A1 (stating that solicitor led students to believe they were completing one credit card application when in fact they were completing applications for four different credit cards).

8. *See* CREDIT CARD SOLICITATION TASK FORCE, *supra* note 7, at 6–7 (recommending that "neither student organizations nor any other entity be permitted to sponsor for payment" any credit card vendor).

9. *See* Susan Carpenter, *Bankrupt at 24*, L.A. TIMES, Jan. 23, 2001, at E1 (stating that in 1980s, credit card companies would not issue cards to students because they lacked full-time jobs and discussing reasons why students are offered credit cards today).

10. Karen Martin, *Young and in Debt: Credit Score May Be More Important Than Most People Think*, BATON ROUGE ADVOC., Jul. 12, 2004, at 1C, 2004 WL 58408293.

11. Chubb Group, Weekly Offers, *supra* note 3.

12. *See infra* notes 125–66 and accompanying text (discussing various studies on college students and their credit card usage).

13. *See* GAO REPORT, *supra* note 4, at 9. The GAO lists several conveniences of holding credit cards: "'[c]ashless' transactions; [a]n interest-free loan from the time of purchase until the payment is due; [c]ash advances from automated teller machines; [t]he ability to shop by telephone and on-line and make hotel reservations; [t]he chance to purchase items that students might not have the cash to purchase; and [a]n instant source of credit that is available without filling out forms or undergoing credit checks." *Id.*

credit card spending habit.[14] As a result, students suffer consequences ranging from dropping out to becoming part-time students to committing suicide.[15] Mitzi Pool, an eighteen-year-old freshman at the University of Central Oklahoma, hanged herself in her dorm room after calling her mother and tearfully expressing her despair over losing her part-time job and not knowing how to pay her bills.[16] Near her body, Mitzi had spread on the bed her checkbook and bills from three credit card accounts that she had maxed out ($2,500) in three and a half months.[17]

Believing suicide a highly improbable reaction to credit card indebtedness, the author conducted a survey at The Ohio State University (OSU Survey) to determine what options students would consider taking if they found themselves overwhelmed by credit card debt. Surveyed students indicated that they would consider harmful options such as increasing alcohol or drug consumption and committing suicide (21.4%).[18] The OSU Survey also sought to determine whether students understood the long-term implications of their credit card

14. *See* Lucas, *Ethical Implications*, *supra* note 4, at 433 (stating that most Americans do not approve of on-campus credit card solicitation practices); Michele Heller, *Bankruptcy, Superior Failure Seen Topping Agenda on Hill*, AM. BANKER, Aug. 29, 2001, at 1 (discussing legislation proposed by Senate Banking Committee Chairman Paul Sarbanes to deal with predatory lending, including practices of credit card companies in extending too much credit to university students and providing incentives to maintain large balances).

15. *See infra* notes 84–91 and accompanying text; *see also* Table 1 (discussing results of survey of students at Ohio State University); OK STUDY, *supra* note 4, at 25–26 (students with debt-handling problems were three times more likely to change majors and over two times more likely to have problems with socializing, academic concentration, extracurricular activities, and course load versus students without debt-handling problems); CREDIT CARD SOLICITATION TASK FORCE, *supra* note 7, at 1 (noting that Task Force's recommendations "can have a significant impact on the lives of our students and on students' ability to pursue degrees to completion").

16. Ann Perry, *The Credit-Card Industry Makes It Easy to Be in Debt*, SAN DIEGO UNION & TRIB., Jun. 25, 2000, at I1, 2000 WL 13972172.

17. *See* Jayne Suhler, *Students Ringing Up Credit Card Debt*, DALLAS MORNING NEWS, Jun. 9, 1999, at 1A. A year after Mitzi Pool's death, Sean Moyer, a twenty-two-year-old at the University of Central Oklahoma, also committed suicide after amassing over $10,000 in credit card debt on twelve credit cards. Schevitz, *supra* note 7, at A22; *see also* Randy Ellis & Steve Lackmeyer, *Student Credit Cards Subject of Hot Debate*, DAILY OKLAHOMAN, Sept. 29, 2001, at 1A. Previously, Sean had lost his scholarship at the University of Texas after his grades dropped due to working two jobs. Although no suicide note was found, his mother is convinced that he killed himself over the debt because Sean had told her before the suicide that he did not know how to fix his financial mess and that his future was hopeless. Steve Lackmeyer, *Debt Worries Lead to Suicide*, DAILY OKLAHOMAN, Sept. 29, 2001, at 4A.

18. *See infra* notes 84–91 and accompanying text; *see also* Table 1.

payment practices.[19] The results show the majority are not aware that a tarnished payment history may lead to negative consequences, such as being denied employment.[20] This lack of understanding is troubling when one considers that the majority of students sign up for credit cards with on-campus solicitors simply because they want free gifts.[21] Consequently, many students risk long-term damage to their credit and in turn to their financial future simply to receive today what amounts to a trinket.[22]

The OSU Survey, as well as other studies,[23] offers some explanation for the positions that university officials have taken in response to the perceived problems with on-campus credit card solicitations. Universities (including the University of Central Oklahoma after Mitzi Pool's suicide)[24] have established policies that either ban or restrict credit card soliciting on their campuses.[25] Other colleges have entered into exclusivity contracts entitling only one credit card vendor to market credit cards on their campuses; in return, the colleges earn substantial royalties, as high as $16.5 million.[26] Royalty calculations

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19. *See infra* notes 160–66 and accompanying text; *see also* Table 3. The OSU Survey sought to determine, among other things, the extent to which college students understand their responsibility for credit cards issued in their names. The results show that 45% of freshmen incorrectly believe their parents are responsible for their credit card debt until they reach the age of twenty-one. *See* Table 3.

20. *See* Table 3.

21. *See infra* notes 126–28 and accompanying text; *see also* Lucas, *Ethical Implications*, *supra* note 4, at 428–29 ("The practice of using persuasive strategies and peripheral cues [such as gifts], particularly those purposefully designed to manipulate the consumer, may in some instances 'trick' the unsophisticated consumer into choosing one particular credit card solicitation over another, regardless of the solicitation's relative merit.").

22. A student with a tarnished credit card payment history will have a lower credit score than a person with a stellar payment history and, therefore, will be charged higher interest rates on loans and pay thousands of dollars more to own cars and homes than the person with the higher credit score. *See infra* notes 103–16 and accompanying text.

23. Several studies have been conducted to learn about the experiences of college students with credit cards. The majority of the studies provide data on the number of credit cards college students have and about their credit card spending habits and payment practices. *See infra* Part I.C.

24. Ellis & Lackmeyer, *supra* note 17 (stating that University of Central Oklahoma bans credit card solicitations on campus).

25. *See infra* Part II.A; Kristin M. Boyd, *Credit Cards on Campus*, LANCASTER NEW ERA (Pa.), Apr. 8, 2002, at 1, 2002 WL 7546068 (discussing various administrative responses, including requiring credit card vendors to register prior to soliciting, pay fee, and promise to abide by certain policies).

26. *See*, *e.g.*, Steve Silverman, *ISU Selling Info to Credit Card Companies*, PANTAGRAPH (Bloomington, Ill.), July 8, 2001, at A10, 2001 WL 6510886 (stating that University of Tennessee has one of most lucrative contracts that requires First USA to pay university $16.5 million over seven years in exchange for names and addresses of

generally include a percentage of interest accruing on outstanding account balances; consequently, universities are actually profiting from their students' failure to pay their credit card bills in full each month.[27] Many concerned groups worry that these exclusivity contracts represent unethical alliances between university officials and card companies that unfairly take advantage of naive college students.[28] University officials respond by claiming the exclusivity contracts provide some protection to students because the contracts limit the number of credit card companies that have on-campus access to students,[29] and because some of the contract royalties are being used to fund student activities and programs.[30]

This Article posits that university officials have a responsibility to protect their students from aggressive marketing that may exploit the vulnerability of young students. Part I explains the solicitation practices of credit card issuers on college campuses and the impact of credit card indebtedness on students.[31] Part I also presents empirical

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university's 42,000 alumni, associates, and students); *see also infra* notes 180-188 and accompanying text.

27. *See infra* notes 180-184 and accompanying text.

28. *See, e.g.*, *Give Students Less Credit*, PALM BEACH POST (Fla.), Feb. 4, 2002, at 16A, 2002 WL 5525921 (stating that "the lack of adequate state financing is the major reason some schools are *pimping* their students") (emphasis added); *Information Release Unethical*, THE LANTERN (Ohio State Univ.), Feb. 27, 2002, 2002 WL 14814525 ("With rampant budget cuts for higher education, it is easy to see why colleges and universit[ies] might be tempted to make a quick buck off of students, but we feel this is highly unethical."); ROBERT D. MANNING, CREDIT CARD NATION: THE CONSEQUENCES OF AMERICA'S ADDICTION TO CREDIT 192 (2000) [hereinafter MANNING, CREDIT CARD NATION] ("[T]he seduction of college and university administrators by the credit card industry [is a] Faustian pact [that] 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.").

29. Texas A&M University has an exclusive contract with Wells Fargo, the only vendor allowed on campus. Linda K. Wertheimer, *Students' Plastic Debt Worries Colleges*, DALLAS MORNING NEWS, Jan. 18, 2002, 2002 WL 101153748. According to Michael B. Huddleston, Texas A&M University's director of contract administration, having an exclusive contract with one credit card company lessens the pressure on students. *Id. But see infra* notes 189–93 and accompanying text (explaining why exclusive contracts do not protect students from marketing by other credit card companies).

30. *See, e.g.*, Roger McCoy & Alice Thomas, *OSU Gives Contact List to MBNA for Bucks*, COLUMBUS DISPATCH, Mar. 2, 2004, at A1, 2004 WL 69866723 (stating that under exclusivity contract between MBNA and Ohio State University's alumni association, Ohio State's athletic department receives 60% of MBNA's annual fee; only 9% of fee is expended for credit education and counseling).

31. The most obvious problem created by these practices is the growing amount of credit card debt among students. The impact of credit card debt on students also encompasses a broad scope of immediate and long-term personal and financial difficulties. *See infra* Part II.B.

research about student credit card use and payment practices and about students' cognitive understanding of their responsibilities. While industry-sponsored studies claim that the majority of students timely pay in full their monthly card balances,[32] other empirical data demonstrate that students are not using credit cards wisely[33] because many students max out a credit card at least once, use one credit card to pay off another, use student loans to pay off credit card balances, and lack sufficient understanding of the long-term impact their credit card use will have on them.[34]

Part II first describes how universities have responded to the growing business of marketing credit cards to college students.[35] It goes on to suggest that university officials should strike a proper balance between revenue-raising and protecting students.[36] Similar to the duty universities assume in other contexts,[37] universities owe a duty to students to protect them from harmful marketing practices and to empower them to make rational economic choices about how to take on and manage credit card debt.

Part III describes the response of state legislators who question the role university administrators have played in the on-campus marketing of credit cards.[38] Part III also analyzes the effectiveness of various restrictions, including banning solicitors from distributing promotional gifts. Finally, Part IV explains why banning promotional

32. *See* ROBERT D. MANNING, CREDIT CARDS ON CAMPUS: COSTS AND CONSEQUENCES OF STUDENT DEBT 17 (1999) [hereinafter MANNING, CREDIT CARDS ON CAMPUS] (stating that industry-sponsored study found that majority of students pay debt in full, but explaining how this industry-sponsored study "obscures more than it illuminates the complexity of student credit card debt" by failing to ask several questions that would reveal facts such as "the increasing use of federal student loans, private debt consolidation loans, and informal family 'loan/gifts' to pay student credit card bills").

33. *See infra* notes 135–38 and accompanying text (explaining why one should substantially discount credit card industry's estimation that most students are responsible users of credit cards).

34. *See* Angela C. Lyons, *A Profile of Financially At-Risk College Students*, 38 J. CONSUMER AFF. 56, 57–60 (2004) (analyzing which students are at risk of mismanaging credit, summarizing various studies about college students and credit cards, and concluding that literature shows that about half of college students pay their credit card balances in full each month).

35. This section explains that universities' responses range from doing nothing to entering into lucrative exclusivity contracts with large credit card companies. *See infra* notes 167–93 and accompanying text.

36. Drawing from tort law, it asserts that the duty of university administrators is neither elevated to *in loco parentis* nor reduced to that of a bystander. *See infra* Part II.B.

37. *See infra* notes 246 –52 and accompanying text.

38. A few states have already passed, or are seeking to pass, legislation banning or restricting on-campus solicitations. *See infra* Part III.C.

gifts and providing mandatory[39] financial courses are effective ways to combat the potential exploitation of college students by credit card companies. By providing financial education, universities will be acting in accordance with what should be the true mission of universities.

I.
CREDIT CARD SOLICITATIONS ON COLLEGE CAMPUSES

Many, if not most, young people first learn to be fully responsible for their personal expenses during college.[40] They enter college eager to do many things for the first time. Credit card companies are eager, too—eager to introduce students to their products. The companies come to campuses hoping to attract students as loyal customers.[41] Credit card representatives advertise on campus bulletin boards, flood student mailboxes with credit card applications, pay college bookstores to put their applications in shopping bags, and give away trinkets to persuade students to complete applications.[42]

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39. This section argues that financial education should be mandatory because of students' demand for such education and because research shows pervasive student financial illiteracy.

40. *See* Jennifer Munro & Joan B. Hirt, *Credit Cards and College Students: Who Pays, Who Benefits?*, 39 J. C. STUDENT DEV. 51, 51 (1998) ("Among the most important responsibilities that many students assume in college is the management of their financial resources.").

41. Since the mid-1980s, credit card issuers have recognized the importance of the college market. *See College Market Performs Well for Prudent Issuers*, CARD NEWS, Apr. 4, 1994, 1994 WL 8751399. "One marketing firm estimates the spending power of all college students at more than $90 billion dollars with full-time, four-year enrollees spending an aggregate of $30 billion a year." Jacquelyn Warwick & Phylis Mansfield, *Credit Card Consumers: College Students' Knowledge and Attitude*, 17 J. CONSUMER MARKETING 617, 618 (2000). Companies believe that eighteen-year-old college students can remain a customer for decades. *College Students Will Spend $96 Million in 1996*, ABOUT WOMEN & MARKETING, Oct. 1996, at 1, 15.

42. *See* Scott Waletzko, *A Pre-Approved Disaster: Credit Cards Offer Students Opportunities and Dangers*, THE DAILY (Univ. Wash.), Jan. 10, 2000 ("They are out there, filling your mailbox with 'incredible deals.' Cluttering every bulletin board on campus with flyers screaming for attention. Giving away free trinkets to snare new customers."), http://archives.thedaily.washington.edu/2000/011000/nF2.CreditCard.html (last visited Feb. 18, 2005); Lucas Grindley, *Students Playing Into Credit Companies' Hands*, THE ORACLE (Univ. S. Fla.), June 28, 1999, 1999 WL 18805605 ("When a student buys textbooks from the campus bookstore, at the bottom of the bag awaits a pile of credit card advertisements pledging easy money and no annual fees. Classroom billboards and students' mailboxes overflow with applications from Visa, Discover, American Express and MasterCard.").
One way or another, students are receiving solicitations in bulk. A nationwide survey of more than 200 college students conducted by Impulse Research on behalf of the Chubb Group of Insurance Companies found that "nearly half (49%) of the students receive credit card applications on a daily or weekly basis," 86% receive applications at least a few times per month, 84% have at least one credit card, more than half have

To many adults, it may seem incredible that banks would actively solicit young students with no income and no financial experience.[43] Yet entering freshmen received an average of eight credit card offers during their first week of school and, thereafter, receive solicitation letters on a regular basis.[44] The credit card industry admits that it is marketing to this segment of the population, but it claims that students are responsible enough to handle a credit card.[45] Empirical studies only partially support this contention.[46] Many students do not under-

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multiple cards, and nearly 30% of students discard the solicitations without properly destroying them. Chubb Group, Weekly Offers, *supra* note 3.

43. *See* Candy A. Bianco & Susan M. Bosco, *Ethical Issues in Credit Card Solicitation of College Students: The Responsibilities of Credit Card Issuers, Higher Education, and Students*, 6 Teaching Bus. Ethics 45, 50 (2002) (reporting that of students with cards in their own name, "only 15 percent said they were employed when they applied"). In 1994, Congress received testimony indicating that credit card companies issue cards to students even though they do not meet minimum standards of creditworthiness. *See Kiddie Credit Cards: Hearings Before the Subcomm. on Consumer Credit and Ins. of the House Comm. on Banking, Fin. and Urban Affairs*, 103d Cong. 79 (1994) [hereinafter *Kiddie Credit*] (testimony of concerned parent that her daughters were issued more than one credit card while in college even though they "did not have jobs, and they were not credit-worthy by any known definition found in principles of sound banking practices"). Ruth Susswein, Executive Director of Bankcard Holders of America, testified that the majority of credit card companies issue credit cards to students even though they have no income, credit history, or cosigner, and that some individuals similarly situated, but not students, would be denied a credit card. *Id.*(statement of Ruth Susswein, Executive Director of Bankcard Holders of America); *cf.* Ruth Susswein, *College Students and Credit Cards: A Privilege Earned?*, Credit World, May-June 1995, at 21 (stating that college market is being given special attention, and some students receive credit over individuals with actual jobs, income, and assets).

44. Karen Martin, *Young and in Debt: Credit Score May Be More Important Than Most People Think*, Baton Rouge Advoc., July 12, 2004, at 1C, 2004 WL 58408293; *see* Chubb Group, Weekly Offers, *supra* note 3 (stating that students receive credit card applications on daily, weekly, or monthly basis); OK Study, *supra* note 4, at 17–18 (58% of students reported that pre-approved solicitations had "moderate" to "lots" of influence on deciding to get their first card).

45. *See* Ring, *supra* note 3, at 37 (reporting that issuers such as Discover and American Express find that college students "use their credit responsibly" and that "bad-debt write-off rate for college students is similar to that of the overall portfolio").

46. *See* GAO Report, *supra* note 4, at 23–24 (discussing results of several studies on college students' credit card use). A study conducted by The Education Resources Institute (TERI) and the Institute for Higher Education Policy (IHEP) reported that 59% of students with a credit card pay their balances in full on a monthly basis, but 14% maintain balances of $1,000 or more. TERI/IHEP, Credit Risk or Credit Worthy? College Students and Credit Cards 2, 11, 16 (June 1998) [hereinafter TERI/IHEP Study] (TERI is a "national not-for-profit organization that aids students in attaining an education and assists educational institutions in providing an education in an economical fashion" and IHEP is a "non-profit, non-partisan organization whose mission is to foster access to and quality in postsecondary education"), http://www.ihep.org/Pubs/PDF/Credit.pdf (last visited Feb. 18, 2005). A study conducted by Student Monitor, a firm that surveys college students on a variety of issues, simi-

stand the potential dangers involved with charging and mismanaging credit card debt.[47] Furthermore, for those students who accumulate a significant amount of credit card debt, the stress and problems associated with growing financial difficulties can have serious consequences.[48]

A. *Credit Card Issuers: Their Motivation, Marketing Tactics, and Credit-Extension Practices*

Why do credit card companies devote so much effort to reach college students? First, research shows that many consumers tend to be loyal users of their first credit card for as long as fifteen years.[49] Assuming that customer loyalty holds true, credit card companies can expect years of profits if they can persuade entering freshmen to sign up for their cards. Even though many students lack employment,[50] credit card companies issue cards to students presumably in anticipation that, if necessary, their parents, although not co-signors, will pay the minimum payments.[51] While credit card issuers claim that college

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larly reported that while 58% of students pay their balances in full each month, 16% carry balances over $1,000. GAO REPORT, *supra* note 4, at 16. The PIRG study found that 38% of students responsible for their own cards pay off their balance each month, while 36% pay "as much as they can," 16% pay only the minimum, and 9% pay late. PIRG STUDY, *supra* note 5.

47. *See infra* notes 144–53 and accompanying text; *see also* Table 3. Many students lack even a basic understanding of their credit cards. *See* Warwick & Mansfield, *supra* note 41, at 621 (stating that student knowledge about their credit cards varied, with 57% knowing their limit, 52.5% knowing their balance, and only 29% knowing their interest rate).

48. *See infra* notes 81–82 and accompanying text; *see also* Table 1.

49. *See Giving Consumers Credit: How Is the Credit Card Industry Treating Its Customers?: Hearing Before the Subcomm. on Fin. Insts and Consumer Credit of the House Comm. on Fin. Servs*, 107th Cong. 134 (2001) [hereinafter *Giving Consumers Credit*] (statement of Edmund Mierzwinski, U.S. Public Interest Research Group) ("industry research shows that young consumers remain loyal to their first cards as they grow older"); *U.S. Issuers Urged to Slow Campus Lending*, CARDS INT'L, Apr. 11, 2001, at 11, 2001 WL 13276018 (stating that credit card companies "covet students because Americans are extremely loyal to their first credit card, keeping it for an average of 15 years, according to the American Bankers Association").

50. According to the Student Monitor study, 55% of students surveyed in 2000 had part-time jobs and 9% had full-time jobs. GAO REPORT, *supra* note 4, at 35. Of students with cards in their own name, the PIRG study found that only 15% reported having full-time jobs when they applied. PIRG STUDY, *supra* note 5. *See also* OK STUDY, *supra* note 4, at 18–19 (39% of students reported card companies required no proof of independent income).

51. *See* PIRG STUDY, *supra* note 5 (finding that 41% of students who obtained credit cards from solicitation tables reported that their parents helped them with their bills); Julie Tripp, *Learning About the Pluses and Minuses of Plastic*, PORTLAND OREGONIAN, Aug. 5, 2001, at E8 (reporting that credit card companies "gamble that parents will bail out students who get into trouble whether the parents co-signed or not");

cardholders are no more profitable than non-college cardholders, they admit that college cardholders do become more profitable after the students graduate.[52] Thus, convinced by the profitability forecasts and customer loyalty research, credit card companies aggressively market on college campuses believing that students will eventually secure full-time employment after graduating and produce long-term profits for the credit card companies.

The second reason credit card companies are aggressively trying to attract college students is that students entering college are the only adult demographic group largely made up of non-credit card holders. According to a study conducted by The Education Resources Institute and the Institute for Higher Education Policy (TERI/IHEP Study), 55% of college students acquired their first credit card during their freshman year.[53] By contrast, the average American household has 14.27 credit cards.[54] Consequently, credit card companies are fiercely seeking to attract new customers, as is evident by their mailing of a record-breaking five billion credit card solicitations in 2001.[55] De-

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Lornet Turnbull, *Students Getting Head Start on Debt*, COLUMBUS DISPATCH (Ohio), Oct. 30, 2000, at 1A (stating that consumer advocates believe most credit card companies require no credit history and have few income requirements because parents will bail out their children if they amass too much debt); *Kiddie Credit*, *supra* note 43, at 5 (statement of Ruth Susswein, Executive Director of Bankcard Holders of America) (testifying that many parents pay their children's credit card bills to keep them from ruining their ability to obtain credit in future). *But see* 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, 653 (1999) (finding that if student had four or more cards, he or she was less likely to turn to friends and family when financial emergencies arose).

52. *See* GAO REPORT, *supra* note 4, at 35 (stating that one credit card issuer told GAO investigators that "credit cards issued to college students were not as profitable as those issued to nonstudents; but once the students graduated, their cards became more profitable than nonstudents' accounts"); Ring, *supra* note 3, at 34 (reporting that industry considers students attractive market because they tend to be loyal to their first card and have delinquency and charge-off rates which are similar to general population); *see also* Jesus Mena, *Beyond the Shopping Cart*, INTELLIGENT ENTERPRISE, Mar. 8, 2001, at 36 (asserting that "capturing a college student can lead to a long and profitable relationship" for credit card issuers).

53. TERI/IHEP STUDY, *supra* note 46, at 10. The study also found that only 25% acquired their cards before college. *Id.* These findings are consistent with the results of other studies. The Student Monitor firm determined that 34% of college students acquired their cards before college, and 46% acquired them in their first year. GAO REPORT, *supra* note 4, at 16; *see also* OK STUDY, *supra* note 4, at 4 (stating that 49% of Oklahoma college students received their first card before college and that by end of their second year, 92% of students had at least one card).

54. Paul J. Lim, *Credit Squeeze*, U.S. NEWS & WORLD REP., June 17, 2002, at 38.

55. Alex Frangos, *Getting That Credit Card Replaced*, WALL ST. J., May 21, 2002, at D2. The five billion solicitations represent 1.5 billion more than in 2000. *Five Billion Direct-Mail Card Offers Last Year*, AM. BANKER, Apr. 19, 2002, at 10.

spite these efforts, the response rate to solicitations remained unchanged at 0.6%.[56] In other words, only a very small fraction of the general population completes credit card applications through direct mail solicitations; the rest of us throw them away. Such a small response rate is not surprising, given that most adult Americans have several credit cards. On the other hand, the majority of students enter college without any credit cards. Although the true response rate among college students is unknown, the TERI/IHEP Study reports that 37% of the students surveyed acquired their first credit card by mail and 24% through on-campus solicitations.[57]

Credit card companies' on-campus solicitation tactics have drawn sharp criticism from various groups. One tactic that has drawn criticism is the companies' reliance on student groups to solicit new customers.[58] Student organizations may solicit too aggressively in a desperate attempt to raise much-needed funds, and some student groups have accused credit card companies of cheating them.[59]

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56. *Five Billion Direct-Mail Card Offers Last Year*, *supra* note 55, at 10.

57. TERI/IHEP STUDY, *supra* note 46, at 20. The Student Monitor survey reported similar findings. GAO REPORT, *supra* note 4, at 16 (finding that 36% acquired card by mail and 21% obtained card from on-campus display or solicitation); OK STUDY, *supra* note 4, at 18 (stating that 44% of Oklahoma college students surveyed reported "moderate" or "lots" of influence from general mail solicitations on first card ownership).

58. For example, the Bradley University Hockey Club earned approximately $300 by soliciting credit card applications for two days. It received $.50 for each completed application and $50 per day to distribute applications. Steve Tarter, *Unrestricted Credit-Card Marketing Hurts College Students, Group Says*, J. STAR (Peoria, Ill.), Nov. 16, 1999, 1999 WL 28708447. Other schools, such as South Dakota State University, allow solicitation by student organizations provided that the co-sponsoring credit card company provide education brochures for all applicants. Young, *supra* note 3. The Ohio State University Credit Card Solicitation Task Force found that several student organizations at OSU depend on income made by co-sponsoring on-campus solicitation with credit card companies. CREDIT CARD SOLICITATION TASK FORCE, *supra* note 7, at 2. OSU student organizations typically earn $.50 for every completed application, but national studies report that a typical fee ranges from $1.00 to $5.00 per completed application. *Id.*; *see also* GAO REPORT, *supra* note 4, at 28 (stating that "[a]t one of the universities we visited credit card vendors paid $4,359 to five Greek organizations, and one other student organization, over the course of 3 academic years with one Greek organization receiving $2,370 in payments for credit card solicitation").

59. Many student organizations are defrauded by credit card companies because they deliver the completed credit card applications but they never get the pay promised. *See* George R. Reis, *Credit Card Marketing in the College Marketplace: Goldmine or Wasteland?*, FUND RAISING MGMT., Apr. 1997, at 30 (watchdog organization stating that "[s]tudent groups are being duped into accepting fund-raising opportunities to promote credit cards on campus"); *Card Marketers Increasingly Facing Expulsion From Colleges*, CREDIT CARD NEWS, Mar. 1, 1999, at 4 ("[T]he world of third party marketers, working on behalf of many card issuers, is wracked with unethical operators, some of whom promise on-campus organizations a cut of their earnings,

Some credit card representatives have also been accused of aggressive, unsavory, and deceptive tactics to get students to complete applications.[60] For instance, at the University of California at Berkeley, a representative from Campus Dimensions College Credit Card Corporation allegedly gave students several gifts for their completion of a pile of forms represented to be one application. The forms turned out to be applications for four credit cards (AT&T, Citibank, Discover, and Sprint).[61] At the University of Louisville, representatives of FrontLine Event Marketing, a vendor hired by Bank One to solicit credit card applications, gave away t-shirts that school administrators considered so sexually explicit and racially offensive that they banned the company from its campus.[62] The shirts featured a Bank One logo, a caricature of a scantily-clothed, African-American woman drinking from a mug of beer, and a caption that read: "10 Reasons Why Beer is Better than a Black Man."[63] The reasons included "A beer doesn't yell at your kids" and "A beer can't get you pregnant."[64] Bank One, which denied any knowledge or approval of the t-shirt, was the exclu-

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but fail to pay off."). For example, a treasurer of the State University of New York at Buffalo's Nursing Student Organization claims that the credit card marketing company promised that the group would receive $3 for every completed application. Reis, *supra* at 26. After she turned in 100 accurately completed applications, along with a letter from the university verifying that all of the applicants were university students, she received a check for $167, significantly short of the $300 she should have received. *Id.* at 26, 30. Some schools have responded to the problem of credit card vendors' short-changing students by banning sponsorship by student organizations. *See* CREDIT CARD SOLICITATION TASK FORCE, *supra* note 7, at 6–7 (recommending that "neither student organizations nor any other entity be permitted to sponsor for payment" any credit card vendor); Iliana Limon, *U. New Mexico Group Aims to Help Students Manage Debt*, DAILY LOBO (Univ. N. M.), Aug. 30, 2001, 2001 WL 24685078 (reporting that University of New Mexico chapter of PIRG is "asking schools to prohibit high-pressure marketing tactics, such as paying student groups based on how many members sign up for credit cards").

60. *See* Katie Dunn, *Collegians Face Credit Card Crush*, WASH. TIMES (D.C.), Sept. 3, 2001, at D9 (stating that young man joined group of students playing frisbee on campus and "[a]fter playing with the group for a while, the man asked the students if they would fill out applications for Citibank MasterCards").

61. Schevitz, *supra* note 7, at A22. In another attempt to get students to view multiple solicitations, one college marketer proposed to pay students for each e-mail credit card solicitation they read, with the pay-off varying in relation to the student's credit rating. *See UCMS Plans on Paying Students to Read Card Solicitations*, CREDIT CARD NEWS, May 1, 1999, at 6.

62. *See Bank One Renounces Offensive Promotion*, CHI. TRIB., Jan. 31, 2003, at 3. A picture of the t-shirt is available at Mark Pitsch, *Offensive T-shirt Stirs Anger at U. of L.*, COURIER-J. (Louisville, Ky.), Jan. 29, 2003, at 1A (available for purchase at http://www.courier-journal.com/localnews and on file with the New York University Journal of Legislation and Public Policy).

63. *Bank One Renounces Offensive Promotion*, *supra* note 62, at 3.

64. *Id.*

sive on-campus credit card solicitor selected by the University of Louisville under a five-year contract worth $1.9 million.[65] In light of these kinds of solicitation practices, no one should be surprised that many students have a negative perception of credit card solicitors,[66] and that many people view the practices of on-campus solicitors as a danger to students struggling with debt.[67]

Like Bank One, credit card companies try to distance themselves from these aggressive solicitation practices by claiming that independent contractors hired by the credit card companies have exceeded their authority in marketing the cards.[68] Several major credit card companies have responded to this problem by adopting a code of conduct for contractors to follow when soliciting on college campuses.[69] However, there appears to be no mechanism for enforcing compliance with this code.[70] Without such an enforcement mechanism, it is doubtful that contractors will observe the code of conduct—especially given that their earnings are based on how many completed applications they are able to obtain.[71]

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65. *Id.* (stating that contract expired in early 2003). To make amends for the anger and controversy that arose from the actions of its rogue independent contractors, Bank One donated $50,000 to the university to fund a diversity lecture series. Deborah Yetter, *U. of L. Forum Defends Activist*, COURIER-J. (Louisville, Ky.), Dec. 5, 2003, at B1 (reporting that donation funded lecture by Sister Souljah, civil rights activist).

66. *See, e.g.*, Todd Richmond, *Credit Card Marketing Scrutinized*, ST. PAUL PIONEER PRESS (Minn.), June 10, 2004, at B1, 2004 WLNR 3542922 (reporting that one student at University of Wisconsin at Madison complained credit card vendors "try to use the students [despite] know[ing] we don't have any money").

67. *See infra* Part II.B. *But see* Zack Martin, *Hands-On Brand Building*, CREDIT CARD MGMT., Oct. 2003, at 54 (stating that some marketing firms are starting to recognize that Generation Y—which dislikes aggressive solicitations efforts—requires different forms of advertising; for example, MasterCard now sponsors an internship program in music and sports industry for college students).

68. *See, e.g.*, Reis, *supra* note 59, at 26, 30 (stating that one credit card marketing company failed to pay student organization amount due by contending that the student organization submitted duplicates; credit card issuer told student organization that duplicates did not matter and therefore organization should have earned fee even for submitting duplicates).

69. *See* GAO REPORT, *supra* note 4, at 29, 69–70.

70. *Id.* (listing in appendix only names of credit card companies adopting code of conduct).

71. *See supra* notes 58–59 (discussing earnings based on percentage of applications completed); *see also* CHERYL HYSTAD & BRAD HEAVNER, MD CONSUMER RIGHTS COALITION & MD PUB. INTEREST RESEARCH GROUP, GRADUATING INTO DEBT: CREDIT CARD MARKETING ON MARYLAND COLLEGE CAMPUSES 12 (Feb. 2004) [hereinafter MD STUDY] (finding that despite internal code of conduct and explicit university regulations, companies are still marketing as they see fit since "[t]he desire to tap into the college student market appears to outweigh any concern for the welfare for the students"), http://marypirg.org/reports/CreditCard04.pdf (last visited Feb. 19, 2005). The MD Study looked at the credit card marketing practices at twelve four-

In addition to their on-campus solicitation practices, credit card issuers are also criticized for their credit extension practices. For example, many students are able to obtain credit cards even though they list no income on their applications.[72] According to bank regulatory agencies, including the Federal Reserve Board and the Federal Deposit Insurance Corporation, making loans without any regard for the borrower's ability to repay is "unsafe and unsound" and represents an "imprudent" lending practice.[73] Credit card companies also mail to students unsolicited blank checks and unilaterally increase a student's line of credit, even though the companies have scant information about the student and have not verified an increase in a student's income as proof of ability to repay a higher debt load. While all credit card holders are subjected to such practices,[74] the availability of credit

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year institutions in Maryland. The researchers asked the schools for their policies regarding on campus solicitation, information selling, contracts with credit card companies, and student education. The researchers contacted at least one "key person" at each of the twelve schools. *Id.* at 7, 19; *see also Card Marketers Increasingly Face Expulsion from Colleges*, *supra* note 59, at 4, 5 (noting that credit card marketers have learned that "[s]ince many people aren't aware of the school's policy [of requiring sponsorship by a student organization], marketers without sponsorship often aren't questioned" and other marketers have discovered that there often is at least one place on campus where solicitation *is* allowed).

72. *See* Frederick H. Lowe, *Student Credit Card Debt Rising*, CHI. SUN-TIMES, Mar. 6, 2001, at 10 (stating that approval is also now based upon projected future income); OK STUDY, *supra* note 4, at 19 (finding that 39% of students reported card companies required no proof of independent income); *see also* John Maggs, *Always a Borrower Be*, NAT'L J., Sept. 8, 2001, at 2738 (stating that lenders do not agonize over morality of extending credit to students and that MBNA's "earnings have grown at a staggering average of 25 percent per quarter for more than 10 years").

73. *See Giving Consumers Credit*, *supra* note 49, at 126 (statement of Frank Torres, Legislative Counsel, Consumers Union); Office of the Comptroller of the Currency (OCC), *Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans*, OCC Advisory Letter 2003-3, at 3 (Feb. 21, 2003) ("A loan made without regard to the borrower's ability to service and repay the loan in accordance with its terms, without resorting to collateral, presents significant safety and soundness concerns, and making or purchasing such loans on a regular basis is inconsistent with safe and sound banking practices. Such loans may pose both a higher risk of default and a higher potential loss exposure at default."), http://www.occ.treas.gov/ftp/advisory/2003-3.pdf (last visited Feb. 19, 2005).

74. Similar to the free flow of credit on college campuses, courts have recognized that credit card companies issue cards to the general population using a "pre-approved" screening process based on little information available about the consumers in an effort to avoid the costs associated with an inquiry into "credit worthiness prior to issuance." Timothy D. Moratzka, *The Gift of Pre-Approved Credit: "Take the Money and Run,"* 8 NORTON BANKR. L. ADVISER 16 (2001) (citation omitted). One court characterized a credit card company's enticement of a debtor to consolidate bills and buy consumer goods through the use of access checks as "commercial entrapment." Bank One Columbus, N.A. v. McDaniel (*In re* McDaniel), 202 B.R. 74, 78, 79 (Bankr. N.D. Tex. 1996) ("creditor cannot sit back and do nothing and still meet the standard for actual and justifiable reliance when it had an opportunity to make an

to college students should be based on a student's earned income, not on hopes that students will persuade their parents to repay the debt.[75] In summary, in the absence of implementation of new policies and laws, credit card companies have little incentive to stop aggressively marketing their credit cards to college students and will continue to engage in the same kind of credit extension practices applied to non-college students. Any potential liability arising from these practices is outweighed by the benefits the industry gains. Entering college students provide an ever-replenishing base of new customers having the propensity to be loyal. Like the general population, these students are susceptible to proven marketing strategies that lead to increased credit card spending and long-term profits for the industry. To the credit card industry, each credit card mailed to new student-account holders represents long-term profits. For students lacking knowledge about how to responsibly use credit cards, those cards can become symbols of financial disaster.

B. *Impact of Credit Card Debt on Students*

Students who use credit cards but lack knowledge about how to handle them may quickly experience personal problems as well as financial difficulties.[76] The impact of poorly-managed credit card debt includes both short and long-term ramifications for students. As ex-

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adequate examination or investigation" before issuing credit card); *see* Bank One Columbus, N.A. v. Schad (*In re* Kountry Korner Store), 221 B.R. 265, 274 (Bankr. N.D. Okla. 1998) (finding it "unlikely that a credit card issuer will be able to prove justifiable reliance if it did nothing to protect itself from irresponsible credit card use other than reviewing third-party credit reports which [are]. . . so superficial in scope as to make them unreliable predictors of solvency, income, budget, work history, and other data relevant to the creditworthiness of a customer"); MBNA America Bank, N.A. v. Ashland (*In re* Ashland), 307 B.R. 317, 321 (Bankr. D. Mass. 2004) (bankruptcy judge William C. Hillman agreeing with one court's position that "to allow the Bank to prevail in this situation would result in converting dischargeable debts into nondischargeable debts and would amount to this court condoning commercial entrapment") (citation omitted); *see also* TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 246 (2000) (discussing credit card solicitations and scant information credit card companies rely on to issue credit).

75. *See generally* Jessica Temple, *The Credit Hook: Plastic's Lure Lands Students Deep in Debt*, S. BEND TRIB. (Ind.), May 1, 2001, 2001 WL 16443299 ("[S]ome people question[ ] the ethics of credit card companies that regularly raise student credit limits or offer additional cards after others are 'maxed out.'").

76. *See* Robert Heady, *Big Credit on Campus: Card Companies Loading Debt on College Students' Shoulders*, CHI. TRIB., April 23, 1997, at 7 ("Meet America's newest class of debtors. They're college students who have been bamboozled by credit card issuers into accepting easy-to-get plastic, only to fall behind in payments. Many . . . will leave college hounded by a negative net worth and a bad credit record—not counting the student loans on which they also owe.").

plained more fully below, students may amass too much debt, struggle financially to make ends meet, suffer emotional problems, engage in destructive behavior, and make employment decisions that negatively impact their collegiate experience and academic performance. After graduating, they may be denied credit, find it hard to obtain credit on favorable terms, pay excessive amounts to obtain home loans, insurance coverage, and utility services, and resort to filing for bankruptcy to get debt relief.

Students who charge items without making a realistic assessment of whether they can pay for them in a short amount of time will accumulate debt when their income is insufficient to pay the credit card balance in full.[77] Because they do not earn enough, students will have to maintain monthly card balances, pay significantly more than the initial cost of the items charged, and pay for a longer period of time than those who pay off their balances in full every month.[78] Like many credit card holders, college students may not understand the long-term consequences of keeping a balance because they focus on the short-term—their ability to make the minimum monthly payment.[79] Students also may not recognize

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77. The majority of students do not create a budget, which can only exacerbate the accumulation of credit card debt. Reasie A. Henry et al., *Money Management Practices of College Students*, 35 C. STUDENT J. 244, 244-45 (2001) (finding that in study of 126 college students, only 42% reported having budget, and of those with budget, 38% reported that they did not follow their budget all of time).

78. *See* Lindsay A. Robbins, *Ten Percent of College Students Have at Least $7,000 in Credit Card Debt*, UTAH STATESMAN (Utah State Univ.), Apr. 10, 2001, 2001 WL 18397593 (providing example of student with $3,000 of debt who pays only minimum 2% on principal per month at 18% interest annually, who would pay for twenty-nine years and six months for total of $10,013); Hayhoe, *supra* note 51, at 649 (finding that regardless of whether card was held jointly or by individual, 75% of respondents had balance on at least one of his or her cards, and 17% had at least one card which was maxed out). Given the number of college students carrying a balance, understanding the effect of interest rates becomes increasingly critical.

79. In light of the OK Study's findings that 23% of students either paid the minimum balance or were behind on payments, the following example from the MD Study is startling: For a $1500 balance at 21% interest for students paying a minimum of $30 monthly, it would take ten years to repay the debt, with accumulated interest payments of almost $2100; for a minimum of $50, forty-three months; for a minimum of $70 monthly, twenty-eight months; for a minimum of $90 monthly, twenty months. MD STUDY, *supra* note 71, at 13; *see also Half of Survey Respondents Say Their Parents Did Not Talk To Them About How To Use Credit*, U.S. NEWSWIRE, Aug. 30, 2000, 2000 WL 21170554 ("Many students do not understand that a credit report can be a 'second resume' [and] [t]his is important for students looking for work, especially in the financial services industry or with government agencies."); Phil Mulkins, *Good Credit History Most Important Asset*, TULSA WORLD, May 22, 2004, at A2, 2004 WL 61471513 (president of National Consumers League stating that "[m]any young people have never heard of 'credit score'" and are ignorant about the impor-

that their credit card balances today may be too high in the long-run.[80]

Once students recognize their credit card indebtedness, they respond in a number of non-mutually exclusive ways, from obtaining employment and seeking financial assistance from parents, to more drastic measures, including criminal behavior[81] and even suicide.[82] A 2002 survey of 401 students at The Ohio State University (OSU Survey) asked participants to choose from among several options they

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tance of having good credit history and how their payment history affects their finances in future).

80. *See* NELLIE MAE, UNDERGRADUATE STUDENTS AND CREDIT CARDS: AN ANALYSIS OF USAGE RAGES AND TRENDS 4–5 (Apr. 2002) [hereinafter NELLIE MAE STUDY] (finding that by time of graduation, students' credit card debt will average 16% of their total debt owed, but approximately 34% of debt payments may be used to pay off credit card debt), www.nelliemae.com/library/ccstudy_2001.pdf (last visited Feb. 19, 2005); THE OHIO STATE UNIVERSITY OFFICE OF STUDENT AFFAIRS ASSESSMENT, SPENDING HABITS OF OSU UNDERGRADUATES: A DATA ANALYSIS OF STUDENT DEBT, CREDIT CARDS, AND EMPLOYMENT 1 (Sept. 2003) [hereinafter 2003 SURVEY OF SPENDING HABITS OF OSU UNDERGRADUATES] (reporting findings of 2001 survey of fifty-five colleges, revealing that 80% of students underestimated total cost of their loans by average of $4,846), http://studentaffairs.osu.edu/pdfs/assess_spending_habits03_report.pdf (last visited Feb. 19, 2005); Marshall Loeb, *Post-College Habitation Rules*, MIAMI HERALD, Jul. 18, 2004, at 3E, (reporting Monster.com's subsidiary's finding that 64% of 2004 college graduates returned home to live with their parents for various reasons, including because they are "shouldering the new burdens of student loans and payments for insurance and credit-card debts").

81. In March 2002, four South Korean college students resorted to criminal behavior to find money to pay their credit card debts and were arrested for attempted bank robbery, causing "Koreans [to] question[ ] their country's sudden love affair with credit cards." Moon Ihlwan, *Falling Madly in Love With Plastic: Is Korea's Credit-Card Binge a Disaster Waiting to Happen?*, BUS. WK. (Int'l Ed.), May 13, 2002, at 57, 2002 WL 9361276.

82. *See* James A. Roberts & Eli Jones, *Money Attitudes, Credit Card Use, and Compulsive Buying among American College Students*, 35 J. CONSUMER AFF. 213, 232 (2001) (noting other studies have found that, in addition to unusual act of committing suicide, "[s]tudents with high consumer debt earn poorer grades, drop out of school, suffer from depression, file for bankruptcy, and work more hours to pay their bills").

At the University of Oklahoma, Sean Moyer, a twenty-two-year-old National Merit Scholar, took his life due to the pressure he felt from his $14,000 credit card debt on twelve cards. Frank Green, *Taking a Swipe at Debt: Group Hopes to Educate Students About Spending Within Their Means*, SAN DIEGO UNION-TRIB., Apr. 11, 2002, at C1. After amassing $2,500 of debt on three credit cards, Mitzi Pool, at the University of Central Oklahoma, hanged herself in her dorm room. Neither Moyer's nor Pool's parents knew that their children were in trouble with credit card debt until it was too late. Ellis & Lackmeyer, *supra* note 17, at 1A, 4A. Fortunately, stories like these are extremely rare, and one cannot automatically assume that those who manage their debt poorly are inclined to engage in self-destructive behavior. *See* Joseph Politano & David Lester, *Self-Destructiveness and Credit Card Debt*, 81 PSYCHOL. REP. 634 (1997) (finding that poor credit card management is not associated with general trait of self-destructive behavior of college students).

may use to cope with credit card debt.[83] The results are shown in Table 1. Fortunately, the most frequent responses included rational, albeit academically detrimental, actions,[84] such as becoming a part-time student with a full-time job (79.6%) or dropping out of school and taking a full-time job to pay off credit card debt (67.1%). Sadly, students indicated that they might also resort to more personally harmful actions, such as stealing (27.2%), increasing alcohol or drug consumption (33.9%), and committing suicide (21.4%).

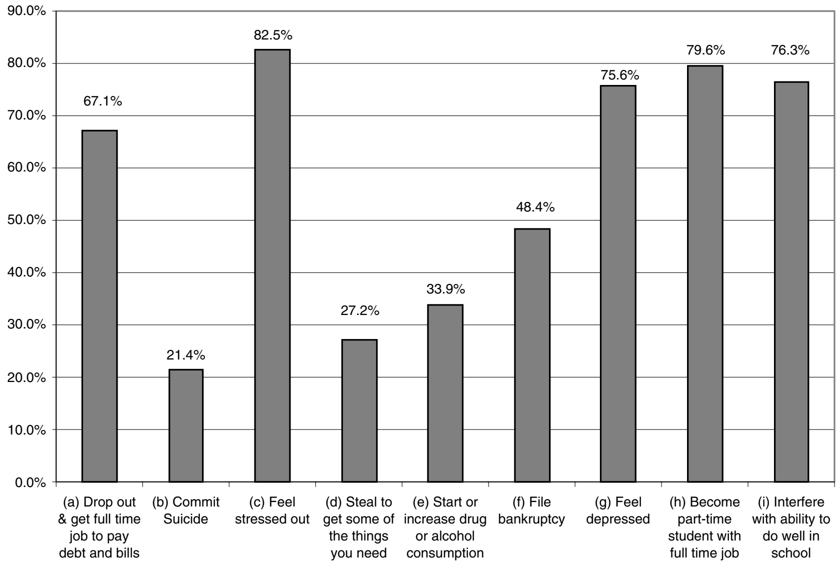
The inability to pay off credit card debt can also take an emotional toll on students. Stress and depression are the most obvious emotional consequences of high or unmanageable debt. In fact, 82.5% of students in the OSU Survey stated that they would feel stressed if they had insufficient income to cover all their bills and credit card debt, and 75.6% stated that they would feel depressed. Life as a college student can be stressful; however, a student stressed over credit card debt may suffer additional financial, psychological, and physical problems.[85] There are three central reasons that credit card debt may

83. Funding for the survey was provided by The Ohio State University Research Challenge Program ("OSU") and assistance with drafting the survey questions was provided by OSU's Office of Survey Research. As with all faculty research, OSU does not endorse the results of the survey. The survey population was created by the author securing the permission of several professors who allowed the author to present the survey questionnaire during class time. The survey was conducted in five courses: two chemistry courses, two women's studies courses, and one sociology course. These courses are introductory courses and, therefore, were chosen because of the mixture of freshmen and upperclassmen. Of the 409 students present when the survey was conducted, 401 participated (215 freshmen, 94 sophomores, 49 juniors, 30 seniors, 5 graduates, and 8 no responses). The response rate was high due to the fact that the survey was conducted during class time and because of the incentives offered. Those who participated were given candy and a raffle ticket for the chance to win one of two $25 gift cards to Target. A five-page, nineteen-question survey was given to the students. Students reported some basic personal information such as their age, race, and gender (223 females, 167 males, and 11 no responses). Students answered questions about the number of credit cards they had, whether they had obtained a credit card on the college campus, why they got their credit card, and how they would consider handling excessive debt. The rest of the survey tested their financial understanding of issues relevant to college students. While these issues are relevant to all credit card holders, the general population is not subject to the in-your-face solicitation practices that college students are and, therefore, the understanding of college students is deserving of more attention. Due to funding constraints, the author did not obtain an analysis of whether certain subset groups were more knowledgeable than others. Consequently, this study does not ascertain whether men are more knowledgeable than women and whether whites are more knowledgeable than minority groups.

84. *See* McCoy & Thomas, *supra* note 30 (quoting school administrator who stated that "students who work more than 15 hours a week to pay off debt suffer academically").

85. *See, e.g.*, Jill M. Norvilitis et al., *Factors Influencing Levels of Credit-Card Debt in College Students*, 33 J. APPLIED SOC. PSYCHOL. 935, 936 (2003) (discussing

TABLE 1
HOW STUDENTS WOULD HANDLE BEING OVERWHELMED WITH DEBT



be particularly stressful or depressing to college students. The first is that the collection efforts of credit card companies can be very aggressive,[86] and collectors can call as early as 8:00 am and as late as 9:00 pm.[87] Second, stress can also arise from a sense of stigmatization: unmanageable credit card debt is a problem that the student either would not want to talk about due to embarrassment or would feel that those confided in would not be able to empathize.[88] Finally, once the

studies that have found that those with high levels of debt report feeling financial stress daily and have overall decreased psychological well-being).

86. *See* Ken Maynard, *Customer Service: The Key to Collection Success*, CREDIT MGMT., Oct. 2003, at 44 ("The goal of any collection operation is to maximize recoveries in as short a time period as possible, which can lead to the adoption of aggressive collection strategies."); *Subprime Credit Card Issuer Sued*, COLLECTIONS & CREDIT RISK, Jul. 2003, at 17 (quoting subprime credit card issuer claiming that "customers . . . [with] troubled credit histories . . . may require more aggressive collections" but insisting that their tactics conform to acceptable industry standards).

87. *See* Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(a)(1) (2000) ("In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location."); Carpenter, *supra* note 9, at E1 (describing one unemployed college graduate deep in credit card debt who "had nothing to do but field phone calls from creditors, which began each day at 8 a.m.").

88. *See* Hayhoe, *supra* note 51, at 653 (finding that if student had four or more cards, he or she was less likely to turn to friends and family when financial emergen-

student realizes that the debt is a problem, debt becomes a constant burden that necessitates significant changes in behavior and lifestyle.

A recent study of over 4,000 Oklahoma college students revealed how credit card debt can negatively impact a student's collegiate experience. Thirty-one percent of the students reported that credit card debt affected their concentration on academic work, 31% stated that it influenced their decision to reduce their course load and obtain a job to pay off debt, 26% stated that it affected their sense of priority about academic work, and 31% stated that it affected their participation in extracurricular activities.[89] These problems were particularly acute among students mishandling their credit card debt: 57% reported that the debt affected their concentration on academic work; 55% reported that the debt influenced their decision to reduce course work and obtain employment; and 46% stated that it affected their sense of priority about academic work.[90]

Students suffering from stress brought on by high levels of credit card debt may seek parental help. Students fortunate enough to have parents with sufficient disposable income can usually persuade them to provide financial assistance and can, thereby, reduce or eliminate their credit card debt.[91] Some parents who continue to have the ability

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cies arose); Carpenter, *supra* note 9, at E3 (reporting that after returning home to live with her parents, a twenty-four-year-old girl said that suicide crossed her mind every day as she felt she would never get out of financial trouble and that her friends were not listening and her parents could not understand); Anne Preller, *U. Minnesota Students Rack Up Debt, Scramble to Pay Off Credit Cards*, MINN. DAILY (Univ. Minn.), Aug. 3, 2001, 2001 WL 5455121 (reporting that some students resort to lying to parents); John E. Grable & So-Hyun Joo, *A Subsequent Study of the Relationships Between Self-Worth and Financial Beliefs, Behavior, and Satisfaction*, 93 J. FAM. & CONSUMER SCI. 25, 28–29 (2001) (finding existence of "positive relationship . . . between financial beliefs, satisfaction, confidence, and self-esteem" and that "financial satisfaction and confidence appear to be significantly important forces in the formation of self-esteem").

89. OK STUDY, *supra* note 4, at 25.

90. *Id.* at 26; *see also* UNIV. S. C., OFFICE OF RESEARCH, GRANTS & PLANNING, CREDIT CARD SURVEY OF USC STUDENTS: RESULTS FROM SPRING 2002 9 (2002) [hereinafter USC STUDY] (finding that students with balance greater than $1000 were more likely to consider withdrawing from school), http://www.sa.sc.edu/research/CreditCardSurveyReport2002.pdf (last visited Feb. 20, 2005); *cf.* 2003 SURVEY OF SPENDING HABITS OF OSU UNDERGRADUATES, *supra* note 80, at 2 ("Working full-time or part-time off campus has been shown to have a negative effect on degree completion, college GPA, various areas of self-reported growth, and every aspect of college satisfaction except with facilities. Working part-time on campus, however, has the opposite effect.").

91. *See* Henry Gilgoff, *Plastic Peril For Students*, NEWSDAY, Sept. 14, 2003, at F2 (quoting consumer advocate from U.S. PIRG who asserts that cards are issued frequently to students who lack ability to pay off credit card debt and who are eventually bailed out of financial trouble by their parents); FRANCES C. LAWRENCE, ET AL., LA.

to influence their children's conduct[92] can foster fiscally-responsible behavior by demanding that the students destroy the credit card or only use it for emergency purposes (e.g., car repair),[93] or by making students use prepaid, parent-controlled, credit cards.[94]

Students unable or unwilling to obtain parental assistance to pay off credit card debt must either get a job or increase their work hours, which will in turn reduce the amount of time students can devote to studying and could lead to lower academic achievement.[95] In addition to limiting study time, students who work to reduce debt limit their participation in other collegiate experiences. Internships, for example, provide some of the best experiences colleges can provide to help stu-

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STATE UNIV. AGRIC. CTR, CREDIT CARD USAGE OF COLLEGE STUDENTS: EVIDENCE FROM LOUISIANA STATE UNIVERSITY (RESEARCH INFORMATION SHEET #107) 6, 10 (Sept. 2003) [hereinafter LSU STUDY] (in stratified sample of 2,400 undergraduate students, finding that 18.7% reported that their parents paid their credit card bills "once in a while," and 28.3% reported that their parents paid bills "on a more regular basis"), http://www.agctr.lsu.edu/Communications/pdfs_bak/RIS107CreditCard.pdf (last visited Feb. 20, 2005).

92. Unfortunately, many parents do not teach their children about credit and how to manage it responsibly. *See* Ed Blitz, *Parents Have Duty to Teach Graduates Financial Facts of Life*, SAN DIEGO UNION-TRIB., Aug. 30, 2003, at E3, 2003 WL 63099582 (citing statistic from personal finance expert that 31% of students between ages sixteen to twenty-two claim that their parents "rarely or never discuss setting financial goals"); *Half of Survey Respondents Say Their Parents Did Not Talk to Them About How to Use Credit*, *supra* note 79 (stating that poll of 1,020 Americans revealed that only half "acquired their financial aptitude through talks with their parents while they were still attending high school").

93. *Cf.* PIRG STUDY, *supra* note 5 (finding that only 13% of students claimed to limit credit cards to emergency usage, while 79% of all students used card for variety of purposes).

94. *See* Michelle C. Brooks, *College Dollars and Sense*, ATLANTA J. CONST., Jul. 26, 2003, at FE1 (stating that prepaid cards are "[t]he ultimate way to prevent out-of-control spending"); Todd Starr Palmer, Mary Beth Pinto & Diane H. Parente, *College Students' Credit Card Debt and the Role of Parental Involvement*: *Implications for Public Policy*, 20 J. PUB. POL'Y & MARKETING 105, 109, 110 (2001) (finding that students whose parents are co-signors on their credit cards or whose bills are paid by their parents have lower credit card balances than do students with no parental involvement).

95. *See* Matthew Walter, *Student Amassing Credit-Card Debt*, ARK. DEMOCRAT GAZETTE, Sept. 7, 2003, at 1G (reporting that college students often drop out to obtain employment to "pay off unsecured debt"). For a discussion of other negative consequences that may result when students amass or poorly manage credit card debt, see *The Importance of Financial Literacy Among College Students: Hearing Before the Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. 40 (2002), [hereinafter *Financial Literacy Hearing*] (statement of Senator Daniel K. Akaka) (testifying that college students' ignorance about how to responsibly manage debt "often leads to a large debt burden for students that further complicate their future financial situations," and precludes or hinders their obtainment of future financial opportunities such as renting apartment or purchasing car or home).

dents get a better-paying job in their area of interest.[96] Although students can earn college credit for many internships, most are unpaid or low-wage positions.[97] Students with too much credit card debt may deny themselves the opportunity to participate in these programs because they need a paying job.[98]

Students working to pay off credit card debt often feel they have to either reduce their course load—which will delay graduation and, ironically, may increase student loan debt—or drop out of college, which will diminish their employment potential.[99] While it is recommended that full-time students work no more than ten to twenty hours a week in order to have enough time to devote to studying, many work longer hours anyway.[100] Unfortunately for these students, making money takes priority over academics. One university official reported losing more students to credit card debt than to academic failure.[101] Naturally, the extent of academic difficulties will vary from student to student, but grades and the general learning experience will suffer when there is not enough time to devote to attending classes and studying.[102]

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96. *See, e.g.*, Jim McKay, *Internships Stopgap Summer Jobs for College Students Seeking Work and Experience*, PITTSBURGH POST-GAZETTE, June 13, 2001, at C1 (discussing growing interest in internships and use of internship programs "to attract and keep talented college students who might otherwise leave Pittsburgh after graduation for opportunities").

97. *See* McKay, *supra* note 96 (discussing program created to encourage employers to offer college students internships at thirty-three Pennsylvania colleges and universities and stating that about half of participating employers pay stipend or hourly wages while others offer unpaid internships that students can receive academic credit for completing); *School News*, S. BEND TRIB. (Ind.), June 23, 2004, 2004 WL 81274451 (stating that fourteen Indiana State University students were each awarded $1,000 scholarship for summer internship created to promote career opportunities for Indiana's current college students).

98. *See supra* note 82 and accompanying text; Table 1 (indicating that 79.6% of students would become part-time students and take full-time job to pay down debt).

99. *See* Green, *supra* note 82, at C1 (reporting finding of one credit counselor that students with maxed out credit cards often have to cut back on classes or drop out of college); OK STUDY, *supra* note 4, at 25 (finding that 31% of students reduced their course load because of credit card debt); *see also* Table 1 (indicating that 67.1% of students would drop out of school and take full time job to pay off credit card debt).

100. *See, e.g.*, Preller, *supra* note 88 (reporting that Marjorie Savage, program director for Office of Student Development at University of Minnesota, recommends that full time students not work more than ten hours a week, yet 1998–99 study found that 36% of university's students work more than twenty hours per week).

101. Tom Berger, *College Students' Future Tied to Debts*, WAUSAU DAILY HERALD (Wis.), Jan. 17, 2002, at 8, 2002 WL 19271923 (quoting John Simpson, administrator at Indiana University).

102. *See* OK STUDY, *supra* note 4, at 26 (finding that 57% of students with debt problems reported difficulties with academic concentration and 46% of students reported problems with academic priorities).

Long-term employment problems may also arise from students' improper management of credit card debt. Students who work more and study less to repay credit card debt are not likely to have the best grades and, therefore, may not secure a well-paying job upon graduation. Also, if students have a tarnished credit card payment history, they could be denied employment because many employers routinely use credit reports to gauge the level of responsibility of a potential employee.[103] Bad credit histories not only may result in unemployment or underemployment, they may also impede students' ability to break the cycle of debt and attain an essential element of the American dream—home ownership.[104] In addition, some industries also use credit reports to determine whether they want a student as a customer and, if so, on what terms.[105] Insurance companies may deny students with marginal credit histories automobile insurance coverage or charge them higher premiums for coverage.[106] Likewise, landlords

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103. *See* Mulkins, *supra* note 79 ("Employers routinely check applicants' credit histories as part of the interview process. With applicants vying for the best positions, solid credit histories provide competitive advantages in the job search."); Mary Ellen Slayter, *Not Paying Your Bills? It Could Cost You a Job*, WASH. POST, Jul. 22, 2002, at E2 (reporting that to many students' surprise, "[m]any employers routinely run credit checks on job applicants and current employees, saying that they provide a quick and easy (and inexpensive) way to judge someone's character, and hopefully protect the company from accusations of negligent hiring practices in case something goes wrong"); MANNING, CREDIT CARD NATION, *supra* note 28, at 159–60 (students with high credit card debts have trouble getting jobs because of bad credit reports).

104. *See* Paulette J. Williams, *The Continuing Crisis In Affordable Housing: Systemic Issues Requiring Systemic Solutions*, 31 FORDHAM URB. L.J. 413, 468 (2004) ("Homeownership is a big part of the American Dream; owning a home is a sign that one has entered the economic mainstream. The benefits of homeownership include the increase in real wealth that occurs when property values and equity increase, the sense that families and neighborhoods are more stable with homeowners rather than renters, and the ability to take advantage of tax incentives available to homeowners.") (footnotes omitted).

105. *See* David Dykes, *Freshmen 101: Learning to Handle Finances*, GREENVILLE NEWS (S.C.), Aug. 15, 2004, at 6, 2004 WLNR 16347680 (quoting Daniel F. Drummond, spokesperson for group of financial services companies, who notes that credit report can "impact a graduate's ability to rent an apartment, get telephone service or other utilities connected . . . qualify for loans for graduate school" and obtain employment).

106. *See* Abby Tillery, *U. Kansas: Bad credit effects* [sic] *insurance, work*, U. DAILY KANSAN (Univ. Kan.), July 7, 2004, 2004 WL 82206739 ("[I]nsurance companies can use credit history to decide . . . premiums."); Mulkins, *supra* note 79 ("Increasingly, insurance companies use credit-based insurance scores to decide who gets auto . . . coverage and how much they pay. All else being equal, a person with a good insurance score will pay less for insurance than someone with a poor score.").

and utility companies can reject student applicants with bad credit or make them pay large security deposits.[107]

Credit card issuers and lenders also make decisions based on a person's credit report. Issuers not only raise interest rates for missed or late payments but now also increase them if a person's total indebtedness exceeds a certain level.[108] Lenders rely on credit reports to determine whether to extend credit to recent graduates for large purchases, such as automobiles and homes. According to mortgage industry experts, the debt loads of college students could jeopardize their approval for home loans in the future.[109] Consequently, a college graduate's credit card payment history may result in a lender denying credit to purchase a home, or charging high (i.e., double-digit) interest rates for such purchases.[110]

The example below demonstrates how much financially worse off students who poorly manage their credit card debt will be when compared to those who understand responsible debt management. The average credit score for consumers who have missed at least one payment is 598; such a score puts the consumer near the lower end of credit score categories and, therefore, in the position of being denied

107. *See* Dykes, *supra* note 105; Mulkins, *supra* note 79 ("Apartment management firms usually rent to the people with the best credit histories . . . . In many urban areas, available housing is limited. Those with good credit histories find apartments to rent, avoid larger security deposits and are not required to have parents co-sign leases."); Haya El Nasser, *Why Grown Kids Come Home*, USA TODAY, Jan. 11, 2005, at 1A (reporting results of survey of 2004 college graduates by MonsterTRAK, an online job-search site, that found that 57% of recent college graduates were moving back in with their parents); *see also* Robbins, *supra* note 78 (describing student who feels as though stress from credit card debt "hangs over her every day and dictates her life").

108. Suein Hwang, *New Group Swells Bankruptcy Court: The Middle-Aged*, WALL ST. J., Aug. 6, 2004, at A1 (discussing how "the credit-card industry has grown increasingly aggressive in raising interest rates for certain consumers").

109. *See* Lawrence Richter Quinn, *Campus Plastic*, MORTGAGE BANKING, Nov. 2001, at 26–27. One mortgage expert states that the high-debt-load trend could deprive the mortgage industry of its business as students reach their "prime home-buying years." *Id*. at 27.

110. *Id*. at 27–28. Poor credit is also likely to drive many graduates into the higher-interest-rate, or subprime, mortgage market. *Id*. Lenders may also require co-signers as additional security for the purchase of a home or car loan. *See, e.g.*, Ruth A. Dillingham, *Financing a Residential Real Estate Transaction*, 1 HANDLING RESIDENTIAL REAL ESTATE TRANSACTIONS IN MASS. § 3.5.3 (2003) (stating that if potential borrower's credit history shows insufficient income-to-debt ratio lender may require debtor to adjust ratio in number of ways, including finding co-signer for mortgage loan); *see also* Christine Dugas, *Debt Smothers Young Americans*, USA TODAY, Feb. 13, 2001, at 1A ("At a time when the overall U.S. homeownership rate has risen to historic highs, young Americans are less likely than people their age 10 years ago to buy a home. The homeownership rate for heads of households younger than 35 has declined from 41.2% in 1982 to 39.7% in 1999 . . . .").

credit or paying the highest interest rates if credit is granted.[111] Assume Patty Paymore, who graduated from college five years ago, has a credit score of 559 because she missed (paid late) one payment three times while attending college, and because she uses a large portion of her available credit by only making minimum balance payments. A person with a credit score between 500 and 559 (the lowest credit score category) could have obtained on May 18, 2004, a thirty-year mortgage at a 9.29% interest rate on a home purchase of $150,000. Assuming Patty had qualified for that thirty-year mortgage, she would pay a total interest amount of $295,772.

Contrast Patty Paymore with Lisa Payless, who has a near-perfect credit score of 843.[112] Lisa obtained her first credit card in college, and she has always paid her bills on time, including credit card bills, and kept her credit card balances low. A person with a credit score between 720 and 850 (the best credit score category) could have obtained a thirty-year mortgage at a 6.24% interest rate on that same $150,000 loan. Lisa Payless would, therefore, have to pay a total interest amount of $182,066, an astounding $113,706 less than Patty Paymore.

Like the majority of entering collegians, Patty Paymore was once a financially illiterate student, signing up for a credit card to get a free t-shirt. Unfortunately, due to her illiteracy, Patty made mistakes managing her credit card debt. Seduced by a trinket that eventually resulted in a low credit score, Patty will lose substantial discretionary income. As noted above, a low credit score will cost her considerably more than $114,000.[113] If Patty Paymore had learned about the consequences of poor credit card usage and payment practices upon entering college, she may have exercised more restraint when signing up for her first card. While college graduates can repair their poor credit

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111. *See One Late Payment Can Hit You Hard*, FT. WORTH STAR-TELEGRAM, Dec. 16, 2004, at A2 (stating that Experian reports consumers with no missed or late payments in last year have average credit score of 759 while those who had one or more delinquent payments had average score of 598). Credit scoring systems are used to measure an individual's risk of defaulting and are the primary non-judgmental measure that lenders use to issue loans and interest rates on the loans. DEANNE LOONIN & CHI CHI WU, NAT'L CONSUMER L. CTR., CREDIT DISCRIMINATION 100–02 (3d ed. 2002) (explaining credit scoring systems).

112. Sakina P. Spruell, *Perfect Score: Taking the Mystery Out of Building A-1 Credit*, BLACK ENTERPRISE, Nov. 2003, at 134 (discussing how to obtain stellar credit score and providing anecdotal story of Lisa Ndiaye's credit history, upon whom Lisa Payless's history is based).

113. *See supra* notes 110–12 and accompanying text.

histories in order to qualify for better credit terms,[114] it will take significant time, and they may have to settle for unfavorable credit terms if a credit extension is needed or wanted immediately.[115]

In addition to having to pay substantially more to obtain credit, college graduates who enter the real world and realize they do not earn enough to pay their credit card debt, student loans, and living expenses may find that filing for bankruptcy is their only option.[116] According to the General Accounting Office (GAO), college students carry an average of $2,748 in credit card debt.[117] After graduating, students for

114. *See* Jack Sirard, *Keeping a Solid Credit Rating Is Key to Getting Loans*, SACRAMENTO BEE, Oct. 30, 2001, 2001 WL 29431098 (explaining that consumer's ability to get good credit score to obtain loan at lowest possible rate depends on "paying all your bills on time").

115. *See* Joe Catalano, *Getting Over the Credit Hurdle*, NEWSDAY, May 26, 2000, at C11 (quoting housing counselor with Long Island Housing Partnership, who advises that "only way to reestablish credit . . . is by paying bills promptly over one to two years").

116. The increase in credit card debt has contributed to the increased bankruptcy rates, as there is a strong correlation between high levels of outstanding credit and bankruptcy filings. *See Consumer Bankruptcy in the Balance: Providing an Effective Safety Net for Overwhelmed Families—Testimony of the National Consumer Law Center Before the Committee on Banking, Housing, and Urban Affairs Subcommittee on Financial Institutions and Regulatory Relief*, 52 CONSUMER FIN. L. Q. REP. 185, 186 (1998); Lawrence M. Ausubel, *Credit Card Defaults, Credit Card Profits, and Bankruptcy*, 71 AM. BANKR. L.J. 249, 250, 257 (1997) (showing statistical correlations between increase in bankruptcy filings and credit card debt); Jagdeep S. Bhandari & Lawrence A. Weiss, *The Increasing Bankruptcy Filing Rate: An Historical Analysis*, 67 AM. BANKR. L.J. 1, 1 (1993) (describing positive relationship between increase in debt levels and bankruptcy filings); H.R. REP. NO. 107-3, pt. 1, at 478 (2001) ("[T]he overwhelming weight of authority establishes that it is the massive increase in consumer debt, not any change in bankruptcy laws, which has brought about the increases in consumer filings. Indeed, there is an almost perfect correlation between the increasing amount of consumer debt and the number of consumer bankruptcy filings."); *The Increase in Personal Bankruptcy and the Crisis in Consumer Credit: Hearing Before the Subcomm. on Admin. Oversight and the Courts of the S. Comm. on the Judiciary*, 105th Cong. 21 (1997) (prepared statement by Ian Domowitz) ("[C]redit card use is very highly correlated with, if not a causal determinant of, consumer bankruptcy."); *see also* Table 1 (indicating that 48.4% of Ohio State undergraduates surveyed would file bankruptcy if their credit card debt became overwhelming).

Students may end up struggling with debt to such a degree that they cannot get a head start on saving for retirement or a down payment on a home purchase; as such, they are "mortgaging their financial future." Dugas, *supra* note 110, at 2A. The macro-scale effects of this trend can be seen in the reduced net worth of young Americans. According to the Federal Reserve, the net worth of the under-thirty-five-year-old group decreased from a median of $12,700 to $9,000, while every other age group's worth increased in value. *Id.*

117. *See* GAO REPORT, *supra* note 4, at 3; OK STUDY, *supra* note 4, at 13 (Oklahoma college students reported average of $2,607 in debt); USC STUDY, *supra* note 90, at 4 (of 392 students surveyed at University of South Carolina who carried credit card balance, 51% reported less than $500 average balance, 20% reported bal-

the first time will have to budget for repayment of student loans, along with credit card debt. Coupling the average credit card debt with an average student loan debt of $19,400, college graduates who fail to get high-paying jobs may be overwhelmed by their debt loads and living expenses.[118] Bankruptcy is becoming more common for young adults; the number of people under the age of twenty-six who filed for bankruptcy tripled between 1995 and 2000.[119] According to Harvard University's Consumer Bankruptcy Project, approximately 100,000 debtors in their twenties filed for bankruptcy in 2001.[120] Bankruptcy can do more harm than good for young debtors if they have relatively little debt, because it stays on credit records for ten years[121] and results in higher interest rates on mortgages and car loans.[122] Currently, college graduates who are overwhelmed by debt usually can erase credit card debt in bankruptcy, although student loans are generally non-dischargeable.[123] However, under pressure from bank lobbyists,

ance on average of $501-$1000, and 16% reported average balance of $1001–$3000); NELLIE MAE STUDY, *supra* note 80, at 1 (21% of college students carrying credit card balances between $3,000 and $7,000); JULIE CUNNINGHAM, KAN. STATE UNIV., COLLEGE STUDENT CREDIT CARD USAGE AND THE NEED FOR ON-CAMPUS FINANCIAL COUNSELING AND PLANNING SERVICES 5 (n.d.) [hereinafter KSU STUDY] (Kansas State students reported average card balance of $671.86), *at* http://www.kon.org/urc/cunningham.html (last visited Feb. 23, 2005).

118. *Cf.* SANDY BAUM & MARIE O'MALLEY, NELLIE MAE CORP., COLLEGE ON CREDIT: HOW BORROWERS PERCEIVE THEIR EDUCATION DEBT 3 (Feb. 2003) [hereinafter COLLEGE ON CREDIT] (average educational debt for undergraduate years is $18,900).

119. Annie Grow & Jason Gifford, *Students Sink in Credit Debt*, DAILY UNIVERSE (Brigham Young Univ.), Apr. 4, 2002, 2002 WL 16986196.

120. Seth Stern, *New College Grads Face Crash Course in Debt*, CHRISTIAN SCI. MONITOR, May 13, 2002, at 17; *see also* Joshua Wolf Shenk, *In Debt All the Way up to Their Nose Rings*, U.S. NEWS & WORLD REP., June 9, 1997, at 38 ("Of the debtors seeking professional help at the National Consumer Counseling Service, more than half are between 18 and 32.").

121. *See* Fair Credit Reporting Act, 15 U.S.C. § 1681c(a)(1) (2000).

122. Stern, *supra* note 120, at 17.

123. 11 U.S.C. § 523(a)(8) (2000) (student loan debt is non-dischargeable except when enforcing debt "will impose an undue hardship on the debtor and the debtor's dependents"); *see* Richard Fossey, *The Certainty of Hopelessness: Are Courts Too Harsh Toward Bankrupt Student Loan Debtors?*, 26 J. L. & EDUC. 29, 31–36 (1997) (analyzing undue hardship cases and concluding that "many courts have interpreted the Bankruptcy Code's 'undue hardship' provision too harshly and without compassion"). Unfortunately, many students are using student loans to pay off credit card debt, thus transforming it into a non-dischargeable debt. *See* MANNING, CREDIT CARDS ON CAMPUS, *supra* note 32, at 29. Note that student loans carry lower interest rates than credit cards and repayment of student loans can usually be postponed until after graduation. Therefore, conversion of the credit card debt may be rational for those lacking the present ability to pay off the credit card debt and for those having a realistic chance of obtaining a good-paying job after graduation.

Congress will likely pass legislation that will make it harder under bankruptcy law for consumers to erase credit card debt.[124]

In summary, the impact of amassing and poorly managing credit card debt on students affects many aspects of their lives, both in the short and long-run. Students who rashly sign up for credit cards to obtain mere trinkets run the risk of negatively impacting their academic achievement, collegiate experience, emotional well-being, discretionary income, loan opportunities, economic stability, and employment opportunities. Empirical studies focusing on college students and credit card debt illustrate how widespread the problems facing maxed out college students may be. Accordingly, the problems associated with college student credit card debt are experienced by more than just a few careless individuals.

C. Empirical Research on Students' Credit Card Usage and Cognitive Understanding

Empirical research conducted thus far sheds light on the following questions about college students' credit card usage: (1) when do college students get their first credit cards; (2) how many credit cards do students have; (3) why do students sign up for credit cards with on-campus solicitors; (4) what do students buy with their cards; (5) what are students' bill-payment practices for their credit card purchases; (6) what are students' attitudes towards credit cards; and (7) how much debt are students carrying. However, very little is known about college students' knowledge regarding the consequences of credit card use. To bridge this gap, students participating in the OSU Survey were asked to respond to statements regarding the use of credit and the

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124. *See* Marianne Lavelle, *When You're Down and Out*, U.S. NEWS & WORLD REP., Mar. 14, 2005, at 18 (reporting that Senate is expected to pass bankruptcy reform bill, "legislation long sought by banks and credit card companies, and supported by the Bush administration, that would make it harder for consumers to wipe out debts by declaring bankruptcy"); Riva D. Atlas & Eric Dash, *Bracing for a Bankruptcy Rush*, N.Y. TIMES, Mar. 11, 2005, at C1 (reporting that Senate passed bankruptcy legislation by vote of 74 to 25 that would make it hard to erase debts; House is expected to vote in April). Congress should consider the fact that credit card issuers generally make no real assessment of a consumer's ability to repay (due to their reliance on pre-screening lists produced by credit reporting agencies) and unilaterally increase credit limits without assessing a consumer's ability to handle more debt. *See generally* Benjamin Soto, *The Bankruptcy Reform Bill*, NBA NAT'L B. ASS'N MAG., June 2001, at 24 (opponents to then pending bankruptcy reform bill that would make it more difficult for consumers to get rid of credit card debt "criticize the credit card companies for mailing out billions of solicitations and trying to hook college students and low income people who may get deep into debt and have trouble repaying.").

implications of a poor credit history. The results show a disturbingly low level of financial literacy among the students surveyed.

While some students have credit cards prior to arriving on campus, the majority obtain their first card while in college,[125] most have a card by the end of their second year in college,[126] and an alarming number have more than one card.[127] The majority sign up for credit cards with on-campus solicitors simply because they want the free gift. As indicated in the OSU Survey (Table 2 below), freshmen are more likely than upperclassmen to be motivated by the free gift. One study concluded that students apply for credit cards because they are aggressively pursued by credit card companies.[128]

Regardless of their motives for obtaining credit cards, students use them to purchase a wide array of goods and services, although

125. *See* TERI/IHEP STUDY, *supra* note 46, at 10 (reporting that only 25% had acquired their cards before college while 55% of students acquired their credit cards in first year of college); *cf.* COLLEGE ON CREDIT, *supra* note 118, at 8 (finding that only 18% of students surveyed did *not* have card when they left school). For further discussion, see *supra* notes 53–57 and accompanying text.

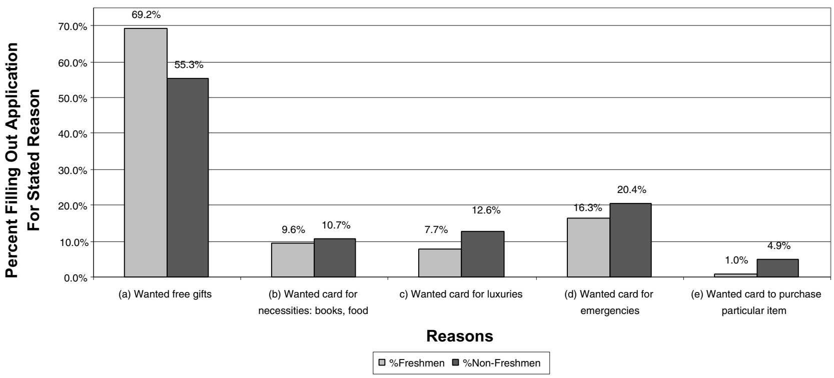
126. *See* OK STUDY, *supra* note 4, at 17. Nellie Mae found that freshmen students have the lowest percentage of credit cards when compared to upper class students, but showed a higher percentage of students with cards overall: 54% of freshmen, 94% of sophomores, 87% of juniors, and 96% of seniors. NELLIE MAE STUDY, *supra* note 80, at 3. An EdFund Study reported that the percentage of students with cards increases for each grade level so that 30% of freshmen have a credit card, almost 40% of sophomores, over 40% of juniors and 60% of seniors have a credit card. LAWRENCE E. GLADIEUX & JOHN B. LEE, EDFUND, CREDIT CARD USE BY UNDERGRADUATES: CALIFORNIA AND THE NATION 12 (2001) (demonstrating that credit card ownership increases by each academic year, but that over half of students obtaining credit cards do so by end of first year of college), http://www.edfund.org/pdfs/i-56.pdf (last visited Feb. 23, 2005).

127. *See* Hayhoe, *supra* note 51, at 649 (finding that approximately 19.5% of student respondents had no cards, 46.5% had one to three cards, and 34% had four or more cards); NELLIE MAE STUDY, *supra* note 80, at 1–2 (reporting that 47% of students have four or more credit cards and finding that, in comparing 2001 study with previous study, "[s]tudents *double* their average credit card debt—and *triple* the number of credit cards in their wallets—from the time they arrive on campus until graduation") (emphasis in original); OK STUDY, *supra* note 4, at 12 (reporting "about 44% owned 1 to 3 major credit cards, and 33% owned 4 or more credit cards").

128. Warwick & Mansfield, *supra* note 41, at 623 ("This study shows that 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."); *see also* OK STUDY, *supra* note 4, at 18 (finding that 32.5% reported "moderate" or "lots" of influence from offers of incentives in obtaining their first card); Lucas, *Ethical Implications*, *supra* note 4, at 428–29 ("The practice of using persuasive strategies and peripheral cues [such as gifts], particularly those purposefully designed to manipulate the consumer, may in some instances 'trick' the unsophisticated consumer into choosing one particular credit card solicitation over another, regardless of the solicitation's relative merit.").

TABLE 2

REASONS STUDENTS FILLED OUT ON-CAMPUS APPLICATION



clothing purchases appear to be the number one use of the cards.[129] Another survey reported that one-third of students use their credit card because they lack the money necessary for their purchases.[130] The lack of money could be due to a number of factors, including lack of earned income[131] and failure to budget for expenditures.[132] Failure to budget, along with students' spending habits, may provide an explana-

129. A survey of credit card use at Kansas State University found that 52% of students surveyed used their cards primarily for convenience, 16% for special occasions, 14% for emergencies only, 9% to make ends meet, and 9% for other uses. KSU STUDY, *supra* note 117, at 5. Many students are also charging their tuition bills, resulting in higher balances. *See* COLLEGE ON CREDIT, *supra* note 118, at 8 (finding that 27% use their credit card to pay for their college education; approximately same percentage use it for graduate studies as well); LSU STUDY, *supra* note 91, at 8 (finding that 68.8% of students surveyed used their credit cards to pay for tuition, books, and supplies); Frederick H. Lowe, *Student Credit Card Debt Rising*, CHI. SUN-TIMES, Mar. 6, 2001, at 10, 2001 WL 7221474 (reporting that students are using credit cards until loan check arrives).

130. 2003 SURVEY OF SPENDING HABITS OF OSU UNDERGRADUATES, *supra* note 80, at 10 (finding that, in 2000, 35.2% responded that main reason for credit card use was lack of money for purchases; in 2003, 26.7% responded this way). This may explain why some encounter financial difficulty. If students do not have the money at the time of the purchase, it is likely that they will not be able to pay the entire bill when it arrives.

131. Studies show many students are unemployed when they sign up for credit cards. *See* Bianco & Bosco, *supra* note 43, at 50 (noting that PIRG study found that only 15% of students surveyed were employed when they applied).

132. *See* Henry, *supra* note 77, at 245 (reporting that majority of students have no budget and of those who do, 38% reported that they did not follow their budget all of time). Students may also carry debt due to an image perception problem.

tion as to why many students experience financial stress[133] and suffer other negative consequences.[134]

Although support exists for the credit card industry's claim that the majority of college students pay their credit card balances in full every month,[135] studies show that a significant number of students carry credit card balances,[136] have two or more credit cards with bal-

133. *See* 2003 SURVEY OF SPENDING HABITS OF OSU UNDERGRADUATES, *supra* note 80, at 6 (reporting that in 2003, 67.3% of students surveyed had current stress over debt and described stress level as "some," "quite a bit" or "great deal"; percentage is up 6.8% from 2002 and 12% from 2000).

134. *Id.* at 7 (reporting that in response to question "Has the amount of money you owe ever caused you to . . .?," 45% of all students surveyed had obtained employment or worked extra hours, and 61% of students who considered themselves in debt had obtained employment or worked extra, 62% had asked their parents for money, and 28% had neglected academic work); *see* Part II.B (discussing numerous short- and long-term negative consequences of credit card indebtedness).

135. *See* John M. Barron & Michael E. Staten, *Usage of Credit Cards Received Through College Student Marketing Programs*, 34 NASFAA J. STUDENT FIN. AID 1, 13 (2004) (discussing results of study conducted by director of Credit Research Center at Georgetown University, analyzing data supplied by five credit card companies and concluding that in comparison to non-student accounts, "student account balances are most likely to be paid in full the next month"). However, Harvard Law Professor Elizabeth Warren calls Staten's Credit Research Center a "friend" of the credit card industry and notes that the industry rewards friendly researchers with access to their proprietary data while denying access to those researchers considered unfriendly to the industry's position. *See* Elizabeth Warren, *The Market for Data: The Changing Role of Social Sciences in Shaping the Law*, 2002 WIS. L. REV. 13, 21–22 (2002) ("The [Credit Research] Center's mission statement touts its independent review of its scholarship, but it makes no mention that the . . . research [supporting bankruptcy reform was] so generously funded by the credit industry, has been published only through credit industry press releases and self-published working papers."); ROBERT D. MANNING & RAY KIRSHAK, CREDIT CARDS ON CAMPUS: ACADEMIC INQUIRY, OBJECTIVE EMPIRICISM, OR ADVOCACY RESEARCH? 1–5 (n.d.) (criticizing credit card research done by Barron and Staten and explaining why it is flawed, including because of failure to ask students about their use of parental help, student loans, and/or family gifts to make credit card payments), http://www.creditcardnation.com/report3/REP03.pdf (last visited Mar. 21, 2005).

136. Norvilitis, *supra* note 85, at 941 (finding in study of 227 Buffalo State University undergraduates that only 32% of students with credit cards reported paying them off every month); NELLIE MAE STUDY, *supra* note 80, at 1 (describing student credit card debt as "alarming" because 21% of college students are carrying credit card balances between $3,000 and $7,000—8% higher than previous year); LSU STUDY, *supra* note 91, at 12 (finding that 51% of students did not pay their credit card balances in full and 23% had more than $1,000 in credit card debt); OK STUDY, *supra* note 4, at 20 (reporting that 23% of students reported either paying only minimum balance or were behind on payments; 37% of students reported paying balances in full); USC STUDY, *supra* note 90, at 5 (finding that 20% of USC students reported paying minimum, 29% paid off everything, and 51% paid something in between two); M. Jill Austin & Melodie Phillips, *Educating Students: An Ethics Responsibility of Credit Card Companies*, 15 J. SERVICES MKTG. 516, 519 (2001) (survey of 225 students from large university in southeastern U.S. found that only 32% of students paid their balances in full each month).

ances,[137] and have difficulty making card payments on time.[138] Other studies show that students' level of enjoyment from credit card usage—as measured by their affective credit attitude score—decreases over time.[139] Their enjoyment may decrease due to their having to

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The KSU Study reported that only 4% of students said they completely paid off their credit card balance, 8% paid only the minimum balance, 4% had "other" payment plans—presumably these students were behind on payments—and 76% said they paid more than the minimum. KSU STUDY, *supra* note 30, at 6–7. The study had a separate category for an 8% who paid a monthly fixed amount greater than the minimum but less than the full balance. *Id.* When students were asked if they had ever made a late payment, 67% reported never doing so, 15% reported one late payment, 8% reported two late payments, and 10% reported three or more late payments. *Id.* The penalties for these students can potentially trigger long-term consequences. The researchers performed a startling theoretical extrapolation of the approximately 10% of students in what they termed "serious debt" to mean "out of the 20,000+ students on a typical land-university campus, around 2000, may have substantial difficulty managing their money."

The TERI/IHEP Study failed to ask questions about student reliance on student loans, parental help, or family gifts to make credit card payments, but, nevertheless, reported that 59% of students with a credit card pay their balances in full on a monthly basis, but 14% maintain balances of $1,000 or more. TERI/IHEP STUDY, *supra* note 46, at 11. Of those who do not pay their balances in full, 5% have balances over $3,000 and 8% refused to answer how high a balance they carried. *Id.* at 14. The Student Monitor study reported similarly that while 58% of students pay their balances in full each month, 16% carry balances over $1,000. GAO REPORT, *supra* note 4, at 16–17. The PIRG Study found 38% of students responsible for their own cards pay off the balance each month, while 36% pay "as much as they can," 16% pay only the minimum, and 9% pay late. PIRG STUDY, *supra* note 5.

137. *See, e.g.*, LSU STUDY, *supra* note 91, at 9 (finding that 32.7% carried balance on two or more cards in stratified sample of 2,400 undergraduate students).

138. *See, e.g.*, *id.* at 10–11 (finding that 20% of students surveyed had been late paying one or more bills in last three months, and 30.4% were considered in "credit crunch" and, therefore, in need of consumer credit counseling).

139. So-hyun Joo et al., *Credit Card Attitudes and Behaviors of College Students*, 37 C. STUDENT J. 405, 415 (2003) (students in more advanced academic years tend to have a more negative attitude toward credit card debt). The affective credit attitude score measures how person feels about using credit. *See* Celia Ray Hayhoe, *Comparison of Affective Credit Attitude Scores and Credit Use of College Students at Two Points in Time*, 94 J. FAM. CONSUMER SCI. 71, 71 (2002) [hereinafter Hayhoe, *Comparison of Affective Credit Attitude Scores*]. The higher the score, the greater the enjoyment a person gets from using credit and the more likely the person is to charge, carry a balance, and have more cards. *Id*. at 73; *see also* Bijou Yang & David Lester, *Predicting the Number of Credit Cards Held by College Students*, 89 PSYCHOL. REP. 667, 668 (2001) (finding that "the number of credit cards held by students was associated with sex, their emotional attitude toward credit cards, and for the [private] university sample, their attitude of retention toward money"). A person with a low affective credit attitude score is likely to feel guilty after making purchases on credit. Hayhoe, *supra* at 73. Therefore, this score is a good indicator of an individual's spending patterns, perceived economic well-being, and acceptable level of debt. *See* E. Davies & S.E.G. Lea, *Student Attitudes to Student Debt*, 16 J. ECON. PSYCHOL. 663, 674–75 (1995). This love of credit does not last forever, as one study shows that after graduating from college, the affective attitude decreases. Hayhoe, *supra* at 75.

make drastic financial decisions to pay off their debt. Dr. Robert Manning, a sociologist and an expert on credit card use in America, conducted a study that found 60% of freshmen and 75% of upperclassmen had maxed out their credit cards at least once, nearly 60% of freshmen and two-thirds of upperclassmen had used one credit card to pay off another, and 73% of freshmen and 67% of upperclassmen had used student loans to pay off credit card balances.[140] Dr. Manning concludes that students have an increased probability of amassing higher and higher levels of consumer debt (student loans and credit card debt) because credit card companies grant financially illiterate students access to credit at an earlier age.[141]

Students who obtain credit cards via on-campus solicitors are more likely to be delinquent with their payments,[142] carry more debt, and have less income than students who obtained them through other means.[143] The financial condition of these students may be explained by one study that found nearly 67% of students surveyed incorrectly

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After graduation, reality sets in as students have to deal with the consequences of over-using credit cards, at which point they no longer like the credit card that got them in that situation. *Id*. at 75.

140. *See The Importance of Financial Literacy Among College Students: Hearing before the S. Comm. on Banking, Housing, and Urban Affairs*, 107th Cong. 14-18 (2002) (statement of Robert D. Manning, Ph.D., Professor Rochester Institute of Technology) (discussing need for financial literacy and criticizing industry-sponsored studies for failing to ask right questions that would more accurately depict student dependency on credit cards); Lyons, *supra* note 34, at 76 (survey found that "financially at-risk students are more likely than others to be financially independent, to receive need-based financial assistance, to hold $1000 or more in other types of debt, and to have acquired their credit card(s) by mail, at a retail store, and/or at a campus table"). *But see* LSU STUDY, *supra* note 91, at 9 (reporting that 12.6% of students reached their credit limit on at least one credit card).

141. *See The Importance of Financial Literacy Among College Students*, *supra* note 140, at 15 (noting that marketing cards to young students will likely lead to them amassing high levels of debt); Haiyang Chen & Ronald P. Volpe, *An Analysis of Personal Financial Literacy Among College Students*, 7 FIN. SERVICES REV. 107, 114–15 (1998) (identifying several subgroups that displayed lower levels of financial literacy and concluding that "graduate students know more than the undergraduate students, and junior and senior students are more knowledgeable than those from the lower ranks").

142. *See* Lyons, *supra* note 34, at 59 (discussing study that found "student accounts were more likely to be delinquent and to result in a charge-off compared to the other accounts[;] [h]owever, the dollar amounts on delinquent accounts and the actual amounts charged-off were substantially lower" than non-student accounts).

143. *See* Norvilitis, *supra* note 85, at 943 (finding that students who applied on campus carry more debt and have less income than students with credit cards from elsewhere); PIRG STUDY, *supra* note 5 (finding students who obtained credit cards via on-campus vendors had more credit cards and carried higher monthly balances than students who did not obtain their cards from on-campus vendors).

believed the university supported on-campus credit card vendors.[144] As set forth in Part II.B. of this article, student perception of university approval of the practices of credit card companies, coupled with student ignorance about the basics of credit card usage,[145] lead to the conclusion that university administrators owe a duty to students to both protect them from overreaching by credit card companies and to educate them so that they can make better financial decisions.[146]

While in high school, college-bound students have low levels of financial literacy and understanding about various aspects of credit card use. The Jump$tart Coalition for Personal Financial Literacy regularly conducts a national survey to assess the financial literacy of high school seniors. This survey likely provides the most accurate picture of the financial literacy of freshmen entering college. The 2004 literacy survey[147] consisted of a thirty-one-question test that asked students basic financial questions about taxes, credit, investing, saving, and retirement planning.[148] After watching overall scores drop over the last three surveys, researchers are encouraged to see that the 2004 survey showed a slight increase: students answered 52.3% of the questions correctly.[149] Nevertheless, college-bound students answered just under half of the questions incorrectly.[150] When asked to choose who among four credit card users is likely to pay the greatest amount in finance charges per year, 65.8% of the students correctly chose the credit card user who only pays the minimum monthly bal-

144. *See* Norvilitis, *supra* note 85, at 941 (finding that 146 of 220 responding students incorrectly believed school supported on-campus credit card vendors, and 24.7% also incorrectly believed that school screened credit card vendors).

145. *See, e.g.*, Joo, *supra* note 139, at 412 (half of all college students are unaware of typical credit card fees, such as annual percentage rates and late fees); Henry, *supra* note 77, at 245–46 (2001) (college students are constantly accumulating debt, which makes them vulnerable to financial crisis because they do not possess knowledge needed to manage their money and, therefore, do not appreciate negative ramifications of current debt on future credit ratings).

146. *See infra* notes 195–241 and accompanying text (discussing what duty is owed by universities to their students).

147. This survey was given to 4,074 high school seniors in 215 schools and thirty-three states. Press Release, Jump$tart Coalition for Personal Financial Literacy, Financial Literacy Improves Among Nation's High School Students: Jump$tart Questionnaire for Seniors Reveals Moderate Gains 1, 2 (Apr. 1, 2004) [hereinafter Jump$tart Questionnaire Summary].

148. JUMP$TART COALITION, PERSONAL FINANCIAL SURVEY (2004), http://www.jumpstartcoalition.com/upload/2004%20Survey%20with%20answers.pdf (last visited Feb. 23, 2005). Students knew more about income (62.9% correct) and spending (55.4% correct) than about money management (45.4% correct) and saving (41.0%). Jump$tart Questionnaire Summary, *supra* note 147, at 2.

149. Jump$tart Questionnaire Summary, *supra* note 147, at 1.

150. *Id.* at 2.

ance, 11.8% incorrectly chose the credit card user who pays off his credit card bill in full every month shortly after receiving it, 11.2% incorrectly chose the user who occasionally pays the minimum but usually pays the bill in full, and 11.2% incorrectly chose the user who pays at least the minimum amount each month and more when he has the money.[151] Overall, 65.5% of the students failed the financial literacy exam, and only 6.1% received a grade of C or better.[152]

A nationwide study like Jump$tart for college students does not exist, although a few studies conclude that college students have low levels of personal finance literacy.[153] To help fill this gap and to gauge students' comprehension of the implications of having credit card debt, a survey was conducted in conjunction with this article among undergraduate students at The Ohio State University (OSU Survey). To explore their literacy about credit card debt and to determine whether upperclassmen have a greater understanding of credit card debt than freshmen, the OSU Survey asked students to answer a survey containing basic questions about the consequences of a tarnished credit card payment history.[154] The data show a general lack of financial understanding, with upperclassmen only slightly more knowledgeable than freshmen in most instances. This study consisted of 401 participating students and was given during five different classes. Each of the classes surveyed were introductory courses, likely to have many freshmen. This allowed for meaningful analysis of freshmen students' knowledge and a basic comparison of freshmen to upperclassmen. One possible bias that should be noted is that in large, introductory classes, a number of students tend to skip class. Therefore, the students who took the survey were those who chose to attend class that day and therefore it may be implied that they took their

151. JUMP$TART COALITION, *supra* note 148.

152. Jump$tart Questionnaire Summary, *supra* note 147, at 1. Dr. Lewis Mandell, Dean of the University at Buffalo School of Management, argues that because schools failed to provide students with an understanding of personal finance "we can expect many of them to make financial missteps, misjudgments, and errors as adults." Lewis Mandell, *Dumb and Getting Dumber*, CREDIT UNION MAG., Jan. 2001, at 6A, 7A (discussing Jump$tart Coalition's 2000 financial literacy survey and concluding that results showed that "common parental methods used for instructing children in personal finance—such as allowances, discussing finances with children, and letting teens handle and manage money—are mostly ineffective").

153. *See, e.g.*, Chen & Volpe, *supra* note 141, at 122 (finding in survey of 924 students from numerous colleges and universities that "overall mean of correct answers for the survey is . . . 53%" which indicates that student answered only about half correctly).

154. *See supra* note 83 and accompanying text (describing study methodology).

studies seriously and had a better understanding than the entire student population actually may have had.[155]

The questions regarding the students' financial knowledge ranged from their responsibility for credit card purchases to information regarding credit reports.[156] All of the questions were applicable to college students; that is, the questions were about the financial situation of a typical college student. For example, students should know that they are solely responsible for paying their own credit card bill.[157] However, as Table 3 shows, less than two-thirds of the freshmen answered this question completely correctly.[158] Many freshmen incorrectly answered that their parents had some responsibility for the bill as long as the student was under twenty-one years of age. Results for upperclassmen on this question were similarly disappointing, as less than two-thirds selected the completely correct answer.[159] Thus, the results of this question indicate that many students do not understand that the responsibility for their credit cards is on the student, not the parent.

The OSU Survey also asked the students about the consequences of missing and making late credit card payments. As shown in Table 3, the OSU Survey indicates that less than half (40.47%) of the freshmen at OSU know that missed payments have a negative effect on

155. This observation about the sample should only reinforce the conclusion that students lack basic financial knowledge. The students attending class take their classes more seriously than those absent. Therefore, those surveyed are probably more responsible and less likely to be working hours that would interfere with course work. In other words, it may be that the OSU Survey overstates student financial knowledge and may understate the number of cards per student.

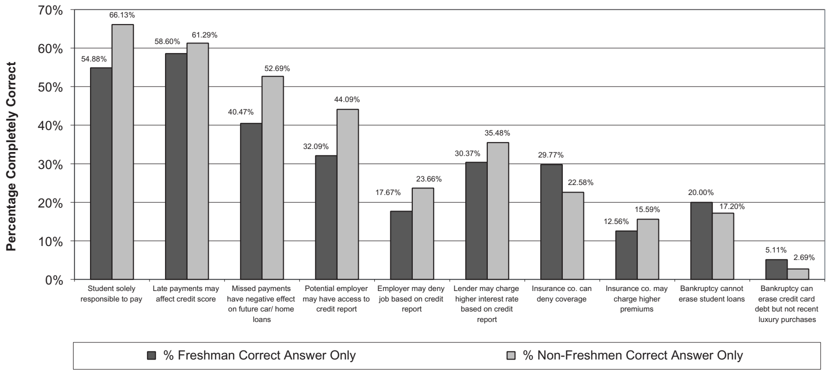
156. The questions were set up in clusters of four True/False options so that students would have to select true for the right answer and false for all of the wrong answers. The data were analyzed according to the percentage that selected True for the right answer and then False for all of the incorrect responses. Therefore, if the student selected the right answer, but also selected one of the incorrect responses, that student did not get the answer completely correct. Using this method, students who guessed the correct answer without understanding the concept are not counted as knowing the answer to the question asked.

157. Question one in the OSU Survey asked students to identify whether their parents had any responsibility for credit cards issued in the student's name.

158. The observed percentage of freshmen answering this question completely correct was 54.88%, which indicates that the true proportion of freshmen that know they are solely responsible to pay their credit card bill is 48.23% to 61.53% at a 95% level of confidence. This confidence interval used a critical z value of 1.96.

159. While a higher percentage of upperclassmen got this basic question right, only 66.13% demonstrated that they know their parents were not responsible for credit cards issued in students' names when the student is under twenty-one years of age. Using a similar confidence interval, we can conclude with a 95% level of confidence that 59.8%–72.46% of upperclassmen know who is responsible for paying credit card bills.

TABLE 3
COMPARISON OF FRESHMEN TO UPPERCLASSMEN ANSWERING COMPLETELY CORRECT



their credit history by making it more difficult to get a loan in the future.[160] By contrast, 87% of 1,578 adult participants in a recent survey conducted by the GAO reported that they understand that missed payments can have a negative effect.[161] Furthermore, approximately one-third of the freshmen in the OSU Survey know that they can be

160. Of the freshmen surveyed, 40.47% demonstrated that they know of this future consequence. *See* Table 3. This indicates at a 95% level of confidence that of the freshmen at OSU, 33.91% to 48.03% know of this credit card trap. Upperclassmen did moderately better; 52.69% of the surveyed students selected the completely correct answer. This indicates a range for upperclassmen of 46.02% to 59.36% at a 95% level of confidence that know of this future consequence. *Id.* Student ignorance about this consequence of late or missed payment is not shocking when one understands that many of the general population of consumers lack a basic understanding about credit scores and how they are used. *See* Press Release, Consumer Federation of America & Providian Financial, Most Consumers Do Not Understand Credit Scores According to a New Comprehensive Survey (Sept. 21, 2004) [hereinafter Most Consumers Do Not Understand Credit Scores] (reporting that "[o]nly about one-third (34%) correctly understand that credit scores indicate the risk of not repaying a loan," and "only 13% correctly understand that scores above the low 700s usually qualify them for the lowest [interest] rates"), http://www.consumerfed.org/092104creditscores.pdf (last visited Feb. 23, 2005). Many consumers lack a clear understanding of how to improve their credit score. *Id.* (reporting that 40% of those surveyed "don't understand that paying off a large balance on a credit card will improve one's credit score"); *see also* Paul Richard, *Universal Default Fleeces Americans*, FIN. SERV. ADVISOR, Sept.–Oct. 2003, at 28 (advising that to improve credit history, consumers should pay all monthly bills at least one week ahead of their due date).

161. U.S. GOV'T ACCOUNTABILITY OFFICE, CREDIT REPORTING LITERACY: CONSUMERS UNDERSTOOD THE BASICS BUT COULD BENEFIT FROM TARGETED EDUCATIONAL EFFORTS (GAO-05-223) 3, 27 (Mar. 2005) [hereinafter GAO, CREDIT REPORTING LITERACY], http://www.gao.gov/new.items/d05223.pdf (last visited Mar. 21, 2005). The study also found that consumers in the youngest age (18 to 24) and oldest age (65 and older) brackets scored the worst on credit literacy questions. *Id.* at 39.

charged a higher interest rate on future loans due to a bad credit history,[162] while 81% of the consumers in the GAO Survey know that a person's credit history can impact the interest rate charged on a loan.[163] Less than one-third of the freshmen in the OSU Survey know that they could be denied a job based on their credit report.[164] A similar percentage of freshmen know they could be denied insurance coverage based on too many creditor inquiries about their credit reports.[165] Finally, very few freshmen know that an insurance company can increase a person's premiums based solely on their credit report.[166] These findings reveal that the majority of the freshmen at

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162. Of the freshmen surveyed, 30.37% demonstrated that they know they could be assessed a higher interest rate on future loans because their credit report indicated that they failed to make seven credit card payments. *See* Table 3. This indicates at a 95% level of confidence that of the freshmen at OSU, only 24.22% to 36.52% understand this future consequence of missed payments. Upperclassmen appeared moderately more knowledgeable. Of the upperclassmen surveyed, 35.48% selected the completely correct answer. *See* Table 3. This indicates a range for upperclassmen at OSU of 29.08% to 41.88% at a 95% level of confidence.

163. GAO, CREDIT REPORTING LITERACY, *supra* note 161, at 63.

164. Of the freshmen surveyed, 17.67% demonstrated that they know they could be denied a job based on information on their credit report. *See* Table 3. This indicates at a 95% level of confidence that of the freshmen at OSU, only 12.57% to 22.77% know of this future consequence. More upperclassmen appeared to know of this future consequence, possibly from experience. Of the upperclassmen surveyed, 23.66% selected the completely correct answer. *See* Table 3. This indicates a range for upperclassmen at OSU of 16.99% to 28.17% at a 95% level of confidence. Freshmen in the OSU Survey appeared to be equally as ignorant as consumers in the GAO Credit Reporting Literacy Survey with regard to the ability of employers to deny employment based on a person's credit report. *See* GAO CREDIT REPORTING LITERACY, *supra* note 161, at 63 (finding that 33% of consumers knew that credit report could affect employer's decision to hire person).

165. Of the freshmen surveyed, 29.77% demonstrated that they know they can be denied insurance coverage because of too many inquiries reflected in their credit report. *See* Table 3. This indicates at a 95% level of confidence that of the freshmen at OSU, only 23.66% to 35.88% understand this future consequence of missed payments. Upperclassmen appeared less knowledgeable on this question. Of the upperclassmen surveyed, 22.58% selected the completely correct answer. *See* Table 3. This indicates a range for upperclassmen at OSU of 16.99% to 28.17% at a 95% level of confidence.

166. Of the freshmen surveyed, 12.56% demonstrated that they know the insurance company can increase their premiums based solely on their credit report. *See* Table 3. This indicates at a 95% level of confidence that of the freshmen at OSU, only 8.13% to 16.99% understand this consequence of a bad credit report. Upperclassmen did not do much better. Of the upperclassmen surveyed, 15.59% selected the completely correct response. This indicates a range for upperclassmen at OSU of 10.74% to 20.44% at a 95% level of confidence. *Cf.* Most Consumers Do Not Understand Credit Scores, *supra* note 160 ("Most consumers surveyed [out of 1,027 adult Americans] correctly understand that lenders use credit scores, but only a minority know that electric utilities (30%), home insurers (47%), and landlords (48%) often use credit scores to decide whether to sell a service and at what price.").

OSU do not understand their financial responsibilities for credit card debt or the consequences of tarnished credit card practices, and their understanding is substantially deficient in comparison to the general population of adult consumers.

In summary, many students have more than one credit card, have to maintain balances on them, have maxed out at least one credit card, and have histories of occasional missed or late payments. Consequently, these students have greatly increased the likelihood that they will be charged high interest rates and be denied loans, insurance coverage, and job opportunities. Soliciting with free trinkets, credit card companies have lured financially illiterate college students down a dark pathway to tarnished credit histories.

II.
University Action or Inaction

Recognizing the proliferation of credit card solicitations on university campuses and the financial illiteracy among students, universities today are faced with a decision—to act or not to act. According to Dr. Robert Manning, by 2001, over 1,500 of the nation's four-year colleges had banned or restricted on-campus credit-card solicitations.[167] Small private schools have done more to restrict on-campus solicitations than larger universities.[168] But the trend among large universities is to enter into exclusivity contracts that permit only one credit card company to solicit on campus and require the company to pay to the universities multi-million-dollar royalties, which sometimes rise as the cardholders' credit purchases increase.[169] This section presents the various solicitation policies adopted by colleges in response to the growing business of on-campus credit card solicitations and discusses what duty, if any, universities have to protect their students from the dangers of credit card overuse. It concludes that universities have a duty to at least limit on-campus practices and educate students.

167. Steven Dinnen, *Colleges Confront On-Campus Creditors*, Christian Sci. Monitor, Jan. 29, 2001, at 13.

168. *See* Manning, Credit Card Nation, *supra* note 28, at 162.

169. *See id.* Some universities provide some form of debt education to students. *See* Leigh Woosley, *College Credit: Higher Ed Graduates Leave with Diplomas, Heavy Debt*, Tulsa World, Apr. 14, 2002, 2002 WL 7115582.

A. University Policies Regarding On-Campus Credit Card Solicitations

No consensus exists among universities on what policy to adopt regarding credit card solicitors on campus. The policies differ based on administrative assessments about whether credit card solicitations are problematic for students. Some universities have decided not to take any action at all regarding credit cards on their campuses. For example, Southern Methodist University in Texas has no plans to limit on-campus solicitations because it does not view credit card debt as a significant problem among its students.[170] At the opposite extreme, some schools completely ban credit card solicitors from campus.[171] Even where banned, however, some credit card solicitors approach students on campus.[172] While some view banning solicitors as pater-

170. Wertheimer, *supra* note 29 (quoting Dr. James Caswell, Southern Methodist University's dean of students). The University of Texas does not have any restrictions either; several types of cards are marketed to students through solicitation tables including one associated with the Texas Ex-Students' Association. *See* Aaron Schoenewolf, *Experts Look for Solutions to Student Credit-Card Debt Problem*, DAILY TEXAN (Univ. Tex.), Feb. 23, 2001, 2001 WL 12499316. Credit card issuers like event marketing (such as setting up tables) because they can "reach people who may be predisposed to saying 'yes' or who fall between the cracks of preapproved lists for mail solicitations." Kate Fitzgerald, *Eventful Days for Event Marketing*, CREDIT CARD MGMT., Nov. 2001, at 36. While most college students might not get their credit cards from tables, it remains a vital way to communicate directly with students. *See Card Marketers Increasingly Face Expulsion from Colleges*, *supra* note 59, at 4 (predicting dramatic increase in fees to set up marketing tables because college administrators nationwide realize that card issuers will pay more to have access to students).

171. For example, Northcentral Technical College in Wisconsin and the University of Wisconsin at Marathon County (UWMC) do not allow credit card companies to solicit on campus. *See* Berger, *supra* note 101. The director of university relations at UWMC explained that the faculty and staff felt that allowing solicitations using trinkets would be an inappropriate carrot for students on financial aid to get further into debt. *Id.* Due to the predatory methods of credit card marketers, the University of South Dakota has also banned on-campus solicitation. Young, *supra* note 3. The University of Texas at Dallas (UTD) has banned solicitors from university space; however, the bookstore is privately owned so solicitors are permitted there. *See* Wertheimer, *supra* note 29; *see also* Mary Beth Pinto et. al., *Credit Card Solicitation Policies in Higher Education: Does "Protecting" Our Students Make a Difference?*, 42 J. C. STUDENT DEV. 169, 170 (2001) [hereinafter Pinto, *Credit Card Solicitation Policies*] (finding that students on campus which had *banned* on-campus solicitation actually carried higher balances (average balance $1079) than students at universities that permitted on-campus solicitation (average balance $792)).

172. *See, e.g.*, Wertheimer, *supra* note 29 (quoting Dr. Darrelene Rachavong, dean of students at UTD, who claims that she and her staff "often chase away vendors who approach students on campus").

nalistic,[173] research shows that the majority of students do not want credit card vendors on campus.[174]

Instead of banning or ignoring credit card vendors, many universities work with the credit card companies by allowing them onto campus when they comply with an established school policy. Some require an affiliation with a student group to solicit on campus, while others require registration and payment of fees.[175] Requiring registration is one way that college administrations can regulate the activities of the credit card companies on campus. Because some registration requirements are more restrictive than others, students may not obtain any real relief from aggressive on-campus credit card solicitation practices. For example, as long as the credit card companies receive permission, Maryland's Montgomery College allows the companies[176] to market at tables on campus during lunch hours and even to recruit students to market their credit cards to other students.[177] By contrast, at Millersville University in Pennsylvania, credit card vendors must

173. *See infra* notes 234–41 and accompanying text (stating that banning solicitors is unacceptable return to era of *in loco parentis* where universities stood in place of parents and explaining why banning on-campus solicitors is not best way to prepare students to handle credit cards).

174. *See, e.g.*, LSU STUDY, *supra* note 91, at 11 (reporting that 62% of students surveyed "stated that credit card vendors should not be allowed on campus").

175. *See, e.g.*, Rebeccah Cantley-Falk, *Today's Spotlight: Overspending*, HERALD-DISPATCH (Huntington, W.V.), Oct. 8, 2002, at 1, 2002 WL 24810900 (stating that Board of Governors at Marshall University in Huntington implemented policy requiring credit card vendors to register prior to marketing on campus); Mick Hinton, *College Credit: Regulations Urged to Protect Novice Borrowers From Heavy Debt*, DAILY OKLAHOMAN, Apr. 10, 2004, at 6A (stating that credit card vendors at Oklahoma State University are allowed to solicit student union provided they pay annual fee of about $10,000). Some schools attempt to restrict solicitations by requiring credit card vendors to work via sponsors. *See, e.g.*, Matt Volke, *The College Credit Trap: Students Have Easy Access to Credit Cards, But Some Can't Handle the Subject Matter*, BUFFALO NEWS (N.Y.), Jun. 11, 2002, at B4, 2002 WL 7431407 (stating that Buffalo State College allows solicitations on campus during first two weeks of each semester and after that period, only credit card vendors that sponsor school organizations are allowed to solicit on Mondays). Prior to the execution of an exclusivity contract between MBNA and Ohio State's alumni association, a task force recommended "that neither student organizations nor any other entity be permitted to sponsor for payment the on-campus credit card sales efforts by the approved company [i.e., MBNA]." CREDIT CARD SOLICITATION TASK FORCE, *supra* note 7, at 8.

176. Katie Dunn, *Collegiates Face Credit Card Crush*, WASH. TIMES (D.C.), Sept. 3, 2001, at D9 (according to Montgomery College spokesman Steve Simon, most requests come from representatives of Visa and MasterCard).

177. *Id.* Franklin & Marshall College in Pennsylvania, on the other hand, requires any outside vendor to have permission before coming onto campus by making reservations to set up a table at a specific location each time the vendor wants to solicit on campus. Boyd, *supra* note 25 (according to Cindy Galgon from school's Office of Student Activities).

register, pay a fee, and comply with specific policies, such as handing out literature on debt management.[178] Furthermore, a solicitor may only be on campus for three days in a semester, must refrain from using giveaways as enticements, and must clearly display the full terms of the credit card.[179]

Rather than restricting on-campus solicitation practices, some universities, such as Ohio State University, have entered into lucrative exclusivity contracts. These contracts essentially create a partnership between the university and one credit card company. The revenue gained from the contracts is arguably the true motive for entering into exclusivity contracts, not a paternalistic desire to protect students from numerous on-campus solicitors.[180] The credit card company's royalty payments to the schools typically include a percentage of the interest earned on their students' accounts.[181] As researchers of college student debt have explained, "[b]ecause interest accrues only when a credit card bill is not paid in full at the end of the month, colleges and

178. Boyd, *supra* note 25 (according to Dwight Horsey, interim assistant vice president for student affairs); *see also* MD Study, *supra* note 72, at 10 (finding that few Maryland schools require credit card companies to provide educational materials with their card applications; Towson University is an exception).

179. Boyd, *supra* note 25. At Northern Kentucky University, credit card companies must also be sponsored by a student organization in order to come on the campus. Craig Garretson, *Easy Credit: Hard Lesson for Collegians*, CINCINNATI POST, Dec. 21, 2001, at 1A.

180. According to Dr. Robert Manning, the University of Tennessee has a seven-year, $16.5 million licensing deal with a credit card company. MANNING, CREDIT CARD NATION, *supra* note 28, at 162. Bank One was the exclusive on-campus credit card solicitor under a five-year contract with University of Louisville worth $1.9 million. *Bank One Renounces Offensive Promotion*, *supra* note 62 (stating that contract expired in 2003). Card marketers are increasingly trying to enter into exclusivity contracts with universities. *See Marketing to Students, Alumni Still Profitable*, CARD NEWS, Aug. 4, 1997, 1997 WL 8787818. According to Jim Boon, executive director of the Texas Exes, the University of Texas alumni group earns about $1 million a year, and its royalties may increase depending on the number of credit card charges. Wertheimer, *supra* note 29. At the University of North Texas, the alumni association has an eight-year, $1 million contract with MBNA America Bank for its credit card, and the North Texas Exes sponsors a credit card table. *Id.* Note that reports of exclusivity contracts paying as little as $1 million do not present the whole picture. While these contracts require the credit card company to pay a flat fee, they usually require the credit card company to pay additional royalties based on factors, including the number of new accounts created and/or the amount purchases made on the credit cards. *See, e.g.*, Borja, *supra* note 100 (stating that University of Texas will receive "$1 for each new account, $3 on the one-year anniversary of existing accounts, and about one-half of 1% of retail sales charged to the account").

181. *See* Munro & Hirt, *supra* note 40, at 51; *see also* Miriam Kreinin Souccar, *Card Marketers Initiating a Soft Sell on Campus*, AM. BANKER, Sept. 3, 1999, at 1 ("Universities involved in [these types of] affinity programs with MBNA or Bank One Corp.'s First USA division typically receive 0.5% of all charges made on the cards.").

universities actually profit from the debt of their students and alumni."[182] In return for the millions paid under the exclusivity contracts, universities have obligations that many find unethical and an invasion of privacy. For example, in exchange for an undisclosed royalty,[183] Ohio State and its alumni association must provide MBNA with a massive "mailing list" and must grant MBNA exclusive, on-campus marketing opportunities and exclusive use of Ohio State's logo on its credit cards. The mailing list contains the names, postal addresses, telephone numbers, and e-mail addresses of Ohio State's students, staff, faculty, alumni, friends, fans, and ticket holders.[184]

Exclusivity contracts like these are technically between the university's alumni association and the credit card company.[185] This means that the alumni association—a private entity not subject to public disclosure information laws—may keep secret the profit earned under the exclusivity contract and what percentage of that profit is indirectly given to the university.[186] The arrangement enables the university to claim that it is not selling the personal information of students to the credit card company.[187] Many find that these contracts

182. *See* Munro & Hirt, *supra* note 40, at 51.

183. *See* McCoy & Thomas, *supra* note 30 (stating that OSU will earn $1.3 million per year under contract with MBNA). When the author obtained a copy of the contract between MBNA and OSU's Alumni Association, the paragraphs describing the royalty calculation were redacted. THE OHIO STATE UNIVERSITY ALUMNI ASSOCIATION, INC., AFFINITY AGREEMENT 6–8 [hereinafter OSU ALUMNI ASSOCIATION AFFINITY AGREEMENT] (on file with the New York University Journal of Legislation and Public Policy). Based on others' research on MBNA contracts, it is possible that the royalties OSU receives are at least partially derived from the interest earned on the accounts, as explained above. *See* Munro & Hirt, *supra* note 40, at 51.

184. *See* OSU ALUMNI ASSOCIATION AFFINITY AGREEMENT, *supra* note 183, at 3. Under the initial terms of the contract, OSU and the Alumni Association must provide MBNA with a mailing list of 55,000 students, 17,000 faculty members, 21,000 staff members, and 327,400 alumni. *Id.*; *see also* McCoy & Thomas, *supra* note 30 ("Ohio State University and the OSU Alumni Association are supplying the world's largest independent credit-card company with information on contacting more than 400,000 students, employees and alumni."); MD STUDY, *supra* note 71, at 8 (four of twelve Maryland schools surveyed offered Alumni Affinity Cards).

185. *See, e.g.*, OSU ALUMNI ASSOCIATION AFFINITY AGREEMENT, *supra* note 183, at 1.

186. The author's copy of the contract is redacted in part and thus prevents calculation of how much money MBNA is required to pay to the OSU Alumni Association. *Id*. at 6–8.

187. The contract provides that the Alumni Association "shall provide MBNA America with the Mailing List free of any charge[.]" *Id*. at 3. However, it makes clear that the "Mailing Lists are and shall remain the sole property of OSUAA and the University . . . ." *Id*. at 5. Other universities also sell mailing lists. *See* Natalie Storey, *U. Montana Theatre Group Protests Selling of Student Info*, MONTANA KAIMIN, (Univ. Mont.), Apr. 2, 2003, 2003 WL 16413043 (reporting that Montana PIRG and University of Montana students are protesting "sale" of student lists to

create an unethical conflict of interest—universities are earning millions by selling out their students to credit card companies who will profit from the ignorance of naive students.[188]

In response to the negative media reports, universities have proclaimed that exclusivity contracts inure to the benefit of all involved. Ohio State and others argue that entering into exclusivity contracts enables them to better monitor solicitation practices and thereby protect students from excessive on-campus solicitations.[189] Universities also maintain that entering into exclusivity contracts is the best policy because the school can negotiate contract terms that generate revenue

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MBNA because under state law, agencies cannot distribute or sell such lists without consent of parties on list; Alumni Association claims they have not sold lists and that MBNA does not have access to student information, but merely puts addresses on envelopes); Valerie N. Donnals, *Southern Illinois U. Student Government May Prohibit Card Solicitation*, DAILY EGYPTIAN, (S. Ill. Univ.), Mar. 18, 2003, 2003 WL 16410274 (reporting that Southern Illinois University undergraduate student government condemns solicitation on college campuses, and notes that school's alumni association "has contracted out [student] information in the past"); MD STUDY, *supra* note 71, at 8 (finding that three of twelve Maryland schools surveyed sold student lists).

Some universities are under the mistaken impression they must provide student lists upon request. *See, e.g.*, *id.* at 16, 18 n.55 ("Some Maryland schools operate under the mistaken belief that they must sell their student lists upon request [due to Family Educational Rights and Privacy Act]."). In fact, student lists can be obtained from outside sources. Credit card companies also gather names from professional corporations that work with colleges and high schools in the recruiting process. *See* Warwick & Mansfield, *supra* note 41, at 618. From this, students' names and personal info are compiled and credit card applications can be issued. Two companies, TeleService and American Student List Company, Inc., are jointly estimated as having ten million names and being responsible for half a million credit applications yearly. *Id.*

188. *See, e.g.*, Tom Humphrey, *Campus Credit-Card Bill Gets OK*, KNOXVILLE NEWS-SENTINEL, May 25, 1999, at A6 (reporting that Tennessee House of Representatives Speaker Pro Tempore Lois DeBerry, D-Memphis, questioned University of Tennessee's use of $2.3 million it receives annually from its exclusivity contract with First USA Bank and contended that "universities are wrongfully profiting from companies that entice students into debts they cannot afford"); Hinton, *supra* note 175 (stating that University of Oklahoma received $13 million lump sum payment when it signed in 1997 ten-year exclusivity contract with First USA Bank and discussing efforts by representatives of several student organizations to persuade state regents for Oklahoma universities to enact regulations requiring banks and credit card companies operating in Oklahoma to lower credit limits for students).

189. *See* McCoy & Thomas, *supra* note 30. For instance, at Texas A&M University, the University's director of contract administration claims that having an exclusive agreement with Wells Fargo eliminates some of the pressure on students because only one credit card company is allowed to solicit on campus. *See* Wertheimer, *supra* note 29. Similarly, Ohio State claims that it provides a service to students by allowing MBNA to be the only credit card company to have on-campus access to the students. According to Archie Griffin, president of Ohio State's Alumni Association, the exclusivity contract "is valuable" because it limits access to students. McCoy & Thomas, *supra* note 30.

to fund educational programs and to offer other benefits to students.[190] While it may be true that they use the royalties to fund programs beneficial to students, universities do not use the funds to provide mandatory financial education to all students.[191] Moreover, because universities tend to be physically located in highly commercialized areas, universities bound by exclusivity contracts cannot constrain the solicitation practices of other credit card companies.[192] If universities are serious about protecting students, they should not only limit on-campus marketing but also create programs to educate students about how to take on and manage credit card debt responsibly.[193]

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190. *See* McCoy & Thomas, *supra* note 30 (stating that "[o]verall, 40 percent of the total payment is channeled to various student-education programs, while 60 percent goes to the OSU Athletics Department for student grants"). Texas A&M's associate vice president of finance contends that Wells Fargo also offers a combination debit/credit card and provides debt education and financial counseling as part of the contract. *See* Wertheimer, *supra* note 29. The Utah State University Alumni Association sponsors a credit card issued by First USA Bank in exchange for which Alumni Relations receives a bonus that is placed in a university scholarship fund and used for other Alumni Relations activities. Robbins, *supra* note 78. An attorney for Utah State University asserts that the credit card deal is good for everyone because he reasons that most students will obtain credit cards—regardless of the university's policy—and that those who obtain First USA's credit card will enable the university to benefit the student body at large. *Id.*

191. Under the MBNA contract, OSU's athletic department receives 60% of the annual fee owed to the University, but only 9% of total fee is expended for credit education and counseling. McCoy & Thomas, *supra* note 30.

192. Given the layout of many college campuses and their surroundings, universities bound by exclusivity contracts are not really protecting students by limiting on-campus marketing to just one credit card company. For example, anyone who visits OSU during the first few weeks of the fall quarter can readily see numerous credit card vendors line the east side of High Street for several blocks to market their credit cards to students leaving the union or any other university-owned building on the west side of High Street. These vendors pay the owners of privately-owned businesses to market in front of their respective premises and to put their credit applications into the businesses' shopping bags. Because the majority of food, clothing, and entertainment establishments are on the east side of High Street, OSU students are drawn there and therefore are not protected from problems associated with overly aggressive solicitation practices.

193. However, it is understandable why universities are entering into these contracts, given the budget cuts most state universities have faced in the last few years. *See* Sara Hebel et al., *States Face Year of Famine After a Decade of Plenty*, CHRON. HIGHER EDUC., Jan. 11, 2002, at A20–A28 (reporting that budget cuts have impacted most states and that budgets for higher education across country have been cut anywhere from 1% to 10%); Catherine E. Shoichet, *With Dollars Tight, States Struggle to Find Money for Merit Scholarships*, CHRON. HIGHER EDUC., Aug. 2, 2002, at A23 (noting that merit scholarship programs are also feeling budget crunch); *see also* OK STUDY, *supra* note 4, at 6 (recommending that colleges require credit card companies to subsidize educational programs on consequences of excessive credit card indebtedness).

B. The Proper Role for University Officials

As illustrated above, universities have responded to on-campus credit card solicitations in four ways: (1) ban them completely; (2) do nothing about them; (3) impose geographical and time limitations; or (4) enter into lucrative exclusivity contracts with a single credit card company.[194] This article posits that instead, the proper role of universities should be to provide mandatory personal finance courses and impose limits to on-campus solicitations.

The legal framework for analyzing the proper role of universities fits within the larger context of tort law in higher education cases. Since the 1960s, the prevailing theory regarding the university's relationship, and therefore its duty, to its students has changed dramatically.[195] This relationship has evolved from one in which the university stood *in loco parentis* to its students to one in which students were viewed as adults and the school as merely an educator or bystander; it is currently undergoing another transformation to one in which the school is viewed as a "facilitator," guiding students between adolescence and adulthood.[196] Because of the continuing evolution of higher education tort law, the proper role of the university and its influence on students' lives is unclear as a matter of legal precedent. Nevertheless, the response among universities toward credit card solicitations on campus indicates how each university perceives its relationship to students and the duty arising out of that relationship.

In the first era of higher-education law—the *in loco parentis* era—courts viewed the university as stepping into the role of parent or guardian of the student. Universities were not merely educators; they were meant to guide all aspects of the student's life so that he or she made appropriate choices.[197] Courts expected universities to act in a

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194. *See supra* Part II.A.

195. *See generally* ROBERT D. BICKEL & PETER F. LAKE, THE RIGHTS AND RESPONSIBILITIES OF THE MODERN UNIVERSITY: WHO ASSUMES THE RISKS OF COLLEGE LIFE? (1999) [hereinafter BICKEL & LAKE, RIGHTS AND RESPONSIBILITIES]; Peter F. Lake, *The Rise of Duty and the Fall of* In Loco Parentis *and Other Protective Tort Doctrines in Higher Education Law*, 64 MO. L. REV. 1 (1999) [hereinafter Lake, *Rise of Duty*]; Robert D. Bickel & Peter F. Lake, *The Emergence of New Paradigms in Student-University Relations: From* In Loco Parentis *to Bystander to Facilitator*, 23 J.C. & U.L. 755 (1997) [hereinafter Bickel & Lake, *Emergence of New Paradigms*].

196. *See* Lake, *Rise of Duty*, *supra* note 195, at 2–3.

197. *See id.* at 4–6.

> Until relatively recently, the college/student relationship was considered to be as much, if not more of, a college/*parent* affair than a direct college/*student* relationship. In other words, a parent sent a "child" off to college—entering into an agreement with the institution—and delegated certain supervisory and disciplinary powers in the process. With regard to

parental role, and university action taken in such a role to regulate student activity generally was not open to judicial scrutiny.[198] Because school educators stand in the place of a student's parent in matters relating to school discipline, universities would only be liable for harm done to a student if the university's conduct was willful or wanton.[199]

Universities that have responded to the problems associated with on-campus credit card solicitations by completely banning them may be viewed as invoking the doctrine of *in loco parentis*. Rather than allow students to flounder with credit cards and end up in debt, the university is taking the stance that students cannot be trusted to make sound financial decisions and therefore, the choice must not be placed before them. By returning to the *in loco parentis* era, the universities are paternalistically clinging to an outdated doctrine that does not serve the best interests of their students. In fact, the *in loco parentis* doctrine was never intended to protect the student, but rather the university by giving it immunity from lawsuits based on the violation or deprivation of rights.[200] While an *in loco parentis*-style response of completely banning credit card solicitations may be better than doing nothing, this response by university administrators does not get to the root of the problem, namely student ignorance of the proper use of credit and healthy credit card payment practices.

The *in loco parentis* era ended in the 1960s with the emergence of the civil rights era, during which college students began to chal-

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> certain types of activities—those principally involving deliberate institutional acts of student regulation and discipline—the college stood "*in loco parentis*."

Id. at 4.

198. *Id.* at 5.

> In this era, a parent was virtually immune from lawsuit by a child: the parent had broad rights to discipline, etc., and a child had little or no right to protection from a parent's intentional or negligent torts, particularly those involving intangible interests like speech, association, and economic opportunity. The college stepped—at least in part—into this parental immunity. When a college deliberately regulated or disciplined a student—allegedly denying that student intangible, civil, or economic rights—the courts used *in loco parentis* to immunize the college.

Id.

199. Susan Brown Foster & Anita M. Moorman, Gross v. Family Services Agency, Inc.*: The Internship as a Special Relationship in Creating Negligence Liability*, 11 J. LEGAL ASPECTS SPORTS 245, 247 (2001) (describing era of *in loco parentis* as period of legal insularity under which "universities had the power to control student conduct and a duty to protect students from harm, but the university would only be liable for willful or wanton failure to protect").

200. *See* Lake, *Rise of Duty*, *supra* note 195, at 6 ("To return to or reconfigure *in loco parentis* would be to recreate an era of legal immunity, not legal duty.").

lenge the universities' expulsion and suspension of student participants in civil rights activities.[201] In *Dixon v. Alabama State Board of Education*,[202] six students were expelled for participating in a sit-in but were not given an opportunity for a hearing and were not told precisely what behavior merited expulsion.[203] The court examined what, if any, due process these students were owed. The defendant school board argued that:

> Attendance at any college is on the basis of a mutual decision of the student's parents and of the college. . . . Just as a student may choose to withdraw from a particular college at any time for any personally-determined reason, the college may also at any time decline to continue to accept responsibility for the supervision and service to any student with whom the relationship becomes unpleasant and difficult.[204]

Implicit in this relationship, the school board argued, was a waiver of such due process concerns as notice and hearings.[205] The court, however, disagreed, stating that the opportunity to attend a university cannot be based on a waiver of basic constitutional rights such as those questioned in the case.[206] Students are adults in the eyes of the law, and the university cannot relieve students of their rights simply because the school is expected to act as a parental figure.[207]

Following *Dixon*, students were treated as "constitutional adults,"[208] free to exercise basic civil rights. However, to the dismay of student litigants in the 1970s, some courts went a step further and concluded that students are adults responsible for the consequences of their choices and, thereby, absolved universities of liability for injuries sustained by the students.[209] In this period, known as the "bystander era," courts had to consider whether universities owed students a duty to protect them from personal or property injury when the injury arose while the students were exercising their freedom to engage in other

201. *See* BICKEL & LAKE, RIGHTS AND RESPONSIBILITIES, *supra* note 195, at 36–37; Foster & Moorman, *supra* note 199, at 247; Jennifer L. Spaziano, Comment, *It's All Fun and Games Until Someone Loses an Eye: An Analysis of University Liability for Actions of Student Organizations*, 22 PEPP. L. REV. 213, 225 (1994) (citing Vietnam War, civil rights movement, and lowering of federal voting age as events leading to demise of *in loco parentis* doctrine).
202. 294 F.2d 150 (5th Cir. 1961).
203. *Id.* at 151–53.
204. *Id*. at 156.
205. *Id.*
206. *Id.* at 156–57.
207. BICKEL & LAKE, RIGHTS AND RESPONSIBILITIES, *supra* note 195, at 38–39 (discussing court's analysis in *Dixon*).
208. *Id.* at 42.
209. Foster & Moorman, *supra* note 199, at 247.

adult activities.[210] Under the bystander theory,[211] schools were immune from liability for injury arising out of the conduct of third parties and students over which the school itself had no direct control,[212] particularly where the injury resulted from alcohol consumption.[213] Thus, where students were injured as a consequence of alcohol consumption on campus or during a campus-sanctioned activity, the university had no duty and therefore was not liable to the student.[214]

210. *See* Lake, *Rise of Duty*, *supra* note 195, at 11–17.

211. Under the "bystander" model, students were treated more like business invitees or parties to a contract than children. *See id.* Thus, the universities' duty to students was limited to such issues as premises maintenance, curricular and co-curricular safety, dormitory and residential safety, and the presence of dangerous third parties. *Id.* For example, in *Mullins v. Pine Manor College*, 449 N.E.2d 331 (Mass. 1983), the school was held liable for a student's injuries resulting from an on-campus attack. The court held that because the university was in a better position to minimize the risk than the students themselves, it could be held liable for failing to provide adequate campus security. 449 N.E.2d at 335. This duty arose primarily out of the special relationship created between the university landlord and the student tenant residing in student residences. Since the school retains the authority to implement adequate security measures to secure its campus, the student could not be seen to bear the responsibility for her attack. *Id.* at 335–36.

212. *See* Univ. of Denver v. Whitlock, 744 P.2d 54, 60 (Colo. 1987) (refusing to impose liability on university where student was paralyzed after falling from trampoline located on university property on argument that imposing liability would cause return to *in loco parentis*).

213. *See* Lake, *Rise of Duty*, *supra* note 195, at 14–18. In many cases involving alcohol consumption and related injuries, universities were similarly successful in avoiding duty and thus liability. *See* Beach v. Univ. of Utah, 726 P.2d 413 (Utah 1986); Rabel v. Illinois Wesleyan Univ., 514 N.E.2d 552 (Ill. 1987). The *Beach* opinion states the view of most courts most clearly:

> The students whose relationship to the University we are asked to characterize as "custodial" are not juveniles. . . . We do not believe that Beach should be viewed as fragile and in need of protection simply because she had the luxury of attending an institution of higher education. Not only are students such as Beach adults, but law and society have increasingly come to recognize their status as such in the past decade or two.

726 P.2d at 418.

214. This rationale reached its zenith in *Beach v. Univ. of Utah*, 726 P.2d 413 (Utah 1986). Beach was paralyzed after falling off of a cliff while on a camping trip with her biology class as a result of becoming intoxicated during a dinner on the trip. 726 P.2d at 415. The court refused to find any duty on the part of the professor conducting the trip or the university, despite the fact that Beach was below the legal drinking age and the consumption of alcohol violated school policy. *Id.* at 416–18. Others have argued that bystander duty should apply in cases involving peer-to-peer sexual harassment. *See* William P. Hoye & William A. Hahn, *Beyond the Camel's Nose: Institutional Liability for Peer Sexual Harassment on Campus*, 50 S.C. L. Rev. 55, 89 (1998–1999) ("[T]o expect colleges and universities to bear full responsibility for peer sexual harassment, when they lack the control necessary to prevent it, to become aware of it, or to effectively police it on their campuses, is untenable and ill advised.").

Applying the bystander analysis to the problems arising from on-campus credit card solicitations, one may conclude that universities who do nothing about the solicitations believe that they owe no duty to protect college students from the activities of credit card solicitors. These universities reason that since third parties are simply making credit cards available to young people who are technically adults, a student's decision about obtaining and using credit cards is not the university's concern.

Universities, however, should not be able to avoid legal duty through a policy of non-engagement in student activities. As courts have found in cases involving injuries to college students, duty arises from any number of factors, including campus residence, campus presence, actual or constructive knowledge of a dangerous person, contracts with students, and "assumption of duty by acts which show an intent to protect or lull students into a sense of security."[215] University officials have knowledge of the dangers of irresponsible credit card use, and have been placed on notice of unsavory and overly-aggressive solicitation practices.[216] Furthermore, universities that follow an inaction policy tend to profit financially to some extent from the presence of on-campus solicitations because on-campus vendors usually pay a fee to market on campuses.[217] By allowing vendors to market under university approval, universities could be giving students a false sense of security by creating the impression that on-campus vendors pose no harm to students. Fortunately for student-plaintiffs, the bystander era has faded, and modern higher-education law supports the conclusion that universities should adopt proactive policies to deal with problems arising from on-campus credit card solicitations.

Beginning in the mid-1980s, courts began to move away from the bystander theory.[218] Courts have increasingly found liability where the injured student proves that the university had knowledge of the risk of harm arising out of conduct of other students or third parties.[219]

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215. BICKEL & LAKE, RIGHTS AND RESPONSIBILITIES, *supra* note 195, at 149.

216. *See infra* notes 312–20 and accompanying text.

217. *See, e.g.*, Hinton, *supra* note 175 (stating that credit card vendors at Oklahoma State University pay annual fee of roughly $10,000 to solicit on campus); *supra* notes 175–85 and accompanying text.

218. *See* Foster & Moorman, *supra* note 199, at 247–48; Peter F. Lake, *The Special Relationship(s) Between a College and a Student: Law and Policy Ramifications for the Post* In Loco Parentis *College*, 37 IDAHO L. REV. 531, 532 (2001).

219. *See, e.g.*, Coghlan v. Beta Theta Pi Fraternity, 987 P.2d 300, 312 (Idaho 1999) (imposing liability on school where intoxicated student fell from window because school assumed duty by placing school employees at party where alcohol was consumed); Knoll v. Bd. of Reg. of the Univ. of Neb., 601 N.W.2d 757, 764–65 (Neb. 1999) (holding university liable where student was abducted by fraternity on univer-

At least some of these courts appear to have re-conceptualized the relationship between universities and their students from one of bystander to that of "facilitator."[220] Professors Bickel and Lake have proposed a new paradigm of university duty based on the relationship of school as facilitator.[221] The facilitator model begins from the premise that students arriving on college campuses, while legally adults, are developmentally in transition between late adolescence and adulthood.[222] The university thus assumes the responsibility of shepherding students safely through this transition, much like Virgil lead Dante through Hell.[223] As a result of this relationship, "the university is responsible, given its particular circumstances, to use reasonable care to facilitate student education and growth."[224] Bickel and Lake conclude that duty, special relationship, and liability are a function of, *inter alia*, the (1) foreseeability of harm; (2) nature of risk; (3) closeness of student misconduct and university activity; (4) moral blameworthiness and responsibility; (5) preventing future harm; (6) burden on the university and the community; and (7) existence of insurance.[225]

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sity property, forced to consume alcohol on non-university property, and injured while intoxicated after falling from window because such hazing was known to university and therefore foreseeable); Nova Southeastern Univ. v. Gross, 758 So.2d 86, 87, 89 (Fla. 2000) (holding university liable where student, assigned by university to internship in known dangerous location, was assaulted at that location); Furek v. Univ. of Del., 594 A.2d 506 (Del. 1991) (holding university liable where student was permanently injured in hazing incident at fraternity on university property because university knew of such conduct).

220. *See Furek*, 594 A.2d at 516–17. The court stated:

> The university-student relationship is certainly unique. While its primary function is to foster intellectual development through an academic curriculum, the institution is involved in all aspects of student life. Through its providing of food, housing, security, and a range of extracurricular activities the modern university provides a setting in which every aspect of student life is, to some degree, university guided. This attempt at control, however, is directed toward a group whose members are adults in contemplation of law and thus free agents in many aspects of their lives and life styles. Despite the recognition of adulthood, universities continue to make an effort to regulate student life and the courts have utilized diverse theories in attempting to fix the extent of the university's residual duty.

Id. at 516 (footnote omitted).

221. *See* Bickel & Lake, *Emergence of New Paradigms*, *supra* note 195, at 783–92.

222. *Id*. at 786 (citing Gary Pavela, *The Power of Association: Defining our Relationship with Students in the 21st Century*, 7 SYNTHESIS 529, 531 (1996)).

223. *See id.* at 788 ("[S]tudents do not need Dr. Spock, but they can use Obi Wan Kenobi or Yoda.").

224. *Id.*

225. *Id.* at 789–92; *see also* Kathleen Connolly Butler, *Shared Responsibility: The Duty to Legal Externs*, 106 W. VA. L. REV. 51, 111–19 (2003–2004) (discussing liability of law schools where law students are harmed during school-sponsored externships).

In a recent decision involving the imposition of tort liability on a university, the Supreme Court of Florida held that a university could be held liable without a finding that a special relationship existed. In *Nova Southeastern Univ., Inc. v. Gross*, a graduate student was criminally assaulted in a parking lot at the site of an assigned off-campus practicum, required for her degree program.[226] The university argued that no special relationship existed between it and the student because she was an adult student who chose to attend the university, and, therefore, the university had no duty to protect the student from an off-campus attack.[227] The court agreed that no special relationship existed based on either the *in loco parentis* doctrine because the student was not a minor,[228] or landlord-tenant law because the incident occurred off the university's premises.[229] In a unanimous decision, the court held that the university owed the student a duty of reasonable care because the university "had control over the students' conduct by requiring them to do the practicum and by assigning them to a specific location;" therefore, it had assumed the "duty of acting reasonably in making those assignments."[230] Because the university had knowledge prior to the student's attack about several criminal incidents that occurred at or near the site of the practicum, the court remanded the case so that a jury could determine whether the university acted reasonably in assigning students to that location.[231] The court also stated that "the duty, one of ordinary care under the circumstances, could include but is not necessarily limited to warning of the known dangers at this particular practicum site."[232]

The holding of *Nova Southeastern* may be applied to the issue of on-campus credit card solicitations. Universities allow credit card companies to have on-campus access to their students with full knowledge that the companies will use gifts to lure students into applying for credit cards, that most entering students are financially illiterate about responsible credit card usage, and that many suffer harm as a result of their credit card use. The fact that the students are adults and choose to obtain credit cards should not excuse the university from its duty of care to the students and to act reasonably in protecting students from overreaching by credit card companies.

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226. 758 So.2d 86 (Fla. 2000).
227. *Id.* at 89.
228. *Id.*
229. *Id.* at 90.
230. *Id.* at 89.
231. *Id.*
232. *Id.* at 90.

The case for imposing a duty on college administrators to protect students from overreaching by credit card companies is even stronger against universities who have entered into exclusivity contracts. These schools are profiting from multi-million-dollar agreements, and they allow students to be lulled into a false sense of security by placing their imprimatur on a particular card.[233] The duty of ordinary care is exercised by universities preparing students to make good life choices—not to "make money at the expense of relatively weak consumers subject only to minimum legal constraints of fairness."[234]

Completely banning on-campus solicitations represents a return to the *in loco parentis* era when students' rights were trampled. An open-campus market for credit card companies, with the university administrators standing idly by, promotes the idea that the schools do not care about the students' financial education. A middle ground must be sought and can be found by casting the university in the role of "facilitator," with the university providing "as much support, information, interaction, and control as is reasonably necessary and appropriate in the situation."[235]

Unlike in *Nova Southeastern*, where the court suggested that a warning of danger to the students could possibly be sufficient exercise of ordinary care for the duty owed,[236] a warning from universities that credit card usage could lead to problems is insufficient.[237] In *Nova Southeastern*, the university selected the locations for each practicum but had no actual control over the premises at which the practicum was located.[238] Therefore, a warning from the university to the students could have possibly been a sufficient exercise of ordinary care. Upon receiving a warning, a student could make a few modifications

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233. Even in the absence of exclusivity contracts, universities owe a duty to students because some students incorrectly believe the universities support on-campus credit card solicitors. *See* Norvilitis, *supra* note 85, at 941 (finding that 66% of students surveyed incorrectly believed university supported on-campus credit card vendors).

234. BICKEL & LAKE, RIGHTS AND RESPONSIBILITIES, *supra* note 195, at 194.

235. *Id.* at 193.

236. 758 So.2d at 90.

237. *Nova Southeastern* involved an externship requirement to complete a psychology doctoral program. 758 So.2d at 87. For an excellent discussion of how law schools have a shared responsibility to protect students who participate in legal externship programs based on the holding of *Nova Southeastern* and other relevant tort duty cases, see Kathleen Connolly Butler, *Shared Responsibility: The Duty to Legal Externs*, 106 W. VA. L. REV. 51, 113–14 (2003–2004) ("In the externship program, the facilitator law school, the extern, and the supervising attorney in the field will share responsibility for the student's safety. A significant amount of that shared responsibility will fall upon the law student . . . . Nonetheless, shared responsibility does place some safety obligations on the law school and upon the externship site.").

238. 758 So.2d at 89.

to avoid being the victim of an assault. Nationwide, universities have control over campuses, and are giving credit card companies access to them. Because most students enter college without having the benefit of instruction in how to take on and manage debt responsibly, a warning from the university would be insufficient to enable students to protect themselves and their economic interests. The duty of care arguably could also be fulfilled if universities limited the on-campus solicitation practices of credit card companies. Such a limitation would minimize predatory behavior, but it would not empower college students to make informed, rational decisions about debt and credit card usage. Responsible money and debt management skills are not innate. To fulfill the duty of care, universities should provide mandatory financial education to all students, in addition to limiting on-campus solicitation practices.

Some may question why this article posits that the burden of providing mandatory financial education should fall on universities and not high school administrators. Financial education in general is welcomed and needed in high school, and some high schools have programs in place.[239]

But university administrators should bear the burden of providing mandatory education because the college campus is the place where students will face enormous pressure to obtain credit cards. Furthermore, universities, not high schools, are culpable in facilitating that pressure.[240] High school students who use credit cards usually have access to them via their parents' credit card accounts, and the parents

239. *See, e.g.*, *BBA, MA Bankruptcy Court Announce Financial Literacy Partnership*, METROPOLITAN CORP. COUNS., Dec. 2004, at 66 (discussing partnership between Boston Bar Association and Massachusetts bankruptcy court to provide financial literacy education for high school seniors throughout Massachusetts). Information on credit card usage and debt management in high school courses is not likely to be retained. Teenagers have a greater interest in sex, drugs, alcohol, and/or tobacco than credit cards. Offering mandatory education on sex, alcohol, drugs, and tobacco in high school is necessary at that juncture (or earlier) not only because of high levels of interest, but because of the alarming number of teenagers involved in sex, alcohol, drugs, and tobacco, the ease with which teenagers can get involved in these activities, and the potential harm that can arise from them. High school students can easily obtain alcohol or cigarettes by asking a friend or using fake IDs, but no reports show that high school students are deceiving their parents, getting help from third parties, or resorting to fraud to obtain credit cards. Teenagers simply ask their parents for what they need. For those students who cannot get from their parents or on their own the latest must-have item, a decision to act fraudulently usually involves simple theft, not applying for a credit card, waiting for it to arrive, and then purchasing the desired item.

240. Because high school students usually do not obtain credit cards and incur debt in their own names, education about responsible use of credit is not likely to be considered relevant to their daily lives. Moreover, credit card companies and banks gen-

usually keep control over use of the cards and pay the bills. However, once young people enroll in college, they are inundated with credit card solicitations (as described in Part I.A.) that urge them to use the cards not only to satisfy needs but to buy luxuries as well. Effective financial education must come at a point where the education is most relevant to the learner. That point is after young adults enter college, where research shows most will obtain their first credit card and many will experience problems as a result of credit card indebtedness.[241]

III.
LEGISLATIVE REACTION

Some university administrators have implemented policies that recognize their obligation to protect students by limiting on-campus solicitations, some have partnered with other organizations to educate students,[242] and others have joined advocates in the legal community to create national outreach educational programs.[243] Legislative attempts to restrict solicitation practices and provide students with financial education have generally been unsuccessful, although proposed legislation has had some support on the federal level, and bills have been introduced in the majority of states. As explained below, in the few jurisdictions where legislation has been enacted, legislators failed to provide sufficient restrictions on solicitation practices

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erally do not extend credit to minors because the law makes them contractually liable only for purchases for real necessities.

241. For the young adults not enrolled in college, community organizations and universities could (and some do) offer non-credit courses, seminars, and/or workshops on responsible credit card use and debt management. *See, e.g.*, NEW YORK UNIVERSITY SCHOOL OF CONTINUING AND PROFESSIONAL STUDIES BULLETIN: ANNOUNCEMENT FOR SPRING 2005 37 (Mar. 7, 2005) (describing non-credit financial education courses such as "Fundamentals of Personal Finance Planning" and "Financial Planning for Women") (on file with the New York University Journal of Legislation and Public Policy).

242. *See, e.g.*, Noel C. Paul, *New US Program Turns Students' Debt Sagas into Cautionary Tales*, CHRISTIAN SCI. MONITOR, Sept. 9, 2002, at 12 (discussing "Project Credit Smarts 2002," program harnessing efforts of several Boston-area universities and Federal Trade Commission to educate incoming students about proper credit usage and debt management and warning students about marketing tactics of credit card companies).

243. Even the judicial system is recognizing the seriousness of student credit card debt. *See CARE [Credit Abuse Resistance Education] Teaches Youth the Dangers of Debt*, 42 BANKR. CT. DECISIONS WKLY. NEWS & COMMENT, Apr. 13, 2004, at A6 (stating that through CARE presentations, bankruptcy judges, attorneys, and court staff encouraged students "to have one credit card and pay the balance every month, have a realistic budget, understand the true cost of credit, and understand that maintaining consumer debt by making minimum payments is not the same as being able to afford the debt").

and failed to require any meaningful financial education. Future legislative attempts must embrace a comprehensive public policy approach to solving the problems arising from the proliferation of credit cards on college campuses.

A. Public Policy Must Reflect a Commitment to Restrict On-Campus Solicitation Practices and to Financially Educate Students

Public policy reflects intentional action undertaken by the government, usually in response to concerns raised by various groups, and is subject to influence based on how the concerns at issue are perceived.[244] Unquestionably, many students, parents, and administrators are concerned about the on-campus practices of credit card companies and the problems arising from credit card use among college students. However, public policy manifested solely in the form of prohibitions—restricting what companies can do on campus—is insufficient because it does not get at the root of the problems, principally the vulnerability of college students due to their naiveté and financial illiteracy. Public policy must help empower students through effective financial education, despite the students' adult status or the perception that the potential harm to students from credit card use is primarily economic.

Because obtaining a credit card is legal for college students eighteen or older, some argue that lawmakers and university administrators should not interfere with the free market and should allow students to learn responsible credit card use through experience.[245] However, laws have been passed and universities have implemented policies and procedures that address other potentially harmful, yet legal, adult activities.[246] For instance, a recent study shows that about

244. JAMES E. ANDERSON, PUBLIC POLICY-MAKING 3, 9 (1979).

245. Lauren Nakasato, *Limit on Credit Companies Under Scrutiny*, THE DAILY CALIFORNIAN (Univ. Cal.-Berkeley), June 19, 2001, 2001 WL 20503731 (reporting that California Assembly member Dave Cox, Republican from Fair Oaks district, opposed bill to limit on-campus solicitation practices on grounds that "it places too much of a restriction on the free market"). *But see* Marianne Lorensen, *For Your Information . . .*, 94 J. FAM. & CONSUMER SCI. 10, 11 (quoting Dean of Students at University of Kentucky, which recently banned on-campus credit card vendors: "We are a free market place of ideas, not a free market place for every vendor that may want to set up shop on our campus. A flea market mentality is not what higher education is all about.").

246. *See* Spaziano, *supra* note 201, at 222 ("Universities commonly have rules regarding drinking, hazing and other potentially dangerous activities. These common university precautions convey a message to parents and students that the university is not merely an educator but also an active participant in the lives and safety of its

half of all college students are social smokers of cigarettes despite the risk of becoming addicted to nicotine, developing terminal or serious diseases, starting fires accidentally, and inflicting second-hand smoke on others.[247] Tobacco companies are legally obligated to produce and broadcast advertisements warning youths of the dangers of tobacco smoke.[248] The majority of universities have tobacco control policies, and a recent survey of college students at over one hundred universities show that the majority of students favor such policies, including the implementation of smoke-free environments for all campus buildings.[249]

Alcohol consumption is another legal and popular adult activity on college campuses that poses dangers such as alcoholism and binge drinking, which in turn can lead to death and the commission of crimes such as date rape and vehicular homicide.[250] To curb binge drinking, universities and governmental entities have implemented programs to curb alcohol consumption and promote alcohol awareness

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students."); Peter F. Lake & Joel C. Epstein, *Modern Liability Rules and Policies Regarding College Student Alcohol Injuries: Reducing High-Risk Alcohol Use Through Norms of Shared Responsibility and Environmental Management*, 53 OKLA. L. REV. 611, 618 (2000) ("Campuses have developed . . . alcohol awareness programs, awareness weeks, peer education programs, special events associated with preventing high-risk alcohol use, and other education and informational programs."); BICKEL & LAKE, RIGHTS AND RESPONSIBILITIES, *supra* note 195, at 194; *cf.* Gil B. Fried, *Illegal Moves Off-the-Field: University Liability for Illegal Acts of Student-Athletes*, 7 SETON HALL J. SPORT L. 69, 96–97 (1997) (discussing attempts to educate student-athletes about violence and date rape).

247. Susan Moran et al., *Social Smoking Among US College Students*, 114 PEDIATRICS 1028, 1031 (2004). The 2001 study, which surveyed a random sample of 10,904 students enrolled at 119 U.S. colleges, defined social smokers as students who stated that they smoked mainly with others rather than alone, or equally alone as with others. *Id.* at 1029, 1031.

248. *See* Michael DeBow, *The State Tobacco Litigation and the Separation of Powers in State Governments: Repairing the Damage*, 31 SETON HALL L. REV. 563, 568 (2000–2001) (discussing settlement agreement under which tobacco companies agreed to make multi-billion dollar payments to states on annual basis, fund five-year, $1.5 billion anti-smoking "education and advertising campaign," and create $250 million foundation to reduce teen smoking).

249. Press Release, Massachusetts General Hospital, College Students Support Smoking Restrictions (Sept. 16, 2003) (discussing research which found that even smokers prefer smoke-free dorms and other tobacco control efforts), *at* http://www.mgh.harvard.edu/news/releases/091603smoking.htm (last visited Feb. 25, 2005).

250. *See* Henry Wechsler et al., *College Binge Drinking in the 1990s: A Continuing Problem*, 48 J. AM. C. HEALTH 199, 199 (2000) (defining binge drinking as "the consumption of five or more drinks in a row for men and four or more for women"); Ralph W. Hingson et al., *Magnitude of Alcohol-Related Mortality and Morbidity among U.S. College Students Ages 18-24*, 63 J. STUD. ALCOHOL 136, 139, 141 (2002) (discussing actions inflicted by students under influence of alcohol).

campaigns with thought-provoking (and hopefully decision-altering) slogans like "Drinking Too Much Too Fast Can Kill You."[251] Similarly, universities have adopted policies (and have been aided by law enforcement) to address sexual activity among college students in order to prevent rape, unwanted pregnancies, emotional scars, and the contraction and spread of sexually transmitted diseases.[252] In summary, public policy favors and reflects programmatic involvement by law enforcement and universities in preventing and reducing the potential harm from several activities perfectly legal for of-age college students.

Lawmakers and university administrators have no convincing justification for failing or refusing to enact laws or implement policies that limit on-campus solicitation practices and inculcate responsible credit card use and debt management practices. As with tobacco, alcohol, and sex, lawmakers and university administrators are aware that many students suffer negative consequences from credit card use and know or should know that students and parents want intervention policies.

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251. "Each April the National Council on Alcoholism and Drug Dependence, Inc. (NCADD) sponsors Alcohol Awareness Month. The 2002 awareness campaign focused on binge drinking, with the slogan, 'Drinking Too Much Too Fast Can Kill You.'" MINN. INST. OF PUB. HEALTH, BINGE DRINKING, *at* http://www.miph.org/area/binge.html (last visited Feb. 25, 2005). Regulatory agencies and law enforcement departments have forged coalitions with colleges to hold seminars, workshops, and conferences aimed at educating students to prevent and curb high-risk alcohol consumption. Wechsler, *supra* note 250, at 199–200 (discussing programs that provide funding to universities to implement comprehensive approaches to curbing binge drinking by establishing university-community coalitions); Ralph Hingson & James Howland, *Comprehensive Community Interventions to Promote Health: Implications for College-Age Drinking Problems*, J. STUD. ALCOHOL 226, 231–32 (Supp. 14 2002) (discussing effectiveness of "comprehensive community programs" to reduce tobacco use among youth and adults); Henry Wechsler et al., *Colleges Respond to Student Binge Drinking: Reducing Student Demand or Limiting Access*, 52 J. AM. C. HEALTH 159, 160–67 (2004) (examining "current alcohol prevention efforts and recent trends in combating student drinking and related harms" and discussing initiatives such as alcohol-free dormitories, alcohol education, and limits on alcohol distribution at on-campus, school-sponsored events).

252. *See, e.g.*, CORNELL UNIV., CARE: CORNELL ADVOCATES FOR RAPE EDUCATION, *at* http://www.care.cornell.edu (last visited Feb. 26, 2005) (describing rape education program that, since its inception over twenty years ago, has "developed administrative initiatives, prepared and distributed educational materials, promoted and developed educational programs, provided consultation to parents, campus administrators, other universities and government officials, conducted evaluations of sexual assault educational efforts, presented at national conferences, proposed and initiated campus policy issues related to the care and support of survivors, and maintained this website to provide extensive information about sexual assault").

Some view the potential harm from credit card use as primarily economic and the potential harm from tobacco and alcohol use and sex activity as primarily physical. But this distinction cannot justify legislative and administrative inaction for two important reasons. First, the number of people negatively impacted by credit card use is significantly more than those negatively impacted in the short-term by tobacco and alcohol use and sexual activity. Of the roughly fifteen million students enrolled in America's colleges, only a small percentage of students suffer serious harm as result of irresponsible alcohol consumption or sexual behavior.[253] The physical harm inflicted by tobacco smoking normally takes years to manifest and may be countered by lifestyle changes, including cessation of smoking. Moreover, one study shows about half of students surveyed were social smokers (i.e., they do not smoke daily or regularly) and, therefore, are least likely to suffer from serious health problems associated with long-term smoking.[254] By contrast, many short-term consequences can flow from amassing too much credit card debt and having tarnished debt payment practices.[255] Also, of the fifteen million college students, surveys show that most students acquire their first credit card in college and a significant number will carry balances. Even if one assumes that only 10% of all students are in trouble from credit card debt—a conservative estimate[256]—one could extrapolate that 1.5 million college students suffer from credit card indebtedness. In a few years, these students will be part of the general adult population of credit card holders, whom studies show rely heavily on credit, possess multiple credit cards, carry significant amounts of debt, and save at a near-zero-percent savings rate, and, thereby, teeter on the verge of financial collapse.[257]

The second reason why law and policy makers should not minimize the harm arising from student credit card indebtedness is that

253. The National Institute on Alcohol Abuse and Alcoholism's website reports that roughly 100,000 students between the ages of eighteen and twenty-four say they have been too intoxicated to know whether they had consensual sex, and 600,000 have been assaulted by someone who had been drinking. NAT'L INST. ON ALCOHOL ABUSE & ALCOHOLISM, A SNAPSHOT OF ANNUAL HIGH-RISK COLLEGE DRINKING CONSEQUENCES, *at* http://www.collegedrinkingprevention.gov/facts/snapshot.aspx (last visited Feb. 25, 2005).

254. *See* Moran, *supra* note 247, at 1030 ("A total of 51% of 2401 current (past 30-day) smokers were social smokers.").

255. *See infra* Part I.B.

256. *See, e.g.*, OK STUDY, *supra* note 4, at 25 (finding that between 20% and 31% of students reported moderate to extensive adverse effects from credit card debt on collegiate experiences such as academic priorities and concentration on academic work).

257. *See* SULLIVAN, WARREN & WESTBROOK, *supra* note 74, at 244–46.

students know far less about responsible credit card use and debt management than they know about avoiding the dangers associated with tobacco, alcohol, and sex. Most students do not receive education about credit cards and debt management and are financially illiterate.[258] By contrast, before most students graduate from high school, they have had sex education classes, have learned about sexually transmitted diseases, and have been provided with reasons for abstinence and/or birth control and condom usage.[259] Most high school seniors have also been subjected to media awareness campaigns and classroom instruction, all warning students why they should avoid tobacco and alcohol consumption, both illegal until the age of majority, and avoid illegal drug use. After enrolling in college, students are subjected to additional education (often mandatory orientation) that augments what they have already learned by encouraging responsible alcohol consumption and sexual activity but discouraging tobacco and drug use.[260] Accordingly, governmental entities and university administrators have policies and programs designed to combat ignorance, foster informed and rational choices, and limit on-campus activities for the ultimate purpose of decreasing the number of people harmed by students' drinking, smoking, drug use, and sexual activity.

Given the number of students affected by credit card use and the level of financial illiteracy, students and society at large are best served by policies focused on educating students on how to handle credit cards and debt and make informed financial decisions. Because of the relatively confined nature of the campus environment and the determination of credit card companies to gain on-campus access, the college campus is the ideal setting for implementing financial educa-

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258. *See, e.g.*, JUMP$TART COALITION, *supra* note 148 (annual financial literacy questionnaire found pervasive financial illiteracy among high school seniors).

259. *See* Camille Waters, Note, *A, B, C's and Condoms for Free: A Legislative Solution to Parents' Rights and Condom Distribution in Public Schools*, 31 VAL. U. L. REV. 787, 788–89 (1996–1997) (discussing condom distribution programs and noting that "[t]hirty-three state legislatures and the District of Columbia have implemented mandatory sex education and AIDS curriculum throughout their public school systems"); Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 200 (2001–2002) (citing recent study of sex education programs that found that 23% of teachers stated they taught abstinence to adolescents as only way to avoid venereal disease and pregnancy).

260. *See, e.g.*, Peggy Walsh-Sarnecki & Lori Higgins, *Binge Drinking Blamed in EMU Case*, DETROIT FREE PRESS, Jan. 3, 2005 (reporting that Eastern Michigan University requires all freshman to attend play addressing several issues, including alcohol abuse, during mandatory fall orientation and to complete mandatory life skills education class covering responsible alcohol use), http://www.freep.com/news/education/binge3e_20050103.htm (last visited Feb. 25, 2005).

tion policies and regulating on-campus solicitations.[261] Laws requiring education and limiting solicitation practices are proper even where university administrators are not contractually obligated to provide on-campus access to credit card companies. Even though universities have a general policy of permitting commercial entities to conduct activities on-campus, many universities ban or substantially limit their activities and access because they pose a risk of undue harm to students.[262] These university policies are in line with the previously-discussed modern view that universities share a responsibility to help protect students and empower them to responsibly engage in adult activities.[263] Legislatures should enact laws to reflect that shared responsibility with regard to credit card companies' on-campus solicitations.

As for the universities that have lucrative contracts with credit card companies, lawmakers, students, and parents should be outraged that university administrators refuse to provide mandatory financial education to all students and refuse to use their leverage to ban gifts, limit solicitation practices, and restrict credit extension practices. Some university administrators assert that students, who are adults, are going to obtain credit cards anyway so the universities have done nothing wrong or unethical by entering into multi-million-dollar exclusivity contracts with credit card companies. Students are going to consume alcohol and tobacco, but the public would find it alarming if universities entered into profitable exclusivity contracts that allowed one beer or tobacco distributor to put their vending machines in college dormitories.[264] Equally disturbing would be a contractual ar-

261. *See supra* notes 239–41 and accompanying text (discussing why burden of providing mandatory financial literacy education should fall on universities, not high school administrators).

262. *See, e.g.*, Frank Fitzpatrick, *Alcohol and College Sports: Schools Can't Find Right Mix*, PHILA. INQUIRER, Apr. 2, 2004, at A1, 2004 WLNR 3681277 (discussing various university responses to alcohol-related problems on campus and citing University of Wisconsin's decision to forgo estimated annual profits of $500,000 by refusing to sell beer in its new hockey arena); Wechsler, *supra* note 251, at 161 (survey by researchers at Harvard School of Public Health reporting that 34% of colleges completely ban alcohol on campus for any student, regardless of age, and 44% restrict alcohol use in at least four of several campus events, including tailgate events, athletic contests, pre- or post-game parties, homecoming celebrations, and on-campus concerts).

263. *See supra* notes 215–17 and accompanying text (asserting that universities have shared-responsibility because they have knowledge of dangers arising from on-campus practices of credit card companies).

264. Once popular, lucrative and exclusive marketing contracts between universities' athletic departments and large beer manufacturers like Anheuser-Busch and Coors are now considered unethical. *See* Fitzpatrick, *supra* note 262, at A1 (stating that university partnerships with beer companies that allowed them to advertise and promote at

rangement between the university and one local dance club that required the university to supply the names, addresses, telephone numbers, and e-mail addresses of all the university's students in exchange for one million dollars. While partying is a legal, fun activity, a university's endorsement would encourage some to party more, possibly leading them to suffer academically. For universities to partner with credit card companies that ignite students' impulsive tendencies[265] and benefit from their ignorance about responsible credit card use is to chart a course that contradicts the universities' primary mission—educating students and preparing them for the future.

Some universities have lost sight of this mission and others are driven to make up budget shortfalls via lucrative contracts with private companies. Thus, the burden shifts to lawmakers to forge public policy outcomes that not only restrain the practices of credit card companies but also provide effective financial education that levels the playing field between naive college students and sophisticated credit card companies.

B. Federal Attempts to Limit Credit Extension Practices of Credit Card Companies

Some federal politicians have recognized the problems associated with credit card vendors' aggressive marketing practices toward college students.[266] In 1999, U.S. Representative Louise Slaughter introduced a bill that would amend the Consumer Credit Protection Act to prevent credit card companies "from taking unfair advantage of full-

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games and on campus sent contradictory messages about alcohol to students; and reporting results of recent survey showing that 69% of colleges now prohibit exclusive contracts and 67% do not allow alcohol-related advertisements in arenas and stadiums).

265. *See* Press Release, Myvesta, College-Age Adults At Risk For Money Abuse: Myvesta survey finds men and women show high levels, but in different behaviors (May 23, 2002) (announcing release of study by Myvesta, formerly known as Debt Counselors of America, finding that consumers in eighteen- to twenty-four-year-old age range "show more signs of money abuse than any other age group" in that majority "spend[ ] money . . . to escape problems or relieve stress", "l[ied], minimiz[ed] or rationaliz[ed] to conceal spending", were "[p]reoccupied with buying things to impress or influence others" and that they had lost out on opportunities because of spending), *at* http://myvesta.org/news/releases/052302PRMoneyAbuse2.htm (last visited Feb. 25, 2005).

266. *See* 145 Cong. Rec. E2439 (Nov. 17, 1999) (statement of Rep. Louise Slaughter) ("[E]ven though many students with credit cards have no income to pay the bills, credit card companies are aggressively marketing their cards to college students [by] set[ting] up tables during orientation week and outside college lunchrooms, advertising free gifts such as t-shirts and mugs, [in order to] sign up as many students as possible.")

time, traditional-aged, college students" and to protect their parents.[267] Although she had the support of thirty-six co-sponsors, the bill never made it out of the Subcommittee on Financial Institutions and Consumer Credit.[268]

Representative Slaughter's bill would have limited the amount of credit available to college students. Unless the student's parent or guardian had assumed joint liability, a credit card company would be required to limit the extension of credit to a full-time, traditional-aged student to the greater of: (1) 20% of the student's most recent annual gross income; or (2) the product of $500 and the number of years since the account was opened (but not more than $2,000).[269] The bill would have prohibited credit card companies from increasing the credit limit on a student credit card for which a parent or guardian had assumed joint liability unless the parent or guardian gave written approval of the increase.[270] The bill also prohibited a creditor from opening a credit card account for a student who had no annual gross income and already had a credit card account.[271]

In 2000, Senator Christopher Dodd introduced a bill entitled the Underage Consumer Credit Protection Act[272] (to amend the Truth in Lending Act[273]) in an attempt to enact some form of consumer protection for students. The bill would have put limitations on the manner in which a credit card can be issued to individuals under twenty-one years of age. For example, credit card companies could not issue a credit card to a student applicant unless the applicant could prove she had an independent means of repaying her credit obligations.[274]

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267. College Student Credit Card Protection Act, H.R. 3142, 106th Cong. (1999).

268. *Id.* The bill was reintroduced in 2001 but met the same fate.

269. *Id*. "Traditional-aged" is to be determined by the educational institution involved. *Id.*

270. *Id.*; *see also* Palmer, et al., *College Students' Credit Card Debt and the Role of Parental Involvement*, *supra* note 94 (reporting that study supports proposed legislation by its finding that students whose parents are co-signors on their credit cards or whose bills are paid by their parents have significantly lower credit card balances than do students with no parental involvement).

271. H.R. 3142, 106th Cong. (1999). The bill would have required that disclosures made in any credit application, solicitation, or other document be in a typeface "at least as large as the largest typeface otherwise used" in the application, solicitation, or document. *Id.* According to Representative Slaughter, the bill's purpose is "to force credit card companies to determine before approving a card, whether a prospective customer, such as a student, could even afford to pay off a balance." Louise Slaughter, *To Free College Students from the Plastic Trap*, ROCHESTER DEMOCRAT & CHRON. (N.Y.), Aug. 31, 1999, at 7A.

272. Underage Consumer Credit Protection Act of 2001, S. 891, 107th Cong. (2001).

273. 15 U.S.C. §§ 1601-1693r (2000).

274. S. 891, 107th Cong. (2001).

While these bills would have limited the credit extension practices of credit card issuers, neither Representative Slaughter's nor Senator Dodd's bill had any provision to restrict on-campus solicitations. By focusing narrowly on the internal credit extension practices of the credit card companies, the bills fell short of protecting students from impulsively signing up for credit cards simply to receive the marketing gifts. Because research shows that the majority of students apply for credit cards at on-campus marketing tables just to get the gifts, the bills should have included provisions aimed at curbing on-campus solicitation practices.[275] In addition to lacking provisions regulating solicitation practices, the bills did not have any provision mandating debt education for students.[276] By excluding provisions mandating debt education, the bills failed to require universities to empower students to make responsible debt-management choices. Students are deprived of practical knowledge, the best weapon against getting caught in the web of excessive debt and predatory lending practices.

C. State Lawmakers' Attempts to Regulate On-Campus Solicitations

The issue of credit card solicitation on college campuses has received more attention at the state level. Legislation aimed at regulating on-campus credit card solicitation has been introduced in twenty-five states in recent years.[277] Rather than prohibiting on-campus solicitations, however, some of the proposed bills simply authorize studies into the problems arising from student solicitation.[278] Only four

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275. *See* 2003 SURVEY OF SPENDING HABITS OF OSU UNDERGRADUATES, *supra* note 80.

276. *See* College Student Credit Card Protection Act, H.R. 3142, 106th Cong. (1999); College Student Credit Card Protection Act, H.R. 184, 107th Cong. (2001); Underage Consumer Credit Protection Act, S. 891, 107th Cong. (2001).

277. Connecticut, Delaware, Florida, Hawaii, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Washington.

278. Legislation was introduced in Connecticut, New Hampshire, North Carolina, North Dakota, and New Mexico to authorize studies into on-campus solicitation problems. North Carolina's study would have focused on the effects of credit card use on all classes of society. *See* S. 800, 2001 Gen. Assem., Reg. Sess. (N.C. 2001). The legislation in Connecticut, New Mexico, and North Dakota would have focused solely on students and young adults, while New Hampshire's proposed study also included a look into parental liability. *See* S. 424, 2002 Leg., Reg. Sess. (Conn. 2002); H.J.M. 22, 45th Leg., 2nd Sess. (N.M. 2002); S. Con. Res. 4041, 57th Leg., Reg. Sess. (N.D. 2001); H.B. 1364, 2000 Leg., Reg. Sess. (N.H. 2000). In contrast, legislation was proposed in New York that would have required university administrators to interview all students withdrawing from school to determine whether credit card debt had anything to do with their decision to leave. *See* A.B. 10492, 2001 Leg.,

states have actually passed legislation to address on-campus solicitations,[279] and of these, two—California and West Virginia—have enacted statutes that merely recommend that universities enact rules to regulate on-campus credit card marketing.[280] In contrast, Arkansas's and Louisiana's laws establish guidelines and provide penalty provisions for violations.[281]

Lawmakers who favor statutes that merely urge universities to adopt certain policies adhere to the long-standing tradition that universities have the administrative freedom to establish student-related policies and the academic freedom to mandate college curricula.[282] Yet

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225th Sess. (N.Y. 2002). However, legislation proposed in two states—Delaware and Texas—attempted to ban solicitation completely. *See* S. 95, 141st Gen. Assem., Reg. Sess. (Del. 2001); H.B. 1737, 78th Leg., Reg. Sess. (Tex. 2003).

279. California, Louisiana, Arkansas, and West Virginia.

280. *See* CAL. EDUC. CODE § 99030 (Deering 2002). California's law provides that the "Regents of the University of California and the governing body of each accredited private or independent college or university in the state are requested to . . . adopt policies to regulate the marketing practices used on campuses by credit card companies." *Id.* The statute goes on to list several topics to be examined by the schools, including limiting the locations where cards may be marketed, whether the companies may offer gifts to students, and whether the companies and/or universities should institute debt education initiatives. *Id.* West Virginia's law provides that:

> The governing boards of each institution shall propose rules in accordance with the rule adopted by the higher education policy commission pursuant to the provisions of section six, [§ 18B-1-6], article one of this chapter no later than the first day of July, two thousand three, to regulate the marketing practices used on campuses by credit card companies. In proposing these rules, the governing boards shall consider the following requirements:
>
> (1) Registering on-campus credit card marketers;
> (2) Limiting credit card marketers to specific institutional campus sites designated by the president or administrative head of the institution or his or her designee;
> (3) Prohibiting credit card marketers from offering tangible gifts to students in exchange for completing a credit card application;
> (4) Requiring that no application for the extension of debt through a credit card may be made available to a student unless the application is accompanied by a credit card debt education brochure;
> (5) Whether or not to use or the appropriate use of student lists for the purpose of soliciting applications for credit cards; and
> (6) Developing a credit card debt education presentation to be incorporated into orientation programs offered to new students.

W. VA. CODE ANN. § 18B-14-10 (Michie 2002). To date, no such rules have been promulgated in California or West Virginia.

281. *See* ARK. CODE ANN. §§ 4-104-202, 4-104-204 (Michie 2001); LA. REV. STAT. ANN. § 9:3577.3 (West 2002).

282. *H.R. 6, The Higher Education Amendments of 1998, System Modernization Efforts at the Department of Education and Accreditation: Hearing Before the Subcomm. on Postsecondary Educ., Training and Life-Long Learning of the House Comm. on Educ. and the Workforce*, 105th Cong. (1997) (statement of Robert Glid-

legislative action that regulates universities directly is the preferable way to ensure true reform. Nevertheless, statutes that give universities the flexibility to determine what policies are appropriate may exert enough influence to pressure them to act in the best interests of their students, as opposed to the credit card companies. The majority of the statutes and bills cover two main areas: (1) restricting the on-campus marketing practices of credit card companies, and (2) educating college students about responsible debt management.

The first step in limiting on-campus solicitation is to require that the vendor register with the school. While several statutes and proposed bills require registration,[283] they fail to specify what information and materials the vendor would have to provide. Registration statutes should mandate that credit card vendors provide comprehen-

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den, President of Ohio State University and Chair of Council for Higher Education Accreditation) (praising America's higher education system and stating that "[t]he genius of this system is that unlike other countries we do not have a mandatory national curriculum for colleges; we do not have a national ministry of education that regulates academic standards; and students are free to choose what type of education they can pursue dependent on their ability and willingness to work hard").

283. Of the four states that have passed solicitation laws, only Louisiana requires credit card vendors to register. *See* LA. REV. STAT. ANN. § 9:3577.3 (West 2002) ("Prior to engaging in the solicitation of a student on a college campus, a credit card issuer shall register its intent to solicit the student for that purpose with an appropriate official of the institution of postsecondary education."). In California and West Virginia, the governing bodies of the universities are merely to consider registration possibilities. *See* CAL. EDUC. CODE § 99030 (Deering 2002) ("In adopting the policies [regulating campus solicitation of credit cards], it is the intent of the Legislature that [the universities' governing bodies] consider . . . all of the following requirements: (a) That sites at which student credit cards are marketed be registered with campus administration."); W. VA. CODE. ANN. § 18B-14-10 (Michie 2002) ("governing boards shall consider . . . [r]egistering on-campus credit card marketers"). Arkansas' statute is silent on the issue of registration. ARK. CODE ANN. § 4-104-202 (Michie 2001). Some proposed legislation provides for vendor registration. *See, e.g.*, S. 7069, 2003 Leg., 227th Sess. (N.Y. 2004) ("requiring every issuer of credit cards to register with the institution prior to any solicitation"); H.B. 2163, 58th Leg., Reg. Sess. (Wash. 2003) (requiring "a bank or credit card company that intends to solicit business from students . . . to register with the institution before engaging in marketing activities on campus"). Proposed legislation in Hawaii, Pennsylvania, and South Carolina requires that registration be considered by the governing bodies in promulgating regulations. *See* H.R. Con. Res. 14, 22nd Leg., Reg. Sess. (Haw. 2003) ("[T]he governing body of each . . . university . . . is requested to adopt policies . . . [with] consideration [to] be given to registering [credit card issuers]"); S. 157, 187th Gen. Assem., Reg. Sess. (Pa. 2003) (governing bodies shall consider "[r]equiring registration of on-campus credit card marketers"); H.B. 3595, 2001 Leg., 114th Sess. (S.C. 2002) ("board of trustees or its designee must consider . . . registering on-campus credit card marketers"). Only legislation proposed in Kentucky specifies what must be included in the registration, but it asks only for the vendor's place of business. H.B. 63, 2004 Leg., Reg. Sess. (Ky. 2004) (requiring solicitors to register with university official; registration must include "principal place of business of the credit card issuer").

sive forms that include, among other things, samples of their gifts, applications, and brochures. Such a registration requirement would enable university administrators to determine which companies are on campus so that they can hold the credit card vendors responsible for violations of the law or university policy.[284]

In addition to requiring registration, various laws impose, and proposed legislation would impose, time, location, and audience restrictions. For example, Louisiana law requires that public schools not allow credit card solicitation to occur during class registration time.[285] Proposed legislation in several states would have placed an age limitation of twenty-one on credit card solicitation, along with other limitations.[286] This legislation would overturn the general rule under

284. Recall the scandal at the University of Louisville when a credit card vendor, hired by Bank One to solicit credit card applications, gave away t-shirts with the caption "10 Reasons Why Beer is Better than a Black Man." *See* Pitsch, *supra* note 62. University administrators and campus police were forced to escort the solicitors off campus after viewing the shirts. *Id.* Had the vendor been required to give the university one of the t-shirts along with its registration form, the university could have banned the vendor from soliciting and prevented the hurt and acrimony that arose from the distribution of these shirts. *Id*. (reporting that university stated it would review its on-campus marketing policies in light of incident).

285. LA. REV. STAT. ANN. § 17:3351.2 (West 2002). California and West Virginia's statutes request that universities consider limiting the number of sites available to the companies. *See* CAL. EDUC. CODE § 99030 (Deering 2002) ("consideration [to] be given to limiting the number of sites allowed on a campus"); W. VA. CODE ANN. § 18-B-14-10 (Michie 2002). ("Limiting credit card marketers to specific institutional campus sites . . . ."). Proposed legislation in seven states has sought to limit the number of sites from which card issuers could solicit students. *See* H.B. 2926, 79th Leg., 2002 Sess. (Kan. 2002) (would limit on-campus solicitation sites to any fraternity or sorority houses located on campus); H.B. 130, 2004 Leg., Reg. Sess. (Ky. 2004) ("administrative regulations shall address the . . . number of sites to be permitted"); H.B. 683, 91st Gen, Assem., 1st Reg. Sess. (Mo. 2001) ("any policy adopted pursuant to this section may include limitations on the number and frequency of solicitations and marketing events"); S. 157, 187th Gen. Assem., Reg. Sess. (Pa. 2003) ("the institution of higher education shall consider . . . [l]imiting credit card marketers to specific areas of the campus"); H.B. 3595, 2001 Leg., 114th Sess. (S.C. 2002) ("board of trustees or its designee must consider . . . limiting credit card marketers to specific designated college campus sites"); H.B. 1451, 2000 Leg., Reg. Sess. (Va. 2000) (governing bodies have power to regulate solicitation on campuses); H.B. 2163, 58th Leg., Reg. Sess. (Wash. 2003) (prohibiting door-to-door solicitations in campus residence halls and direct marketing in campus dining facilities).

286. A proposed resolution in Oklahoma would prohibit solicitation of anyone under twenty-one who is not financially independent. S. Con. Res. 1, 48th Leg., 1st Sess. (Okla. 2001). Proposed legislation in Connecticut states that no credit card may be issued to a student through face-to-face solicitation. S. 424, 2002 Leg., Reg. Sess. (Conn. 2002). A Washington bill would require that cards not be issued to individuals under twenty-one years of age unless certain conditions are met, including that a "written application is obtained in which an applicant indicates a list of all approved but unused credit available . . . and a statement by the applicant indicating the applicant's age[ ] and . . . [that] applicant qualifies for credit under reasonable and prudent

contract law that eighteen is the age of majority for a contract to be enforceable against a young adult.[287]

Credit card companies may agree with time and location restrictions but not age limit restrictions. College students between the ages of eighteen and twenty-one are the prime target of credit card companies because they are the easily identifiable social group most likely to lack a credit card.[288] Because soliciting these students is crucial to obtaining new cardholders, any age restriction legislation that limits the numbers of students who may be solicited will likely draw objections from the credit card industry and, as a result, will not be enacted. Even if an age restriction became law, it would likely be ignored and difficult to police. Despite the risks of getting arrested, thousands of underage college students every year obtain false driver's licenses so they can buy liquor.[289] That same license could be presented when applying for a credit card. Accordingly, one has to conclude that students who want credit cards will ignore age restrictions, especially given that none of the legislation penalizes students for violations of college solicitation rules,[290] and given that credit card companies often issue cards to underage children, and even pets.[291]

As well as seeking to increase the age for obtaining credit cards, some states want to protect students' and parents' privacy by shielding them from overreaching credit card companies.[292] For example, under

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standards used in the industry. . . ." S. 6369, 57th Leg., Reg. Sess. (Wash. 2001). Likewise, Kentucky would require parental consent, in writing, for any student under twenty-one to submit a credit application. H.B. 63, 2004 Leg., Reg. Sess. (Ky. 2004).

287. Amy Hilsman Kastely, Deborah Waire Post & Sharon Kang Hom, CONTRACTING LAW 544 (1996).

288. *See supra* notes 49–55 and accompanying text.

289. Approximately 40% to 60% of college students own fake IDs, which are now readily available for as little as twenty dollars. *See* Elizabeth Trendowski, *The IDs are Fake but the Problem Isn't*, HARTFORD COURANT, Aug. 10, 2001, at A13, 2001 WL 25316350.

290. *See, e.g.*, S. 424, 2002 Leg., Reg. Sess. (Conn. 2002); S. 6369, 57th Leg., Reg. Sess. (Wash. 2001). None of the bills carry a penalty for the students if a credit card is obtained under false pretense to meet certain age requirements. Any and all penalties are on the credit companies alone.

291. *See* Jimmy Settle, *Mid-Tennessee Plagued by High Bankruptcy Rates*, LEAF-CHRON. (Clarksville, Tenn.), Sept. 9, 2003, at B8, 2003 WL 61483585 (quoting Lloyd Ray, clerk of U.S. Bankruptcy Court in Nashville, who has seen credit cards issued to pets, teenagers, and children under age of five); Daniel Snyder, *From List Fatigue To Relationship Marketing*, CREDIT WORLD, Nov.-Dec. 1997, at 27 (noting that in 1960s, "[p]re-approved cards were being mass-mailed to literally any lists banks could lay their hands on. From children, to welfare recipients and even family pets, credit cards were being issued indiscriminately.").

292. The West Virginia legislature requires its university governing boards to consider limitations on a university's ability to the sell name lists. *See* W. VA. CODE ANN. § 18B-14-10 (Michie 2002). Proposed legislation in at least three states would

Louisiana law, public institutions are prohibited from providing credit card companies with student information in exchange for compensation.[293] Yet no real privacy protection is afforded by these states because credit card companies have cleverly drafted the contracts to require the universities to supply, not sell, the information.[294] For example, the MBNA exclusivity contract with Ohio State uses a private entity (e.g., the alumni association) as a conduit for Ohio State to "provide" the mailing list information.[295] A Washington bill attempted to prevent this intrusion by requiring schools to create a Do-Not-Contact list for students and to inform students of the availability of this list.[296] This list, together with an express requirement that the students not be contacted, would have been required in every agreement between the university and a bank or credit card company[297] and, thereby, would have provided students with a means to protect themselves from unwanted solicitations.

Louisiana is the only state that has statutorily addressed the role of public school employees in the solicitation process. No employee

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have gone farther and offered some privacy protection by actually prohibiting the sale of student lists. *See* H.B. 1373, 2002 Leg., Reg. Sess. (Md. 2002) ("credit card issuer may not purchase or otherwise obtain . . . the names or addresses of the students"); H.B. 683, 91st Gen. Assem., Reg. Sess. (Mo. 2001) (having option of not being listed in directories or of indicating that they do not wish to receive any solicitations); H.B. 2163, 58th Leg., 1st Reg. Sess. (Wash. 2003) ("[T]he governing boards. . .shall not permit the selling of student directory information to bank or credit card company by the institution" and must also create do-not-contact list for students to be included in any contract or agreement with a bank or credit card company).

293. *See* LA. REV. STAT. ANN. § 17:3351.2(3) (West 2002).

294. *See, e.g.*, OSU ALUMNI ASSOCIATION AFFINITY AGREEMENT, *supra* note 183, at 3.

295. OSU technically does not sell any information, but is obligated to provide the information to the Alumni Association, which in turn provides it to MBNA. *See supra* notes 183–188 and accompanying text. Yet it is clear that OSU is invading the privacy of others by providing the names, postal addresses, telephone numbers, and email addresses of OSU's students, staff, faculty, alumni, friends, fans, and ticket holders. *See* OSU ALUMNI ASSOCIATION AFFINITY AGREEMENT, *supra* note 183, at 3.

296. *See* H.B. 2163, 58th Leg., Reg. Sess. (Wash. 2003).

297. *Id.* ("The institution of higher education shall incorporate the do not contact list, including an express requirement that the students listed shall not be contacted with unsolicited offers, into any contract or agreement with a bank or credit card company for the solicitation of business from students on campus."). Similarly, a bill in Tennessee would have allowed students to indicate that they do not wish to receive unwanted solicitations. H.B. 993, 102nd Gen. Assem., Reg. Sess. (Tenn. 2001) (requiring that governing bodies of the universities "shall include on forms used in such collecting [of personal information] a provision that student may indicate that the student does not wish to receive solicitations, offers or advertisements by mail or otherwise based on such directory listing"). This preference would be marked and explained in the student directory, one of the ways marketers receive such information. *Id.*

of a Louisiana public school is allowed to disseminate information or applications for credit card companies.[298] This requirement is likely aimed at protecting students from undue pressure by certain employees to entice the students to obtain credit cards. University employees, particularly those with power over the students, either by authority or public appeal, can be especially persuasive to students.[299]

Besides attempting to protect potential customers, enacted and proposed legislation affords protection in the debt collection phase. For example, Louisiana's law prohibits credit card companies from imputing a student's debt to his or her parents unless the parent has agreed to assume liability on the debt.[300] Additionally, several states

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298. *See* LA. REV. STAT. ANN. § 17:3351.2 (West 2002).

299. At OSU, solicitation letters from MBNA to individuals on the mailing list are "written" by Jim Tressel, the head coach of OSU's football team. *See, e.g.*, Letter from MBNA America, signed by Jim Tressel, Head Football Coach, The Ohio State University, to Creola Johnson, Professor, Moritz College of Law at The Ohio State University (May 2003) (on file with the New York University Journal of Legislation and Public Policy). One letter associates school pride with obtaining an Ohio State-MBNA credit card:

> It was the perfect end to another memorable Buckeye football season. A hard-fought battle to the very end. Great plays you'll be talking about for a long time. And then the final whistle and . . . Ohio State wins the 2002 National Championship by a final score of 31-24! Now you can take that National Championship pride into a new year by applying for The Ohio State University Alumni Association *Platinum Plus*® MasterCard® credit card.

Id. Even this solicitation featured an enticing trinket; it offered applicants "eligib[ility] to receive a FREE officially licensed special edition Ohio State University National Champions Spectator Chair—a $30 value!" *Id.*

In a similar letter, MBNA attempted to capitalize on the Ohio State-University of Michigan rivalry and appealed to the heart of the fan. *See* Letter from MBNA America, to Creola Johnson, Professor, Moritz College of Law at The Ohio State University (Sept. 2003) (on file with the New York University Journal of Legislation and Public Policy). As suggested from the wording below, students who receive this solicitation letter could feel that they are not "team players" if they choose not to apply for the credit card:

> The Ohio State Buckeyes and The University of Michigan—the greatest rivalry of the century as ranked by ESPN.com—will go head-to-head for the 100th time on November 22, 2003 in Michigan Stadium. With national title implications frequently on the line, will the host Wolverines stop the defending champion Buckeyes this year? Which team do you want to win bragging rights? . . . Sport your team's colors . . . apply for The Ohio State University Alumni Association or the Alumni Association of the University of Michigan credit card from MBNA America Bank—now with *WorldPoints*[SM]! It's the ultimate fan gear.

Id.

300. *See* LA. REV. STAT. ANN. § 9:3577.4 (West 2002). West Virginia's law contains a similar provision. *See* W. VA. CODE ANN. § 18B-14-10 (Michie 2002).

have sought to protect parents from secondary liability.[301] To make it clear that credit card companies cannot rely on the assets of parents who do not co-sign, proposed legislation in Washington puts the burden on the companies to assess the student's other sources of available unused credit and assess the student's credit worthiness under "reasonable and prudent standards."[302]

Most of the state statutes and proposed bills deal with the giving of trinkets—the practice at the heart of on-campus solicitations.[303]

301. *See, e.g.*, H.B. 63, 2004 Leg., Reg. Sess. (Ky. 2004); H.B. 1895, 185th Gen. Assem., Reg. Sess. (Pa. 2001).

302. *See* S. 6369, 57th Leg., Reg. Sess. (Wash. 2002) (prohibiting issue of cards to students under age twenty-one unless "written application is obtained in which an applicant indicates a list of all approved but unused credit available to the applicant, by amount and source, and a statement by the applicant indicating applicant's age" and that "the applicant qualifies for credit under reasonable and prudent standards used in the industry for extensions of similar credit").

303. Arkansas bans gifts from being offered to students under twenty-one years of age in face-to-face marketing on campus. *See* ARK. CODE ANN. § 4-104-202 (Michie 2001) ("It is unlawful on the campus of an institution of higher education to offer gifts or any other promotional incentives to any person under twenty-one years of age through direct face-to-face contact in order to entice the person to apply for a credit card."). Both California and West Virginia urge universities to adopt an outright ban on gifts. *See* CAL. EDUC. CODE § 99030 (Deering 2002) ("Marketers of student credit cards [must] be prohibited from offering gifts to students for filling out credit card applications."); W. VA. CODE ANN. § 18B-14-10 (Michie 2002) ("[T]he governing boards shall consider . . . [p]rohibiting credit card marketers from offering tangible gifts to students in exchange for completing a credit card application . . ."). Louisiana prohibits gifts to students under twenty-one unless they have been provided with an educational credit card debt brochure. *See* LA. REV. STAT. ANN. § 9:3577.3 (West 2002) ("[I]t shall be unlawful for any credit card issuer to give or offer to give, directly or indirectly, orally or in writing, any gratuity or other thing of value . . . or advertise the offering of such . . . unless the student has been provided a credit card debt education brochure.").

For proposed legislation that seeks to ban credit card solicitation via trinkets, see H.R. Con. Res. 14, 22nd Leg., Reg. Sess. (Haw. 2003) (governing bodies should consider "[p]rohibiting marketers of credit cards from offering gifts to students for filling out credit card applications[ ]"); H.B. 2926, 79th Leg., 2002 Sess. (Kan. 2002) ("No incentives may be offered by any person as or [sic] promotion for or inducement to submit an application for a credit card or affinity card."); H.B. 130, 2004 Leg., Reg. Sess. (Ky. 2004) ("Credit card companies, marketers or their agents shall not offer gifts to students for filling out applications for student credit cards."); H.B. 1373, 2002 Leg., Reg. Sess. (Md. 2002) ("A credit card issuer may not offer gifts in exchange for the completion of a credit card application as part of a marketing program conducted on a campus of an institution of higher education in the state."); A.B. 10492, 2001 Leg., 225th Sess. (N.Y. 2002) (governing bodies shall adopt policies prohibiting gifts and incentives); S. Con. Res. 1, 48th Leg., 1st Sess. (Okla. 2001) (credit cards may not be issued to anyone under twenty-one who is "not financially independent, without the express written approval of such person's parent or legal guardian"); S. 137, 185th Gen. Assem., Reg. Sess. (Pa. 2001) (gifts cannot be given unless debt education materials are also distributed); H.B. 7056, 2003-2004 Leg., Reg. Sess. (R.I. 2004) ("It shall be unlawful to offer gifts on college campuses in connec-

Studies have shown that the majority of students are enticed to apply for credit cards with on-campus vendors because they can obtain a free sweatshirt or other gifts simply by completing an application.[304] Statutes and proposed legislation that ban or limit gifts and impose other limits on soliciting practices are aimed at preventing students from rashly signing up for credit. Banning gifts is essential to any state legislation seeking to regulate on-campus solicitations because the majority of students will not apply for a credit card unless a gift is offered. As a result, the ban will prevent students from being enticed to prematurely take on debt.

Finally, many lawmakers have recognized the need to require some form of financial education to protect students from overusing the credit available to them.[305] In some states, a university's obligation to provide education is conditioned on certain events. In Arkansas, education must be provided during freshman orientation but only if credit card companies are allowed to solicit at athletic events.[306] Louisiana only requires that debt education brochures be handed out if

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tion with the solicitation of credit card to students."); H.B. 3595, 2001 Gen. Assem., 114th Sess. (S.C. 2002) ("board of trustees or its designee must consider . . . prohibiting credit card marketers from offering gifts . . . unless student has been given a credit card debt education brochure"); H.B. 993, 102nd Gen. Assem., Reg. Sess. (Tenn. 2001) ("It is unlawful to offer gifts or any other promotional incentives to students on campus . . . in order to entice such students to apply for credit cards or any other instruments of credit"); H.B. 2163, 58th Leg., Reg. Sess. (Wash. 2003) ("shall not be permitted to [ ] [a]dvertise or offer free merchandise and incentives to students as part of a credit card marketing effort").

304. *See, e.g.*, 2003 SURVEY OF SPENDING HABITS OF OSU UNDERGRADUATES, *supra* note 80, at 15; OK STUDY, *supra* note 128.

305. Arkansas, California, Louisiana, and West Virginia have passed legislation that requires some form of debt education to students when they apply for credit cards. In California, the higher education governing bodies only have to consider promulgating rules that mandate debt education during freshman orientation. *See* CAL. EDUC. CODE § 99030 (Deering 2002). California's statute states that "it is the intent of the Legislature that [the governing bodies of the universities] consider . . . [t]hat credit card and debt education and counseling sessions become a regular part of campus orientation of new students." *Id*. However, the statute only indicates that "existing debt education materials prepared by nonprofit entities" be used, with no specification as to what such materials should contain and what the university should teach. *Id*. West Virginia's statute provides that "the governing boards shall consider . . . [d]eveloping a credit card debt education presentation to be incorporated into orientation programs offered to new students," but like the California statute, fails to specify what information should be included, who should present it, and how the information should be presented. *Id*.

306. *See* ARK. CODE ANN. § 4-104-203 (Michie 2001). The statute provides that "[i]f the institution of higher learning permits solicitations at athletic events, the institution shall include a credit seminar within the institution's freshman orientation", yet fails to provide any details about what information the seminar should present. *Id.*

the solicitors are using gifts or other incentives to induce students to apply.[307]

Much of the proposed legislation introduced in other states includes debt education requirements that would require the university to offer a debt management seminar during campus orientation,[308] and/or require credit card issuers to provide educational materials to students.[309] However, only Maryland, New Jersey, and Rhode Island have introduced legislation that actually describes in detail what information must be disseminated in the debt education programs.[310] Spe-

307. LA. REV. STAT. ANN. § 9:3577.3 (West 2002). The provision fails to specify what information the brochures should contain, seemingly leaving content to the credit companies to decide. *Id.*

308. *See* H.B. 130, 2004 Leg., Reg. Sess. (Ky. 2004) (providing that "[p]ublic postsecondary institutions shall include credit card and debt education and counseling sessions as part of campus orientation of new students . . . [that] may utilize existing debt material prepared by nonprofit entities," but offering no specifics as to what orientation shall include); A.B. 10492, 2001 Leg., 225th Sess. (N.Y. 2002) ("governing body of every institution of higher education in this state shall establish a course of instruction, to be administered during the orientation of all newly admitted students, on the implications of establishing a bad credit rating"); H.B. 7056, 2003-2004 Leg., Reg. Sess. (R.I. 2004) (if solicitation is allowed on campus, then institution must require all of its new students to attend comprehensive seminar).

309. *See* A.B. 10492, 2001 Leg., 225th Sess. (N.Y. 2002); *see also* S. 7069, 2003 Leg., 227th Sess. (N.Y. 2004) (failing to specify what materials distributed by solicitors should contain). Legislation introduced in Pennsylvania and South Carolina requests that the governing bodies institute a debt-education orientation program and have educational materials be provided quarterly via distribution of brochures to students with purchases from campus bookstores. *See* S. 157, 187th Gen. Assem., Reg. Sess. (Pa. 2003) (failing to specify what material should be included in brochure); H.B. 3595, 2001 Leg., 114th Sess. (S.C. 2002) (failing to specify what material should be included in brochure). Other states' proposals would ask the universities to formulate plans to educate students. *See* H.B. 525, 2000 Leg., Reg. Sess. (Fla. 2000) (providing that "each university shall ensure that students are provided opportunities to become educated as to proper use of credit cards, methods to avoid indebtedness and how to manage debt responsibly," but failing to specify how and when such information should be presented); H.R. Con. Res. 14, 22nd Leg., Reg. Sess. (Haw. 2003) (stating that "consideration should be given to . . . [i]ncluding credit card and debt education and counseling in the regular orientation of new students . . . and . . . [u]tilizing exiting [sic] debt education materials prepared by nonprofit entities", but failing to specify what material should be presented); S. Res. 163, 91st Leg., Reg. Sess. (Mich. 2002) (urging "Michigan's public colleges and universities to provide financial responsibility and debt education seminars to all incoming freshmen," but failing to specify what material should be presented); H.B. 683, 91st Gen. Assem., 1st Reg. Sess. (Mo. 2001) (providing for class on debt management to be offered per quarter or semester and similar information in student handbook, but fails to specify what material should be presented). In a different format, a New Jersey bill provided that universities may enter into marketing agreements with credit card companies, so long as the schools charge a fee that is sufficient to cover a school-operated debt education program. S. 647, 210th Leg., Reg. Sess. (N.J. 2002).

310. *See* H.B. 1373, 2002 Leg., 416th Sess. (Md. 2002); S. 647, 210th Leg., Reg. Sess. (N.J. 2002); H.B. 7013, 2001-2002 Leg., Reg. Sess. (R.I. 2002).

cifically, these programs must give a full explanation of the consequences of unpaid credit card bills, rate shifts, fixed rates, introductory rates, balance transfers, grace periods, annual fees, a discussion of the good and bad uses of credit, and a discussion of the timeline for paying off a bill at the minimum monthly rate.[311] While Maryland, New Jersey, and Rhode Island have proposed legislation that goes further than the other legislation and statutes, none of them comprehensively and cohesively provide a framework for debt education. Such a framework must address: (1) who should provide the debt education; (2) how should the information be disseminated; (3) what should be taught in a debt education course; and (4) when should the education be offered.

In summary, many lawmakers correctly recognize that on-campus credit card solicitations pose problems for some students who naively sign up for credit cards in order to obtain free gifts. Lawmakers have sought to address these problems by restricting solicitation practices and by sometimes requiring education, but most of these efforts have been incomplete. As set forth in the next section, effective legislation should ban free merchandise, impose reasonable solicitation restrictions, and provide mandatory education.

IV.
A MODEST PROPOSAL: LIMITING SOLICITATION PRACTICES AND PROVIDING FINANCIAL EDUCATION

To date, no state has passed legislation that protects students adequately from the pitfalls of credit card debt. Nevertheless, it is imperative that universities, especially those which profit from lucrative exclusivity contracts with credit card companies, fulfill their obligation to protect students.[312] At a minimum, lawmakers should require universities to adopt proactive policies that limit on-campus soliciting practices and provide mandatory education about how to responsibly incur and manage credit card debt.

A. Banning Gifts and Restricting Credit Card Extension Practices

Short of completely banning on-campus solicitations, a move that many students would welcome,[313] lawmakers should absolutely pro-

311. *See* statutes cited *supra* note 310.
312. *See supra* Part II.B.
313. Research shows the majority of students do not want credit card vendors on campus. *See, e.g.*, LSU STUDY, *supra* note 91, at 11 (reporting that 62% of students surveyed "stated that credit card vendors should not be allowed to solicit students on campus").

hibit credit card companies from offering gifts because this is the primary limitation needed on solicitation practices. Students are bombarded with credit card offers during the first week of college.[314] The OSU Survey revealed that the majority of students who sign up for credit cards with on-campus solicitors do so simply to get the free merchandise,[315] and, in fact, the Credit Card Solicitation Task Force at Ohio State recommended a ban on the giving of free merchandise in exchange for completion of credit card applications.[316] Another survey reported that only 15% of students obtaining cards in their names had jobs when they applied for credit cards on campus.[317] Students who obtain their own credit cards via on-campus solicitors carried higher monthly balances—by an average of $200—in comparison to students who had obtained them through other means.[318] When asked how long it would take for someone making only the minimum

314. *See* David Flaum, *In the Know on Dough*, THE COM. APPEAL (Memphis, Tenn.), Mar. 31, 2004, at C1, 2004 WL 59037573 ("Students entering college are offered an average of 8 credit cards the first week of school.").

315. 2003 SURVEY OF SPENDING HABITS OF OSU UNDERGRADUATES, *supra* note 80, at 15 (finding that 70% of students applied with on-campus vendor to get "free stuff").

316. The report reads as follows:

> 4. Significant limitations on credit card solicitations should be instituted as university policy and included in the exclusive contract, as follows:
>
> a. Point-of-sale inducements should be banned at credit card marketing efforts at general campus locations, which are generally targeted to students. This ban would include giveaways of such items as T-shirts, caps, phone cards, soda, etc. in exchange for persons completing applications, or simply as gifts. Significant sentiment also existed on the committee for a ban on permitting application to be completed at the time the face-to-face sales effort is made on campus, as an alternative or in addition to the ban on inducements. The majority felt, however, that the ban on inducements in conjunction with other listed controls would be sufficient.

CREDIT CARD SOLICITATION TASK FORCE, *supra* note 7, at 6–7. Without providing an explanation, OSU ignored this recommendation and adopted a policy that could be called a weak attempt at providing education by making available free debt counseling for students already in financial trouble. *See* Jack Teed, *Students Benefit from New Credit Deal*, THE LANTERN (Ohio State Univ.), Mar. 8, 2004 ("MBNA funds a position on campus to educate students about financial debt and credit card management.") (on file with the New York University Journal of Legislation and Public Policy); Derrik Chinn, *Solicitors Must be Registered by OSU*, THE LANTERN (Ohio State Univ.), June 3, 2003 (credit solicitors can still be found on OSU's campus, handing out free items in exchange for completed credit application) (on file with the New York University Journal of Legislation and Public Policy).

317. PIRG STUDY, *supra* note 5.

318. *Id*. (also finding that students who obtained credit cards via on-campus vendors had more credit cards than students who did not obtain their cards from on-campus vendors); *see also* Norvilitis, *supra* note 85, at 943 (students who applied on campus carry more debt and have less income than students with credit cards obtained elsewhere).

monthly payment to pay off a credit card balance of $1,000 at an 18% interest rate, only 20% of the students surveyed correctly answered six years.[319] As this research reveals, financially-ignorant, unemployed, gift-seeking students should not be left at the mercy of marketing-savvy (and arguably predatory) credit card companies.[320]

Banning gifts will level the playing field because it will result in the completion of applications by students who actually want credit cards, not free merchandise, but will still leave credit card companies with opportunities to market on campus. A ban on gifts is necessary even when the university is contractually obligated to limit campus access to one credit card company because research suggests that students will continue to apply for cards simply to get the promotional gifts.[321] Once a ban on gifts is implemented, college students who need credit cards will still have ample chances to apply for credit cards because the credit card industry's presence on college campuses is unavoidable.[322] In addition to giving away merchandise at marketing tables, the industry's typical methods include displaying "take-one" applications in key locations, paying on- or near-campus businesses to place credit card applications in shopping bags, placing flyers or posters in dorms and student unions, advertising in campus newspapers and magazines, and mailing solicitations to student dorms.[323] In short, no one should fear that a credit card company lacks marketing opportunities, even if a ban on gifts is in place.

Lawmakers should not end reform at a ban on free gifts but should require universities that have entered into exclusivity contracts with credit card companies to use their leverage to impose limitations on the companies' credit extension practices. Unquestionably, credit card companies compete for these exclusivity contracts because the contracts provide the companies with sole on-campus access to solicit students.[324] Some lawmakers and university administrators agree that

319. PIRG STUDY, *supra* note 5.

320. *See* MD STUDY, *supra* note 71, at 13 (stating that college students fail to understand basic fact that using credit card is loan).

321. *See* 2003 SURVEY OF SPENDING HABITS OF OSU UNDERGRADUATES, *supra* note 80, at 14, 15 (finding that although OSU limited on-campus access to only one vendor in 2003, there was only 4.5% drop in number of students who applied for card; study also found that 70% signed up to get "free stuff").

322. *See* Pinto, *Credit Card Solicitation Policies*, *supra* note 171, at 171 (noting that some research questions effectiveness of school policies restricting vendors' on-campus practices, finding that policies do not reduce number of students with credit cards).

323. Bianco & Bosco, *supra* note 43, at 51.

324. *See*, *e.g.*, *MBNA at Citigroup Smith Barney's Seventh Annual Financial Services Conference*, FIN. DISCLOSURE WIRE, Jan. 28, 2004, 2004 WL 65933088 (report-

restricting credit extension practices of the credit card companies is essential to providing students with basic protections.[325] Therefore, in selecting a credit card company as the exclusive on-campus vendor, lawmakers should require a university to strongly favor the vendor that is willing to agree to the following restrictions: (1) creation of low lines of credit for students with no income or with part-time jobs; (2) prohibition against unilateral increases in credit limits; (3) prohibition against sending unrequested blank checks; (4) verification of an increase in a student's income before increasing credit limits; and (5) inclusion of conspicuous information in every billing statement about the payoff period for minimum balance payers. Imposing these restrictions and banning gifts are only part of an effective solution to combating the practices of credit card companies that unfairly lure students to sign up for credit cards.

B. Equipping Students through Mandatory Education to Handle Credit

In light of the research data that demonstrates that students are woefully ignorant about basic money matters and credit,[326] lawmakers should impose on universities the obligation to provide financial education in addition to banning promotional gifts and restricting credit extension practices.[327] Research shows students want education on

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ing remarks of Bruce Hammonds, President and CEO of MBNA Corporation, stating that MBNA is primarily in credit card business and that it uses "unique marketing" penetration strategy that entails entering into affinity or endorsement contracts with variety of organizations, including over 800 universities and colleges); David Flaum, *First South Invests in U. of M.*, COMM. APPEAL (Memphis, Tenn.), Aug. 23, 2003, at C1, 2003 WL 59707707 (reporting that University of Memphis requested proposals from fifteen to twenty regional financial institutions and ultimately awarded to First South Credit Union right to have only bank on campus).

325. *See supra* notes 266–74 and accompanying text (discussing federal bills aimed at restricting credit extension practices); CREDIT CARD SOLICITATION TASK FORCE, *supra* note 7, at 9 (recommending that OSU impose certain credit extension restrictions on credit card company selected as exclusive on-campus vendor).

326. *See* Chen & Volpe, *supra* note 141, at 112 (finding in survey of college students' financial literacy that participants answered only half of questions correctly and concluding that "college students' knowledge on personal finance is inadequate"); *supra* notes 147–52 and accompanying text (discussing financial illiteracy among high school seniors).

327. *See Financial Literacy Hearing*, *supra* note 95 (testimony of Senator Daniel Akaka) (urging passage of financial literacy legislation and pointing out that "college students who make uninformed financial decisions are also likely to continue to make the same mistakes as they get older. They may not fully understand the power of, for example, compound interest and may fail to save and invest sufficiently for retirement"); MD STUDY, *supra* note 71, at 13-14 (stating that college students fail to understand basics, such as consequences of only paying minimum monthly amount and implications of bad credit report); Shenk, *supra* note 120, at 38 ("In a recent survey

how to use credit cards and manage debt responsibly.[328] Their pervasive illiteracy is due, in part, to a lack of financial education courses in college.[329] Providing education to remedy this ignorance should be the mission of every university.[330]

To ensure that universities fulfill this mission, Congress could amend existing federal law to require universities to provide mandatory specialized financial literacy curricula for college students and could condition continued receipt of federal funding for higher education on implementing such curricula.[331] Recognizing that many

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by the Consumer Federation of America, 78 percent of college juniors and seniors didn't know that the best way to figure out the cost of a loan was to look at the interest rate."). These conclusions are supported by the results of the survey conducted in conjunction with this paper, which show that students—particularly freshmen—are generally ignorant of the implications of mishandling their credit. *See supra* notes 153–66 and accompanying text; Table 3.

The problem is not limited to students, however. The general American population has been given a "D" in financial literacy for the last two years by Bankrate.com's Financial Literacy Survey. *Americans Given a 'D' for Financial Knowledge*, CREDIT UNION J., May 3, 2004, at 3. Financial literacy around the world has been receiving increased attention in recent years. *See* Jeanne M. Hogarth, *Financial Literacy and Family & Consumer Sciences*, 94 J. FAM. & CONSUMER SCI. 14, 14 (2002) ("Over the last several years, the issue of financial literacy seems to have risen on the agendas of educators, community groups, businesses, government agencies, organizations, and policy-makers—everyone is talking about it.").

328. *See* Norvilitis, *supra* note 85, at 944–45 (finding that many students with credit card debt want information and education regarding management of their finances); 2003 SURVEY OF SPENDING HABITS OF OSU UNDERGRADUATES, *supra* note 80, at 2 (reporting that 78.5% of students want university advice on credit card management).

329. *See* Chen & Volpe, *supra* note 141, at 112 ("One reason for the low level of knowledge is the systematic lack of sound personal finance education in college curricula.").

330. "More than 800 colleges and universities nationwide have begun offering financial consumer advice and workshops." *US Issuers Urged to Slow Campus Lending*, CARDS INT'L, Apr. 11, 2001, at 11. A study by the National Endowment for Financial Education found that as few as ten hours of education can have a positive impact on students' financial habits. *See* LINDA STARR, EDUCATION WORLD, FINANCIAL LITERACY BEGINS AT SCHOOL!, *at* http://www.education-world.com/a_lesson/lesson232.shtml (last visited Feb. 28, 2005). *But see* Kelly Hildebrandt, *U.S. Students and Financial Literacy*, ARGUS LEADER (S.D.), May 2, 2004, at 1D, 2004 WL 62607152 (reporting that very few states require personal finance courses as requirement for graduation, though more colleges now require economics). Unfortunately, most Americans never learn basic financial management from an organized system, but rather through experience, family, and friends. Clark Boardman Callaghan et al., *Debtor Education: Making Sure a Good Idea Does Not Go Awry*, 1 NORTON BANKR. L. ADVISER 6 (2000), WL 2000 No. 1 NRTN-BLA 6; *see also* MD STUDY, *supra* note 71, at 8 (finding that eleven of twelve Maryland schools surveyed offered varying forms of financial education, but that largest school, University of Maryland at College Park, offered none).

331. Congress could give higher education institutions an incentive to provide mandatory education by conditioning the receipt of federal funding on the providing of financial literacy programs. *See* Lynn A. Baker & Mitchell N. Berman, *Getting Off*

consumers need tools and knowledge to manage their finances, Congress created recently the Financial Literacy and Education Commission (FLEC) as part of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) to improve consumer financial literacy.[332] Pursuant to the FACT Act, the GAO recently completed a survey of consumers' knowledge about and experience with credit reports.[333] The report concluded that although consumers demonstrated sufficient literacy on a few credit-related questions, FLEC should improve literacy using a multimedia campaign "targeting those populations that scored the lowest on [the] survey."[334] Survey participants under twenty-five were among the consumer groups that scored the lowest.[335] Since this GAO survey and the OSU survey described above demonstrate the financial illiteracy of college students, Congress could require FLEC to work with universities to improve financial literacy on a number of topics already designated as relevant to consumers in general. Those topics include teaching consumers how to effectively "manage spending, credit, and . . . credit card debt" and "increas[ing consumer] awareness of the availability and significance of credit reports and credit scores in obtaining credit . . . and the effect common financial decisions may have on credit scores."[336]

While credit card companies have been involved in creating financial education programs, universities should be given the mandate to provide debt education using the best tools for inculcating responsi-

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the Dole*: Why the Court Should Abandon Its Spending Doctrine, and How a Too-Clever Congress Could Provoke It to Do So*, 78 IND. L.J. 459, 501–03 (2003) (describing how to use Spending Clause to circumvent limits on congressional authority and arguing that Congress could get states to comply with intellectual property law "by conditioning full federal funding for university research on a state's waiver of its immunity in intellectual property cases").

332. *See* Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, 117 Stat. 1952 (2003) (amending Fair Credit Reporting Act, 15 U.S.C. § 1601 *et seq.*); 20 U.S.C. § 9702(a) (establishing "Financial Literacy and Education Commission"); 20 U.S.C. § 9703(a)(1) ("The Commission . . . shall . . . streamline, improve, or augment the financial literacy and education programs, grants, and materials of the Federal Government, including curricula for all Americans.").

333. *See* 20 U.S.C. § 9706 (requiring completion of "study to assess the extent of consumers' knowledge and awareness of credit reports, credit scores, and the dispute resolution process, and on methods for improving financial literacy"); GAO, CREDIT REPORTING LITERACY, *supra* note 161, at 3 ("This report responds to a mandate in the Fair and Accurate Credit Transaction Act (FACT Act) of 2003 requiring GAO to assess consumers' understanding of credit reporting.").

334. GAO, CREDIT REPORTING LITERACY, *supra* note 161, at 45-46.

335. *Id.* at 46.

336. *See* 20 U.S.C. § 9703(a)(2)(B)-(C).

ble financial budgeting and debt management.[337] In some of the proposed state bills previously analyzed, debt education was to be the responsibility of the credit card company.[338] An inherent conflict exists between credit card companies' education programs and their financial interests.[339] Credit card companies do not have a strong incentive to provide college students with the most accurate information on how to manage debt.[340] From the perspective of the company, the student only needs sufficient income to pay the minimum balance on time every month. In fact, to a credit card company, such a student is a responsible account holder even though that student is making financial decisions that may interfere with the typical long-term goals of a student (e.g., purchasing a home at the lowest possible interest rate).[341] Further, debt management education is best done by college

337. *See* Bianco & Bosco, *supra* note 43, at 59–61 (arguing that universities should require every student to take personal finance course that includes lessons on responsible credit card use and discounting credit card companies' efforts to educate students because companies "offer pseudo 'financial education' programs along with credit card applications"). *But see* Austin & Phillips, *supra* note 136, at 523–24 (arguing that due to survey findings about student credit card indebtedness, "developing programs to educate students is likely the most beneficial undertaking credit card companies can accomplish to change their image and be accepted more readily on college campuses"). *See also* Norvilitis, *supra* note 85, at 944–45 (finding that many students with credit card debt want information and education regarding management of their finances); 2003 SURVEY OF SPENDING HABITS OF OSU UNDERGRADUATES, *supra* note 80, at 13 (reporting that 78.5% of students want university advice on credit card management); Chen & Volpe, *supra* note 141, at 112 ("One reason for the low level of knowledge is the systematic lack of sound personal finance education in college curricula.").

338. *See supra* notes 305–311 and accompanying text.

339. Non-industry studies consider those students who pay their balance in full every month to be responsible "convenience payers." *See, e.g.*, Munro & Hirt, *supra* note 40, at 55 (finding that "[s]tudents who use less judicious payment practices (revolving payers) are more likely to be racial minorities, upper-division or graduate students who acquire their credit cards after enrolling in college and who have had cards for 3 or more years").

340. *Cf*. Howard B. Hoffman, *Consumer Bankruptcy Filers and Pre-Petition Consumer Credit Counseling: Is Congress Trying to Place the Fox in Charge of the Henhouse?*, 54 BUS. LAW. 1629, 1630–31, 1641–43 (1998–1999) (noting that by requiring potential bankruptcy filers to undergo mandatory credit counseling prior to filing under Chapter 13, credit counselors would have increased incentive to set up agreements favorable to counseling service and not debtor; although most counseling services are non-profit, industry is largely unregulated and is subject of numerous complaints); Susan Block-Lieb et al., *Lessons from the Trenches: Debtor Education in Theory and Practice*, 7 FORDHAM J. CORP. & FIN. L. 503, 518–19 (2001) (observing that special attention must be paid to development of "predatory educational practices"—in which groups will attempt to take advantage of education to advance their own interests—in mandatory education components of recent bankruptcy bills).

341. *See supra* notes 111–15 and accompanying text (explaining how credit card payment practices impact credit scores and using example that compares two students,

educators, not administrators, who, as a result of approving exclusivity contracts, may have a stake in the success of the credit card companies' marketing efforts.[342] Credit card companies, however, could bear the additional cost of providing mandatory education,[343] particularly since some credit card companies have acted on their own initiative to provide financial education.[344]

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one with a high credit score and one with a low score and shows that person with low score will pay over $114,000 in additional interest on home and car loans).

342. *See*, *e.g.*, Munro & Hirt, *supra* note 40, at 51 (explaining how royalties paid to universities are based on percentage of interest on outstanding accounts and stating that "[b]ecause interest accrues only when a credit card bill is not paid in full at the end of the month, colleges and universities actually profit from the debt of their students and alumni").

343. To prevent the cost of college from rising due to mandatory financial education courses, colleges could easily substitute a course about credit usage and debt management for one of several mandatory undergraduate courses of doubtful utility (e.g., mandatory completion of physical science courses for students majoring in liberal arts degree programs). Universities could also look to non-profit foundations and/or private donors to cover the costs of creating and providing the course. *See, e.g.*, Michelle Singletary, *Bankruptcy Judge Takes Novel Approach in Warning Young People of Debt's Dangers*, WASH. POST, Nov. 18, 2004, at E3 (discussing financial literacy program called CARE (Credit Abuse Resistance Education), founded by John C. Ninfo II, chief judge of U.S. Bankruptcy Court for Western District of New York, which sends bankruptcy professionals such as attorneys, judges, and trustees into colleges and high schools across America to educate students about financial matters, including dangers of credit card indebtedness).

Furthermore, because credit card companies are desperate to gain access to students, it is likely that they can be persuaded to fund the additional cost of offering the course. If Dr. Manning's estimate is correct, more than half of all universities have entered into exclusivity contracts and more will follow. MANNING, CREDIT CARD NATION, *supra* note 28, at 162. Universities bound by such contracts can simply pass on the cost of the course to the credit card company granted exclusive access to students on campus. In summary, college matriculation is the time to learn credit usage and debt management skills, and universities have various ways of covering the costs of providing a course to teach those skills.

344. *See* CONSUMER BANKERS ASS'N., 2004 SURVEY OF BANK-SPONSORED FINANCIAL LITERACY PROGRAMS 35 (2004) (claiming that banks are primary sponsor of 57% of college-based literacy programs). Many credit card companies are now entering campuses to offer "education" as well, including peer-to-peer seminars entitled "Are You Credit Wise?" sponsored by MasterCard and "Citibank Credit Education Programs," which provides marketing classes with a budget to create a campaign to educate fellow peers about credit card usage in general. Kate Fitzgerald, *They're Baaaaack: Card Marketers on Campus*, CREDIT CARD MGMT., June 2003, at 18. While the credit card issuers may be offering "education," the opportunity for sales is not lost on them—as a MasterCard Vice President noted, "[e]ven without having a big sales effort, simply having students see MasterCard's name at the end of a presentation is a very powerful one-on-one association when it's presented by another student." *Id*. at 20. In addition to MasterCard's peer-to-peer program, the company distributes pamphlets to its current cardholders that are designed to teach finances to younger consumers, sends copies of videotapes to high schools, counsels parents on how to teach their children finances, and runs an educational website. *MasterCard's Latest Education Initiative*, CREDIT CARD MGMT., July 2002, at 10. There have been

The form and timing of the education is critical. For years, financial literacy training has been provided in various forms to different audiences; it has been touted as both a cure for consumers' unwise financial decisions and as a way for people to protect themselves from predatory lenders.[345] Research shows that education does have a positive impact on consumers;[346] however, "a 'one size fits all' approach to financial education will be less effective than more targeted, tailored approaches."[347] As discussed earlier, some lawmakers want, and Louisiana law requires, debt education brochures to be handed out as a condition of the credit card company's distribution of free merchandise.[348] Because educational brochures are not addressed to anyone personally and are intended to address a wide audience, distribution of brochures is the most generic approach to dissemination of information about responsible credit card use. Given the nominal efficacy of broad "educational" efforts,[349] and a strong likelihood that educational brochures distributed at on-campus marketing tables will end up in the trash can, distribution of educational brochures should not be adopted as sound policy by university administrators. These brochures are not likely to impart knowledge or positively affect the subsequent behavior of students.

Including debt education during orientation is a better alternative to educational brochures. Orientation, however, may not be the ideal time for something as important as debt education. Because the majority of entering freshman do not have credit cards and because freshman orientation programs tend to be generic, debt education will likely be viewed as irrelevant and be lost in the overload of informa-

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no studies regarding the efficacy of the education provided by credit companies. *See* Joanne Cleaver & Frances Martin, *Pass or Fail for Credit Education*, CREDIT CARD MGMT., Sept. 1996, at 110.

345. *See* Richard M. Todd, *Financial Literacy Education: A Potential Tool for Reducing Predatory Lending?*, THE REGION, Dec. 2002, at 8.

346. Students with financial educations tend to show greater financial responsibility as adults, having higher saving rates and larger contributions to retirement plans. Press Release, U.S. Dep't of the Treasury, Treasury's Office of Financial Education Joins Florida International University to Launch Financial Education Program in Miami (Apr. 6, 2004), 2004 WL 73625608.

347. *See* Jeanne M. Hogarth et al., *Patterns of Financial Behaviors: Implications for Community Educators and Policy Makers (Discussion Draft)*, Feb. 2003, at 22, *at* http://www.federalreserve.gov/communityaffairs/national/CA_Conf_SusCommDev/pdf/hogarthjeanne.pdf (last visited Feb. 27, 2005); OK STUDY, *supra* note 4, at 27, 29 (stating that most students reported little or no usefulness from school debt-management programs and that 80% believed their school could do more to inform students on debt-related issues).

348. *See supra* notes 305–07 and accompanying text.

349. MD STUDY, *supra* note 71, at 13 (describing most educational programs offered by schools as "inadequate").

tion usually presented at orientation programs. The second semester of the freshman year may be the best time. By January, many students will have already obtained credit cards[350] and charged items and, therefore, will have a context to apply the financial education.

The course should contain extensive information presented in the most effective way.[351] As the Treasury Department's Financial Education Office has observed, "[p]roviding reliable and sound financial education information is crucial to improving people's lives and helping them avoid costly mistakes."[352] There are two basic approaches to classroom learning, which can be illustrated through the surface/deep metaphor.[353] Students with only a surface approach to the course just attempt to manage the course requirements without any further handling or consideration of the material.[354] On the other hand, students take a deep approach when they relate ideas to previous life experience and knowledge, look for patterns, and otherwise critically examine the material.[355] The deep approach closely correlates with what has been termed committed learning, which is characterized by students learning tasks which they deem personally important and fulfilling.[356] Committed learning also carries a sense of confidence and

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350. Credit card marketing companies recognize that the fall term is "when [the students] are most responsive." *Marketing to Students, Alumni Still Profitable*, CARD NEWS, Aug. 4, 1997, at 1, 1997 WL 8787818.

351. Research demonstrates the effectiveness of debtor education in other contexts. A recent study conducted by one of the leading purchasers of home mortgages found that home-ownership counseling can effectively reduce delinquency rates by as much as a third. *See* Melissa Miller-Atwood, *Smarter Homeowners*, KAN. BANKER, Oct. 2003, at 17, (discussing Freddie Mac study that found that debtors who received home-ownership counseling had 19% lower mortgage delinquency rate than those who did not). Alan Greenspan, chairman of the U.S. Federal Reserve Board, strongly urges community organizations to provide financial literacy training because not only is it beneficial for the individual, but for the economy as a whole. Alan Greenspan, *Financial Literacy: A Tool for Economic Progress*, THE FUTURIST, July–Aug. 2002, at 40–41 ("Community organizations are also using financial-literacy campaigns to help prevent vulnerable consumers from becoming entangled in financially devastating credit arrangements. The campaigns are important in addressing abusive lending practices that target specific neighborhoods or vulnerable segments of the population and can result in unaffordable payments, equity stripping, and foreclosure.").

352. Press Release, U.S. Department of the Treasury, Office of Public Affairs, Deputy Assistant Secretary Dan Iannicola, Jr. Supports Financial Education Efforts in Louisiana Through Financial Education Roundtable and Debt Management Conference in New Orleans (May 6, 2004), http://www.ustreas.gov/press/releases/js1530.htm (last visited Feb. 27, 2005).

353. *See* Noel Entwistle, *Reconstituting Approaches to Learning: A Response to Webb*, 33 HIGHER EDUC. 213, 214 (1997).

354. *See id.*

355. *Id.*

356. *See* Andrea A. diSessa, *How Should Students Learn?*, 23 J. COMPUTER DOCUMENTATION 14, 14 (1999).

competence that students can succeed in managing the task.[357] Because students engaging in deep or committed learning tend to more readily internalize the information, promoting such learning should be the goal of all education and, in particular, financial education, which must prepare students to deal with the tactics of credit card marketers and to responsibly use credit and manage debt.

Other factors—such as the target audience—also need to be taken into consideration in designing a debt-education program. One study of financially at-risk students concluded that financial education should be provided to students who are minorities, women, and/or low-wage earners.[358] The GAO credit literacy survey of adult consumers concluded that in addition to young consumers (under the age of twenty-five), low-income earners and Hispanics should be the focus of financial literacy campaigns.[359]

Another study found that low-performing students are more likely to rationalize working extra hours to pay off their debt as a necessary evil which accompanies their lifestyle choice.[360] These same students tend to see their lower academic performance as an unfortunate but unavoidable consequence.[361] Engaging these students in deep or committed learning will require more than the simple brochure distribution, as true education will require changing their atti-

357. *Id.*

358. Lyons, *supra* note 34, at 74. The study attempted to determine which subsets of the University of Illinois student body are more at risk and concluded that universities should develop "financial education programs that specifically target financially at-risk groups such as low-to-middle income students, women, and minorities to ensure that they are not at a financial disadvantage." *Id.* at 59, 74. The study also concluded that "financially at-risk students are more likely to be financially independent, to receive need-based financial aid, to hold $1,000 or more in other debt, and to have acquired their credit card(s) by mail, at a retail store, and/or at a campus table." *Id.* at 76.

359. The GAO's recent survey of 1,578 consumers confirms this article's conclusion that literacy programs should be targeted to reach certain groups. The survey found that "African Americans and whites scored similarly, showing approximately equal levels of knowledge, while Hispanics scored consistently lower on our survey. . . . In addition, we found that African Americans and whites were almost equally as likely to have viewed their credit reports and obtained their credit scores but that Hispanics were less likely to do either." GAO CREDIT REPORTING LITERACY, *supra* note 161, at 36–37. The survey also found that 63% of Hispanics, 84% of African Americans, and 92% of whites knew that missing a loan payment could negatively affect one's credit score. *Id.* at 38.

360. *See* Mary Beth Pinto et al., *College Student Performance and Credit Card Usage*, 42 J. C. STUDENT DEV. 49, 56 (2001). Students defined as low-performing had GPAs of less than or equal to 2.50. *Id.* at 53.

361. *Id.* at 56.

tudes.[362] It is also critical to reach these low-performing students in the first year because research has shown students with a GPA under 2.0 generally do not return for a second year of studies.[363]

Students in financial education courses may well benefit from non-traditional educational sources.[364] One study has shown that students exposed to fictional stories answered more general-knowledge questions correctly after having read the relevant stories, apparently by integrating the "facts" from the story into the student's own base of knowledge.[365] Therefore, the many stories of individuals affected by serious credit card debt may play a positive role in the education process.

In summary, to combat the ills of on-campus solicitations and irresponsible handling of credit card debt, universities should ban distribution of gifts in on-campus solicitations, use their leverage to limit the credit extension practices of the credit card companies, and provide mandatory debt education employing a committed-learning, tailor-made approach that reaches a complex body of students with various learning styles.

Conclusion

"Late night pizzas: $5,200. Books for classes: $7,000. Tuition & Fees: $120,000. Moving back into [your parents'] basement: Priceless."[366] "Some things money can't buy. For everything else there's Mastercard."[367] This parody may be extreme, but it reflects the easy credit that credit card issuers make available to students and how costly in the long run credit card purchases will be for many students who ignorantly amass credit card debt. Most students receive no financial education prior to entering college, and most lack understanding about the short- and long-term impact their credit card use and payment practices will have on their financial future. Aware of student ignorance, credit card companies descend on college campuses

362. *See id*. at 56 (finding that low-performing students are less likely to stop "spend-work-pay" cycle their lifestyle has created).

363. *See id*. at 57.

364. *See* Elizabeth J. Marsh et al., *Learning Facts from Fiction*, 49 J. Memory & Language 519, 519 (2003) (noting that people learn from many sources other than textbooks and classes; even fictional sources can serve as important learning tool).

365. *Id*. at 534.

366. Jessica L. Levine, *Students Overload on Credit*, Daily Targum (Rutgers Univ.), Jan. 28, 2004, 2004 WL 59461298 (slogan of "Now and Zen Slacker" t-shirt ridiculing MasterCard television advertisement).

367. Emma Barns, *MasterCard Ad Focuses on Theme-Park Fun*, Campaign (UK), Aug. 6, 2004, at 9, 2004 WL 88028476 (describing MasterCard's usage of "priceless" campaign since 1999).

and aggressively solicit students by giving away free merchandise at marketing tables, placing applications in student mail boxes and bookstore shopping bags, and advertising on the walls of student dorms and unions and in campus newspapers and magazines.

In light of this proliferation of credit card solicitations and the financial illiteracy of college students, it is not surprising that research shows that many students believe incorrectly that universities support on-campus credit card vendors, the majority possess more than one credit card, many carry balances on their cards, many pay their credit card bills late, and many make life-altering and academically-damaging, debt-coping decisions. In responding to the potential harm credit card companies pose to students, lawmakers and university administrators have been largely ineffective because they have failed to completely prohibit credit card vendors from using promotional gifts at marketing tables.

Moreover, no matter what other solicitation restrictions are imposed on credit card companies, lawmakers and universities have primarily left students to learn responsible credit card use and debt management in the school of hard knocks. With the aid of faculty and an array of academic resources, students invest the bulk of their energy into building strong educational résumés. Most students naively think academic achievement alone is the key to acquiring the usual accoutrements of the college educated. Too often, students realize late in the game that their credit card use and payment practices have created negative credit reports—the financial résumés that determine whether they will qualify for home and car loans. University administrators and lawmakers must provide the kind of education that enables students to make financially wise decisions and protect their credit history—the asset *or liability* that will follow them for the rest of their lives.