Document ID: 0.7.2486.603784

From: Pitts, John (CFPB)

(b)(6)

To: Parker Rose, Cheryl (CFPB)

(b)(6)

Cc:

Bcc:

Subject: RE: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1

Date: Tue Nov 28 2017 09:25:11 EST

Attachments:

I talked with Students- this is getting pulled.

From: Parker Rose, Cheryl (CFPB)
Sent: Monday, November 27, 2017 2:05 PM
To: Pitts, John (CFPB)
Subject: Fw: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1
Importance: High

From: Bentovim, Max (CFPB)
Sent: Wednesday, November 22, 2017 12:06 PM
To: Pitts, John (CFPB); Mayorga, David (CFPB); Chea, Keo (CFPB); Sheehan, Timothy (CFPB); Parker Rose, Cheryl (CFPB); Cameron, Matt (CFPB); Hand, Delicia (CFPB); Pope, David (CFPB); Stockett, Jennifer (CFPB); Galicia, Catherine (CFPB); Smith, Daniel (CFPB); CFPB_EAClearance
Cc: Wade-Gery, William (CFPB); Zhang, Wei (CFPB); Williams, Richard (CFPB); Pierce, Michael (CFPB); Frotman, Seth (CFPB)
Subject: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1

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Please provide any comments back by Friday, December 1 (COB), to myself, Wei Zhang, Rich Williams, and Michael Pierce If that date presents a problem for you, or if you have any further questions, please let us know as soon as possible.

Max Bentovim

Financial Analyst

Card, Payments, and Deposits Markets

Research, Markets, and Regulations

Consumer Financial Protection Bureau

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(b)(6) (mobile)

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Document ID: 0.7.2486.426915

From: Bentovim, Max (CFPB)
(b)(6)
To: McNamara, John (CFPB)
(b)(6)
Cc:
Bcc:
Subject: RE: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1
Date: Wed Dec 27 2017 21:42:45 EST
Attachments: image001.png

Sorry you haven't been kept in the loop – we're releasing it (I believe) next week (b)(5)
(b)(5)

Max Bentovim

Financial Analyst

Card, Payments, and Deposits Markets

Research, Markets, and Regulations

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From: McNamara, John (CFPB)
Sent: Thursday, December 28, 2017 1:47 AM
To: Bentovim, Max (CFPB)
Subject: FW: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1

Season's Greetings, Max!

What is the timeline for release of this report?

I hope you and the family are well. And thanks again for the help on the CAR!

John McNamara

Assistant Director, Consumer Lending, Reporting, and Collections Markets

Division of Research, Markets & Regulations

Consumer Financial Protection Bureau

1700 G Street NW

Washington, DC 20052

Office- (b)(6)

Blackberry- (b)(6)

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From: Parrish, Leslie (CFPB)
Sent: Thursday, November 30, 2017 6:58 PM
To: Bentovim, Max (CFPB); Scherschel, Patricia (CFPB); Conkling, Thomas (CFPB); Cole, Lisa (CFPB); Rigby, Nora (CFPB); Mayle, Adam (CFPB); Stein, Gary (CFPB); Goldberg, Eric (CFPB); Nagypal, Eva (CFPB); McNamara, John (CFPB)
Cc: Wade-Gery, William (CFPB); Zhang, Wei (CFPB); Williams, Richard (CFPB); Pierce, Michael (CFPB); Frotman, Seth (CFPB)
Subject: RE: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1

Thanks for the opportunity to review this Max!

Leslie Parrish

Research, Markets & Regulations

Office: (b)(6)

Consumer Financial Protection Bureau

consumerfinance.gov

From: Bentovim, Max (CFPB)
Sent: Wednesday, November 22, 2017 10:08 AM
To: Scherschel, Patricia (CFPB); Conkling, Thomas (CFPB); Cole, Lisa (CFPB); Rigby, Nora (CFPB); Mayle, Adam (CFPB); Stein, Gary (CFPB); Goldberg, Eric (CFPB); Nagypal, Eva (CFPB); Parrish, Leslie (CFPB); McNamara, John (CFPB)
Cc: Wade-Gery, William (CFPB); Zhang, Wei (CFPB); Williams, Richard (CFPB); Pierce, Michael (CFPB); Frotman, Seth (CFPB)
Subject: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1
Importance: High

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Max Bentovim

Financial Analyst

Card, Payments, and Deposits Markets

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Document ID: 0.7.2486.394114

From: Wade-Gery, William (CFPB)
(b)(6)
To: Parrish, Leslie (CFPB)
(b)(6) Stein, Gary
(CFPB) (b)(6)
(b)(6)
Cc: Nagypal, Eva (CFPB)
(b)(6) McNamara, John
(CFPB) (b)(6)
(b)(6)
Bcc:
Subject: RE: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1
Date: Fri Dec 01 2017 10:47:15 EST
Attachments:

Thanks all.

(b)(5)

From: Parrish, Leslie (CFPB)
Sent: Friday, December 01, 2017 9:55 AM
To: Stein, Gary (CFPB)
Cc: Wade-Gery, William (CFPB); Nagypal, Eva (CFPB); McNamara, John (CFPB)
Subject: Re: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1

Thanks Gary, (b)(5)
(b)(5)

From: Stein, Gary (CFPB)
Sent: Friday, December 01, 2017 07:40 AM
To: Parrish, Leslie (CFPB)
Cc: Wade-Gery, William (CFPB); Nagypal, Eva (CFPB); McNamara, John (CFPB)
Subject: RE: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1

Leslie, FYI, the plan as I understand it from David (and Gail) is that we will publish the statutorily required sections of the report, which focus on credit card, only and hold off on the sections that Students is adding. As a result, I am not going to review at this time. Deep apologies for not sharing that with you earlier—I forgot it was sent to you and thought Max or someone might have relayed that to you. My bad! In any event, I am sure you helped the Students folks tremendously, and I hope that ultimately, they will get to publish a version of their section that we all feel good about. In the meantime, I think you helped to accomplish something significant by getting them to defer what they had intended to publish right before Thanksgiving.

Gary Stein | Deputy Assistant Director

Office of Cards, Payments, and Deposits Markets

Consumer Financial Protection Bureau

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From: Parrish, Leslie (CFPB)
Sent: Thursday, November 30, 2017 6:58 PM
To: Bentovim, Max (CFPB); Scherschel, Patricia (CFPB); Conkling, Thomas (CFPB); Cole, Lisa (CFPB); Rigby, Nora (CFPB); Mayle, Adam (CFPB); Stein, Gary (CFPB); Goldberg, Eric (CFPB); Nagypal, Eva (CFPB); McNamara, John (CFPB)
Cc: Wade-Gery, William (CFPB); Zhang, Wei (CFPB); Williams, Richard (CFPB); Pierce, Michael (CFPB); Frotman, Seth (CFPB)
Subject: RE: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1

Thanks for the opportunity to review this Max!

Leslie Parrish

Research, Markets & Regulations

Office: (b)(6)

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From: Bentovim, Max (CFPB)
Sent: Wednesday, November 22, 2017 10:08 AM
To: Scherschel, Patricia (CFPB); Conkling, Thomas (CFPB); Cole, Lisa (CFPB); Rigby, Nora (CFPB); Mayle, Adam (CFPB); Stein, Gary (CFPB); Goldberg, Eric (CFPB); Nagypal, Eva (CFPB); Parrish, Leslie (CFPB); McNamara, John (CFPB)
Cc: Wade-Gery, William (CFPB); Zhang, Wei (CFPB); Williams, Richard (CFPB); Pierce, Michael (CFPB); Frotman, Seth (CFPB)
Subject: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1
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Max Bentovim

Financial Analyst

Card, Payments, and Deposits Markets

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Document ID: 0.7.2486.734448

From: Wade-Gery, William (CFPB)
(b)(6)

To: Silberman, David (CFPB)
(b)(6) McNamara, John (CFPB) (b)(6)
(b)(6)

Cc: Borzekowski, Ron (CFPB)
(b)(6) Sokolov, Dan (CFPB) (b)(6)
(b)(6) Cochran, Kelly (CFPB) (b)(6)
(b)(6) Galed, Simon (CFPB) (b)(6)
(b)(6)
Stein, Gary (CFPB) (b)(6)
(b)(6)

Bcc:

Subject: RE: Input requested by Monday - Transition materials outstanding questions

Date: Mon Nov 13 2017 19:02:50 EST

Attachments: image001.png

Update here.

Gary's shown me an email from Mike Pierce in which he says (today) that they are NOT planning to release next week. They are now doing a "significant reframing" based on RMR and LD input.

From: Silberman, David (CFPB)
Sent: Monday, November 13, 2017 4:58 PM
To: McNamara, John (CFPB); Wade-Gery, William (CFPB)
Cc: Borzekowski, Ron (CFPB); Sokolov, Dan (CFPB); Cochran, Kelly (CFPB); McArdle, Mark (CFPB); Hedgespeth, Grady (CFPB); Galed, Simon (CFPB); Davies, Misha (CFPB); Singer, Susan (CFPB)
Subject: RE: Input requested by Monday - Transition materials outstanding questions

Students thinks this report is coming out next week so if we have concerns better escalate quickly

From: McNamara, John (CFPB)
Sent: Monday, November 13, 2017 4:56 PM
To: Wade-Gery, William (CFPB); Silberman, David (CFPB)
Cc: Borzekowski, Ron (CFPB); Sokolov, Dan (CFPB); Cochran, Kelly (CFPB); McArdle, Mark (CFPB); Hedgespeth, Grady (CFPB); Galed, Simon (CFPB); Davies, Misha (CFPB); Singer, Susan (CFPB)
Subject: RE: Input requested by Monday - Transition materials outstanding questions

Will is correct. Pat has concerns about the Students piece.

John McNamara

Assistant Director, Consumer Lending, Reporting, and Collections Markets

Division of Research, Markets & Regulations

Consumer Financial Protection Bureau

One Constitution Square

Washington, DC 20002

Office: (b)(6)

Blackberry: (b)(6)

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From: Wade-Gery, William (CFPB)
Sent: Monday, November 13, 2017 2:25 PM
To: Silberman, David (CFPB)
Cc: Borzekowski, Ron (CFPB); Sokolov, Dan (CFPB); Cochran, Kelly (CFPB); McNamara, John (CFPB); McArdle, Mark (CFPB); Hedgespeth, Grady (CFPB); Galed, Simon (CFPB); Davies, Misha (CFPB); Singer, Susan (CFPB)
Subject: RE: Input requested by Monday - Transition materials outstanding questions

Small point.

(b)(5)

(b)(5)

From: Borzekowski, Ron (CFPB)
Sent: Monday, November 13, 2017 2:00 PM
To: Silberman, David (CFPB); Sokolov, Dan (CFPB); Cochran, Kelly (CFPB); Wade-Gery, William (CFPB); McNamara, John (CFPB); McArdle, Mark (CFPB); Hedgespeth, Grady (CFPB); Galed, Simon (CFPB); Davies, Misha (CFPB); Singer, Susan (CFPB)
Subject: RE: Input requested by Monday - Transition materials outstanding questions

Data Points:

(b)(5)

QCCTs:

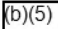
(b)(5)

Conference Call for Papers: 11/30 or sooner

From: Silberman, David (CFPB)
Sent: Thursday, November 09, 2017 5:01 PM

To: Sokolov, Dan (CFPB); Cochran, Kelly (CFPB); Borzekowski, Ron (CFPB); Wade-Gery, William (CFPB); McNamara, John (CFPB); McArdle, Mark (CFPB); Hedgespeth, Grady (CFPB); Galed, Simon (CFPB); Davies, Misha (CFPB); Singer, Susan (CFPB)
Subject: FW: Input requested by Monday - Transition materials outstanding questions

With respect to #2 below, here is the list I think we should send:



(b)(5)

From: Bushlin, Merav (CFPB)
Sent: Thursday, November 09, 2017 3:34 PM
To: Hillebrand, Gail (CFPB); D'Angelo, Chris (CFPB); Alag, Sartaj (CFPB); Martinez, Zixta (CFPB); McLeod, Mary (CFPB); Silberman, David (CFPB)
Cc: English, Leandra (CFPB); Fulton, Kate (CFPB); Gorman, Lindsay (CFPB); Uejio, David (CFPB)
Subject: Input requested by Monday - Transition materials outstanding questions

SLT:

I understand that there were several follow-ups related to transition briefing materials from Tuesday's meeting:

(b)(5)

We'll also reach out to a couple folks with questions on specific materials.

Please send any feedback related to the above items by COB Monday 11/13.   Our goal is to finalize this binder by early next week.

Thank you,

Merav Bushlin

Policy Strategy Program Manager | Office of Strategy

Office of the Director

Office: ((b)(6) | Mobile: (b)(6)

Consumer Financial Protection Bureau
consumerfinance.gov

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Document ID: 0.7.2486.30180

From: Galban, Laura (CFPB)
(b)(6)

To: Bentovim, Max (CFPB)
(b)(6)

Cc: _DL_CFPB_LDParalegals
(b)(6)
CFPB_OGC_Clearance (b)(6)
(b)(6)
Nasser-Ghodsi, Nadia (CFPB) (b)(6)
(b)(6)
Bressler, Steven (CFPB) (b)(6)
(b)(6)
Brown, Amy (CFPB) (b)(6)
(b)(6) Coleman, John (CFPB) (b)(6)
(b)(6) Deutsch, Rebecca (CFPB) (b)(6)
(b)(6) Heiser, Nicole (CFPB) (b)(6)
(b)(6) Hussain, Laura (CFPB) (b)(6)
(b)(6) Ladd, Christine (CFPB) (b)(6)
(b)(6) Rice, Kevin (CFPB) (b)(6)
(b)(6) Van Meter, Stephen (CFPB) (b)(6)
(b)(6) White, Sonya (CFPB) (b)(6)
(b)(6) Zorc, Anne (CFPB) (b)(6)
(b)(6)

Bcc:

Subject: LD Review Complete (Comments) - 2017 Student Banking Report - Preclearance Review - Comments Due 12/1

Date: Fri Dec 08 2017 10:38:44 EST

Attachments: Student Banking Report 2017 PRECLEARANCE+NNG.DOCX
CWEmbed1.unknown

Max,

The Legal Division (Nadia Nasser-Ghodsi) has completed its review and comments are attached. Also, please see Nadia's comment below:

Please note that my understanding is that this project has been put on hold, and my feedback is intended to help facilitate the document owner for whenever the project resumes. Thank you.

Thank you.

Laura Galban

From: Bentovim, Max (CFPB)
Sent: Wednesday, November 22, 2017 12:05 PM
To: Nasser-Ghodsi, Nadia (CFPB); Van Meter, Stephen (CFPB); Deutsch, Rebecca (CFPB); Ahn, Sue-Yun (CFPB); CFPB_OGC_Clearance
Cc: Wade-Gery, William (CFPB); Zhang, Wei (CFPB); Williams, Richard (CFPB); Pierce, Michael (CFPB); Frotman, Seth (CFPB)
Subject: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1
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2017 Student Banking Report - Preclearance Review - Comments Due 12/1

Max Bentovim

Financial Analyst

Card, Payments, and Deposits Markets

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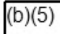
XXX 2017

Student banking

Annual report to Congress

Executive Summary



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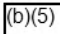
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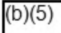
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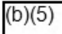

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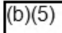
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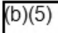

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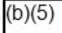
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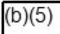

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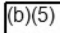

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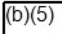

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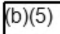
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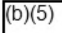

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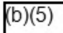

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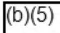

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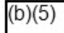

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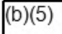
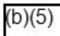

(b)(5)



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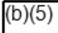

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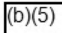

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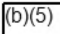

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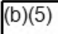

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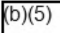
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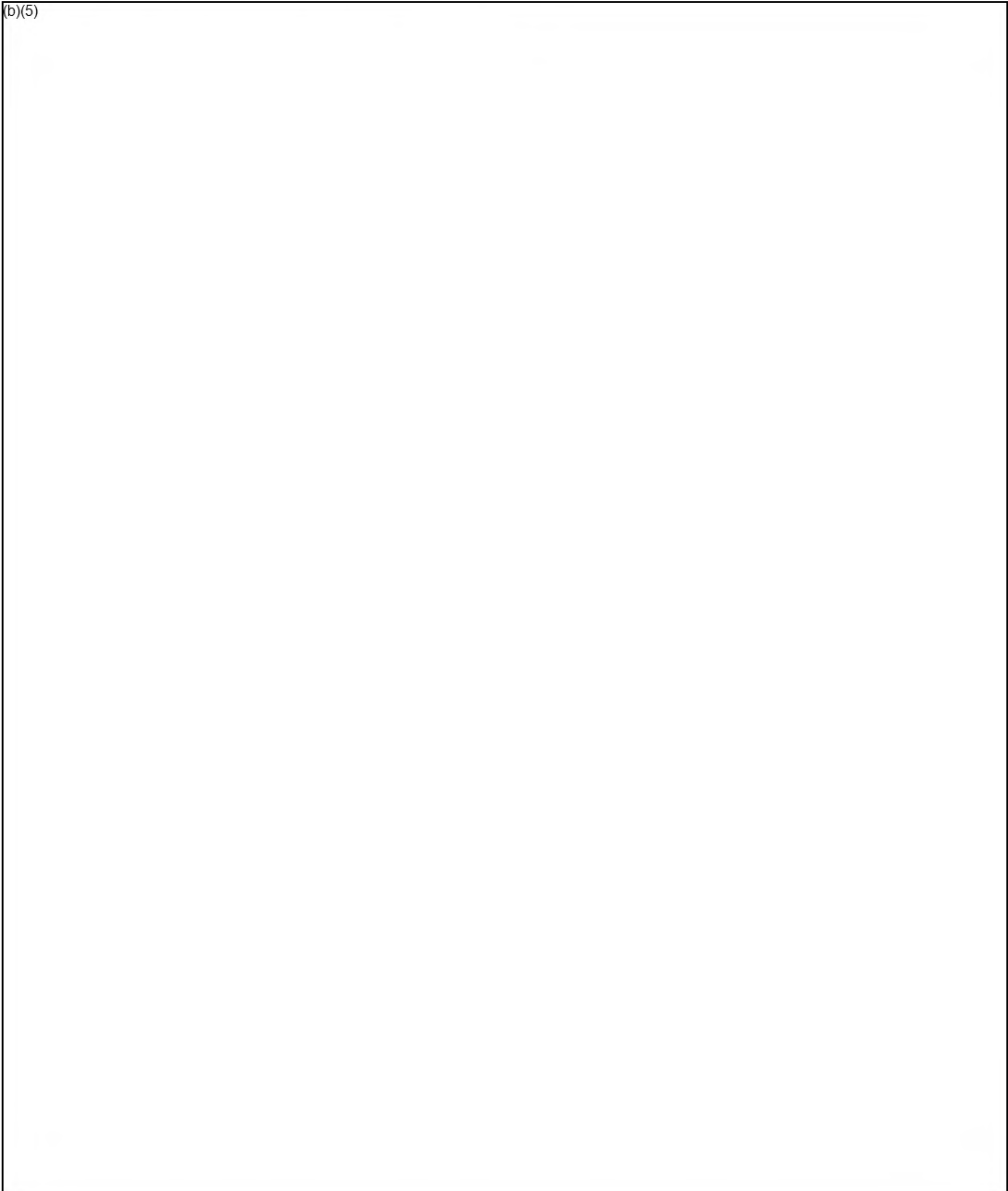
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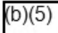

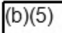
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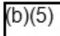
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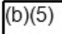

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Document ID: 0.7.2486.864206

From: Howard, Jennifer (CFPB)
(b)(6)
To: Holland, Megan (CFPB)
(b)(6) Zhang, Wei
(CFPB) (b)(6)
(b)(6) CFPB_digital
(b)(6) Fyne,
Jordana (Contractor)(CFPB) (b)(6)
(b)(6)
(b)(6) ; Fulton, Kate (CFPB)
(b)(6)
Cc: Wade-Gery, William (CFPB)
(b)(6)
Ahmed, Shaista (CFPB) (b)(6)
(b)(6)
Bcc:
Subject: RE: Posting of Reports
Date: Fri Dec 22 2017 11:38:42 EST
Attachments:

That's correct. We are not publishing today.

Jen Howard

Consumer Financial Protection Bureau

E: (b)(6)

O

C

From: Holland, Megan (CFPB)
Sent: Friday, December 22, 2017 11:38 AM
To: Zhang, Wei (CFPB); CFPB_digital; Fyne, Jordana (Contractor)(CFPB)
Cc: Wade-Gery, William (CFPB); Ahmed, Shaista (CFPB); Howard, Jennifer (CFPB)
Subject: RE: Posting of Reports

To the best of my knowledge we are NOT releasing these today. We are still waiting on a release date.

From: Zhang, Wei (CFPB)
Sent: Friday, December 22, 2017 11:34 AM
To: CFPB_digital; Fyne, Jordana (Contractor)(CFPB)
Cc: Wade-Gery, William (CFPB); Ahmed, Shaista (CFPB); Holland, Megan (CFPB)
Subject: RE: Posting of Reports
Importance: High

Jordana, I don't have the final signed decision memo by the Acting Director yet but I know the two reports are expected to be released today. We may need to get them staged soon.

+ Megan, Do you have more info on timing so that Digital folks can move forward?

FYI - We are finalizing the two reports and should send the PDF version as soon as we have them.

Wei

From: CFPB_digital
Sent: Monday, December 18, 2017 10:52 AM
To: Zhang, Wei (CFPB)
Cc: Wade-Gery, William (CFPB); CFPB_digital; Ahmed, Shaista (CFPB)
Subject: RE: Posting of Reports

Hi Wei,

Thank you for sending. I'm copying in Shaista as Content Owner for the Research & Reports vertical.

For the Consumer credit card market report (going on Report page), I've attached a template you can fill out to build this year's page for it. You can send the actual PDF report later when it's ready.

For the 2017 Student banking report to Congress, we'll need:

********* Cleared language to update all of the sections on that page that currently displays information about the 2016 report.

********* That line graph is a PNG image. I'm sure it's pulled from the report, but we'll want to work with

CFPB Design

Design (b)(6) to make sure we have a high-quality standalone image.

********* There's a CSV file for download (under the graph) we'll want to update with the latest data.

********* Then of course the report itself.

Does that sound like everything? Thanks for the heads up.

Thanks,

Jordana

From: Zhang, Wei (CFPB)
Sent: Sunday, December 17, 2017 7:01 PM
To: CFPB_digital
Cc: Wade-Gery, William (CFPB)
Subject: Posting of Reports
Importance: High

Hi there, We have two reports that are needed to be released and posted on our website this week. The decision memo for their release has been sent to Acting Director Friday 12/15. We expect it will be approved this week. I attached links to our previous reports below for your reference. We will have the final reports and support material ready early this week. Please let me know if you have any questions.

The Credit Card Market Report

https://www.consumerfinance.gov/data-research/research-reports/the-consumer-credit-card-market/

The College Credit Card Agreement Report

https://www.consumerfinance.gov/data-research/student-banking/student-banking-reports-congress/

Wei Zhang

Credit Card Program Manager

Office of Card and Payment Markets

Consumer Financial Protection Bureau

Tel: (b)(6)

BB:

Document ID: 0.7.2486.742849

From: Nedimala, Himali (CFPB)
(b)(6)

To: Nasser-Ghodsi, Nadia (CFPB)
(b)(6)

Cc: _DL_CFPB_LDParalegals
(b)(6)
Ahn, Sue-Yun (CFPB) (b)(6)
(b)(6) Van Meter, Stephen (CFPB) (b)(6)
(b)(6)
Deutsch, Rebecca (CFPB) (b)(6)
(b)(6)
Ladd, Christine (CFPB) (b)(6)
(b)(6) Zorc, Anne (CFPB) (b)(6)
(b)(6) Brown, Amy (CFPB) (b)(6)
(b)(6) Heiser, Nicole (CFPB) (b)(6)
(b)(6) Rice, Kevin (CFPB) (b)(6)
(b)(6) White, Sonya (CFPB) (b)(6)
(b)(6) Bressler, Steven (CFPB) (b)(6)
(b)(6)
Hussain, Laura (CFPB) (b)(6)
(b)(6)

Bcc:

Subject: PRECLEARANCE Review Request - 2017 Student Banking Report - Preclearance Review - Comments Due 12/1 - DUE Dec 1 @ 4:00 PM (2017-PCL-0771)

Date: Wed Nov 22 2017 13:22:55 EST

Attachments: Student Banking Report 2017 PRECLEARANCE.DOCX
CWEmbed1.unknown

Nadia,

This is assigned to you. Please note that comments are due by 4:00pm on Friday, December 1st.

Please let me know if anyone else needs to review the report.

Thanks,

Himali

From: Bentovim, Max (CFPB)
Sent: Wednesday, November 22, 2017 12:05 PM
To: Nasser-Ghodsi, Nadia (CFPB); Van Meter, Stephen (CFPB); Deutsch, Rebecca (CFPB); Ahn, Sue-Yun (CFPB); CFPB_OGC_Clearance
Cc: Wade-Gery, William (CFPB); Zhang, Wei (CFPB); Williams, Richard (CFPB); Pierce, Michael (CFPB); Frotman, Seth (CFPB)
Subject: 2017 Student Banking Report - Preclearance Review - Comments Due 12/1
Importance: High

Attached for your preclearance review is the 2017 Student Banking Report, a co-effort of CPDM (on the credit card side) and Students (on the debit card side). Please note that the Executive Summary is forthcoming, but will be included in Bureau-wide clearance and will largely reflect the text of the report proper.

Please provide any comments back by Friday, December 1 (COB), to myself, Wei Zhang, Rich Williams, and Michael Pierce If that date presents a problem for you, or if you have any further questions, please let us know as soon as possible.

2017 Student Banking Report - Preclearance Review - Comments Due 12/1

Max Bentovim

Financial Analyst

Card, Payments, and Deposits Markets

Research, Markets, and Regulations

Consumer Financial Protection Bureau

(b)(6)

(b)(6) (mobile)

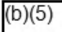
Confidentiality Notice: If you received this email by mistake, you should notify the sender of the mistake and delete the e-mail and any attachments. An inadvertent disclosure is not intended to waive any privileges.

XXX 2017

Student banking

Annual report to Congress

Executive Summary



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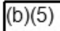

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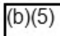
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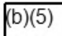

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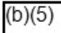

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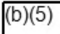
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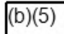

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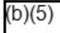

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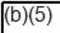
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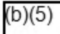
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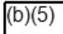
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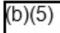
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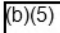

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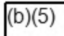

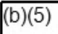
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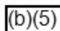
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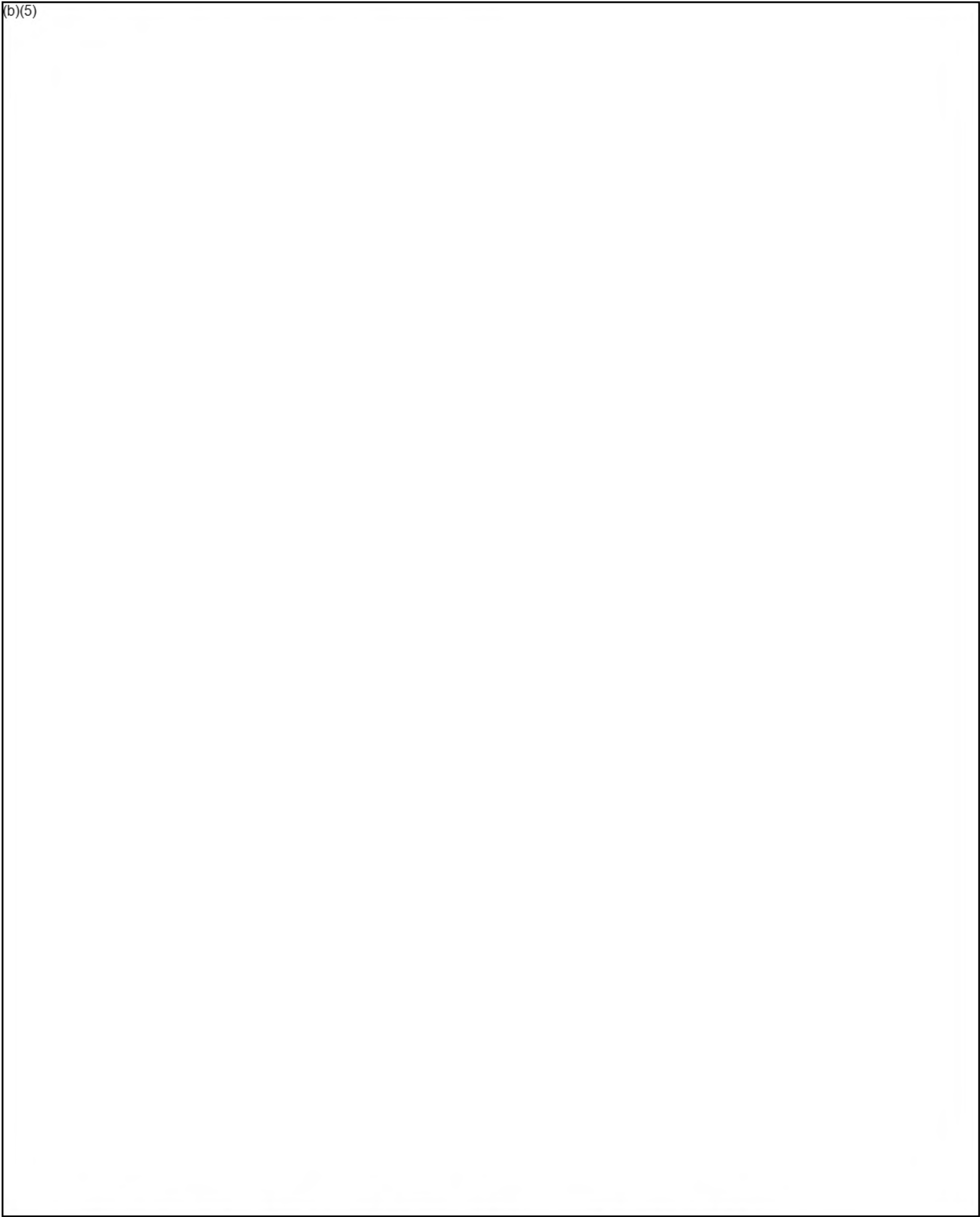
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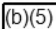
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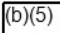

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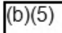

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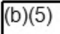
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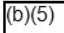
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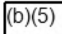

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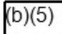

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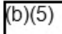
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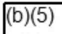

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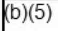
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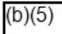

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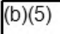

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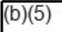

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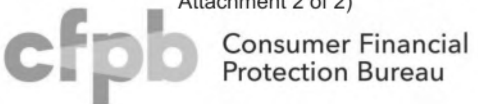

Document ID: 0.7.2486.783735

From: Williams, Richard (CFPB)
(b)(6)

To: Pitts, John (CFPB)
(b)(6)
(b)(6) Mayorga, David
(CFPB) (b)(6)
(b)(6) Chea, Keo
(CFPB) (b)(6)
(b)(6) Sheehan, Timothy
(CFPB) (b)(6)
(b)(6) Parker
Rose, Cheryl (CFPB) (b)(6)
(b)(6) Smith,
Daniel (CFPB) (b)(6)
(b)(6) Galicia,
Catherine (CFPB) (b)(6)
(b)(6)
Stockett, Jennifer (CFPB) (b)(6)
(b)(6) Pope,
David (CFPB) (b)(6)
(b)(6) Hand, Delicia
(CFPB) (b)(6)
(b)(6) Cameron, Matt
(CFPB) (b)(6)
(b)(6)

Cc: Pierce, Michael (CFPB)
(b)(6)

Bcc:
Subject: RE: Quick follow on about student banking
Date: Wed Nov 22 2017 10:38:04 EST
Attachments:

Hi EA colleagues - (b)(5)
(b)(5)
(b)(5) As for next steps, RMR will move the full Student Banking report into preclearance together. We look forward to any additional comments you have on the full report and are happy to discuss the new content at any time.

Thanks again, and have a happy Thanksgiving!

Rich

-----Original Message-----
From: Pierce, Michael (CFPB)
Sent: Monday, November 13, 2017 4:46 PM
To: Pitts, John (CFPB); Mayorga, David (CFPB); Chea, Keo (CFPB); Sheehan, Timothy (CFPB); Parker Rose, Cheryl (CFPB); Smith, Daniel (CFPB); Galicia, Catherine (CFPB); Stockett, Jennifer (CFPB);

Pope, David (CFPB); Williams, Richard (CFPB); Hand, Delicia (CFPB); Cameron, Matt (CFPB)
Subject: Quick follow on about student banking

EA Colleagues:

Thanks for taking the time to provide feedback on Thursday. I wanted to let you know that we're pausing on this report for now, based on some feedback from RMR and LD. We will circle back on next steps ASAP.

Thanks!

Mike

Document ID: 0.7.2486.753968

From: Pierce, Michael (CFPB)
(b)(6)

To: Pierce, Michael (CFPB)
(b)(6) Smith, Daniel (CFPB) (b)(6)
(b)(6) Galicia, Catherine (CFPB) (b)(6)
(b)(6)
Stockett, Jennifer (CFPB) (b)(6)
(b)(6)
Williams, Richard (CFPB) (b)(6)
(b)(6)

Cc: Sheehan, Timothy (CFPB)
(b)(6) Parker Rose, Cheryl (CFPB) (b)(6)
(b)(6) Pitts, John (CFPB) (b)(6)
(b)(6) Pope, David (CFPB) (b)(6)
(b)(6) Mayorga, David (CFPB) (b)(6)
(b)(6)

Bcc:

Subject: Quick follow on about student banking

Date: Wed Nov 08 2017 19:19:17 EST

Attachments: For preclearance - College Account Issue Highlight 110717.docx

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StartTime: Thu Nov 09 16:00:00 Eastern Standard Time 2017
EndTime: Thu Nov 09 16:30:00 Eastern Standard Time 2017
Location: (b)(6)
Invitees: Smith, Daniel (CFPB); Galicia, Catherine (CFPB); Stockett, Jennifer (CFPB); Williams, Richard (CFPB)
Recurring: No
ShowReminder: No
Accepted: Yes
AcceptedTime: Thu Nov 09 15:57:00 Eastern Standard Time 2017

Per several requests, I'm grabbing an alternate time to try and discus our upcoming student banking report for those who were unable to join our call earlier today. Our suggested deadline for clearance comments is 4pm tomorrow (prior to this call) but we'd also be happy to take verbal feedback here if that's easier. I've attached a copy of the report to this calendar item.

Thanks!

November 2017

The costs of college-sponsored bank accounts

Initial insights on newly disclosed data

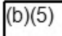
Table of contents

(b)(5)

Executive Summary

(b)(5)

(b)(5)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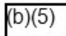

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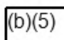

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Document ID: 0.7.2486.519540

From: Wade-Gery, William (CFPB)
(b)(6)
To: Silberman, David (CFPB)
(b)(6)
Cc: Stein, Gary (CFPB)
(b)(6)
Bcc:
Subject: RE: Reports
Date: Tue Nov 28 2017 08:36:40 EST
Attachments: Student Banking Report 2017 PRECLEARANCE.DOCX
CWEmbed1.unknown

Yes.

Under new DOJ rules, colleges now have to disclose information about agreements with deposit and prepaid providers. (b)(5)
(b)(5)

(b)(5)

Here's the latest I have seen in preclear. (b)(5)
(b)(5)

From: Silberman, David (CFPB)
Sent: Monday, November 27, 2017 6:21 PM
To: Wade-Gery, William (CFPB)
Subject: Reports

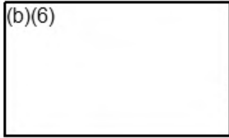
Are both credit card reports due by 12/31?

(b)(5)

David M. Silberman

Associate Director, Research, Markets, and Regulations

Consumer Financial Protection Bureau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XXX 2017

Student banking

Annual report to Congress

Executive Summary

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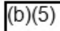
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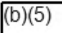
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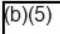
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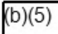
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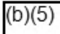

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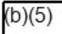

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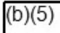

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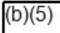

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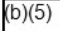
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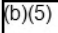

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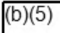
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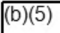

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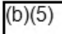
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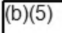
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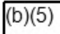

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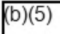

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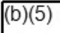

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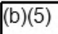
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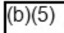

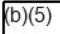
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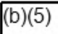

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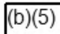

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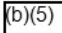

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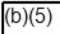

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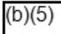
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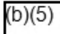
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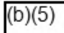
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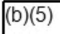

(b)(5)

1700 G Street, N.W., Washington, DC 20552

December 27, 2017

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hensarling:

Enclosed is the Consumer Financial Protection Bureau's report to Congress on the impact of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act) on the consumer credit card market, pursuant to Section 502(a) of the CARD Act.

Should you have any questions concerning this report, please do not hesitate to contact me, or have your staff contact Matt Pippin in the Bureau's Office of Legislative Affairs. Mr. Pippin can be reached at (b)(6)

Sincerely,

Mick Mulvaney
Acting Director

1700 G Street. N.W., Washington. DC 20552

December 27, 2017

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
United States House of Representatives
4340 Thomas P. O'Neil, Jr. Office Building
Washington, DC 20515

Dear Ranking Member Waters:

Enclosed is the Consumer Financial Protection Bureau's report to Congress on the impact of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act) on the consumer credit card market, pursuant to Section 502(a) of the CARD Act.

Should you have any questions concerning this report, please do not hesitate to contact me, or have your staff contact Matt Pippin in the Bureau's Office of Legislative Affairs. Mr. Pippin can be reached at (b)(6)

Sincerely,

Mick Mulvaney
Acting Director

1700 G Street NW, Washington, DC 20552

January 3, 2018

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

JEB

Dear Chairman Hensarling:

Enclosed is the Consumer Financial Protection Bureau's report to Congress on college credit card agreements, as required by Section 305(a) of the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act).

Should you have any questions concerning this report, please do not hesitate to contact me, or have your staff contact Matt Pippin in the Bureau's Office of Legislative Affairs. Mr. Pippin can be reached at (b)(6)

Sincerely,

Mick Mulvaney
Acting Director

College credit card agreements

Annual report to Congress

Consumer Financial Protection Bureau

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1. Introduction

The Credit Card Accountability, Responsibility, and Disclosure Act ("CARD Act" or "Act") requires the Consumer Financial Protection Bureau (the "Bureau") to submit to Congress, and to make available to the public, an annual report that lists information submitted to the Bureau concerning agreements between credit card issuers and institutions of higher education or certain organizations affiliated with such institutions.[1] This report refers to these agreements as "college credit card agreements" or simply "agreements."[2] Affiliated organizations include fraternities, sororities, alumni associations, or foundations affiliated with or related to an institution of higher education.

This is the eighth annual report pursuant to the CARD Act. The Federal Reserve Board submitted the first two reports. Pursuant to title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), responsibility for collecting data and submitting to Congress annual reports regarding college credit card agreements transferred from the Federal Reserve Board ("Board") to the Bureau on July 21, 2011. [3] The Bureau has since submitted five reports.[4]

---

[1] The mandate is at section 305(a) of the CARD Act, Pub. L. No. 111–24, § 305(a), 123 Stat. 1734, 1749-50 (2009). Section 305(a) amended section 127 of the Truth in Lending Act. This provision is codified at 15 U.S.C. § 1637(r).

[2] This report refers to credit card issuers as "issuers," to institutions of higher education as "institutions," and to organizations affiliated with such institutions as "affiliates" or "affiliated organizations."

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[4] *See* Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Oct. 2012), *available at* https://www.consumerfinance.gov/documents/1685/201612_cfpb_StudentBankingReport2016.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2013), *available at* http://files.consumerfinance.gov/f/201512_cfpb_college-credit-card-agreements.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2014), *available at*

The regulations implementing section 305 of the CARD Act require credit card issuers to submit to the Bureau each year the terms and conditions of any college credit card agreement that was in effect at any time during the preceding calendar year between an issuer and an institution of higher education.[5] The same requirement applies to agreements between an issuer and an affiliated organization of the institution, such as an alumni organization or a foundation associated with the institution.[6]

Issuers are required to submit the following information with respect to each such agreement:

- the number of credit card accounts covered by the agreement ("college credit card accounts") that were open at year-end;
- the amount of payments made by the issuer to the institution or organization during the year;[7]
- the number of new college credit card accounts covered by the agreement that were opened during the year; and
- any Memorandum of Understanding ("MOU") between the issuer and institution or affiliated organization that directly or indirectly relates to any aspect of the agreement.[8]

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http://files.consumerfinance.gov/f/201412_cfpb_college-card-agreement-report-2014.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2015), *available at* http://files.consumerfinance.gov/f/201312_cfpb_report_college-credit-card-agreements.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2016), *available at* http://files.consumerfinance.gov/f/201210_cfpb_report_College_Credit_Card_Agreements.pdf.

[5] *See* 15 U.S.C. § 1637(r); 12 C.F.R. § 1026.57(d); *see also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).

[6] 12 CFR 1026.57(a)(4) and (5) and (d). In some cases, issuers submitted to the Bureau agreements with other types of organizations, such as fraternities, sororities, and professional or trade organizations that relate to the issuance of credit cards to college students. Such agreements are included in this report and categorized as agreements with "other organizations."

[7] All payments included in this report are rounded to the nearest dollar.

Appendix A provides more information on the dataset consolidating this year's submission with past years' data. Institutions of higher education are also required to make agreements available to the public.[9]

The CARD Act requires the Bureau to issue a report each year on the information and documents provided by card issuers, including the number of new accounts opened pursuant to agreements between card issuers and colleges and universities and the compensation paid by issuers to these institutions. [10] This report is based on the information and agreements submitted to the Bureau by credit card issuers. The information is current as of the end of 2016.[11] Information included in this report also is available on the Bureau's public website at www.consumerfinance.gov.

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[8] *See* 12 C.F.R. § 1026.57(d)(2).

[9] This obligation applies to "any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card." 12 C.F.R. § 1026.57(b); *see also* 15 U.S.C. § 1650(f)(1).

[10] 15 U.S.C. § 1637(r)(3).

[11] Issuers were required to make their annual submission by March 31, 2017. This submission comprised college credit card agreements to which the issuer was a party during 2016 and information regarding payments and accounts as of December 31, 2016.

2. Summary

This report makes the following findings:

- Further continuing an established trend, the number of agreements between credit card issuers and colleges, universities, and affiliated organizations sponsoring credit card programs decreased in 2016, as did the number of accounts open pursuant to such agreements and the total amount paid by issuers to counterparties pursuant to such agreements;
- Alumni associations remain the predominant entity type in this market; while institutions of higher education regained some market share as measured by agreements and open accounts, alumni associations nevertheless increased their share of issuer payments; and
- The largest few agreements continue to increase the share of the overall market that they account for, with the ten most-lucrative agreements representing an unprecedented 43% of all payments by issuers.

These findings are subject to a number of limitations. Some college agreements cover other financial products besides credit cards, such as deposit accounts, so payments made by issuers under these agreements may not relate solely to credit card accounts. In addition, some or all of the accounts opened in connection with these agreements, even those directly between issuers and institutions, may have been opened by individuals who are not students, such as alumni, faculty, and staff of an institution of higher education. (Conversely, it is theoretically possible that students may have opened accounts under the terms of alumni agreements.) Furthermore, card issuers' submissions do not include information regarding credit card accounts opened by students independent of a college credit card agreement, such as when a student responds to an offer made to the general public. Finally, because issuers were required to submit all college credit card agreements to which they were a party at any time during 2016, issuers' submissions include agreements that are no longer in effect.

3. Findings

3.1 Overall trends

The Bureau received 225 college credit card agreements from 37 credit card issuers for 2016. This section of the report presents data about these agreements and compares that to data for earlier years.

FIGURE 1: TRENDS IN ISSUER-REPORTED METRICS (INDEXED TO 100% IN 2009)

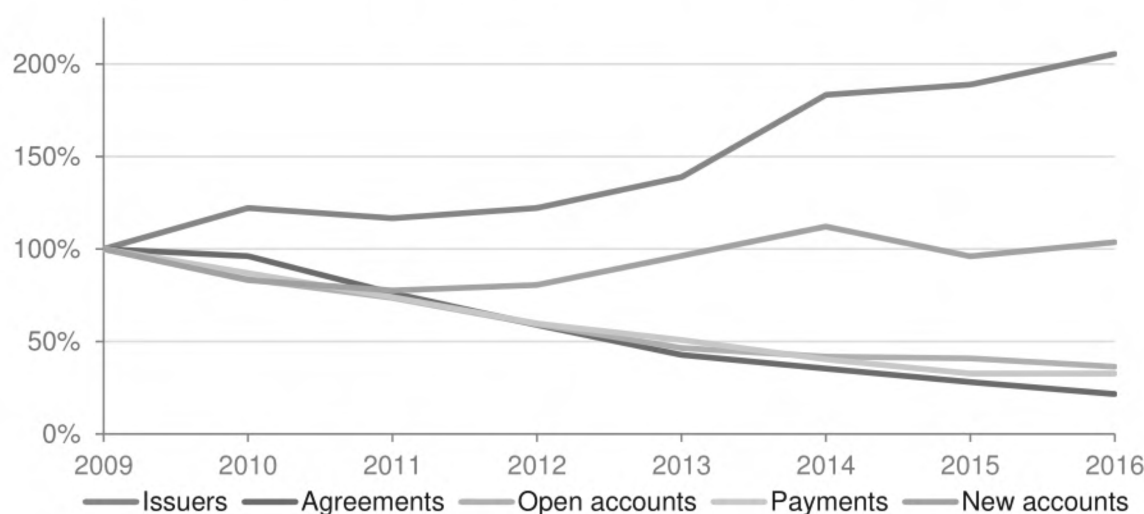


Figure 1 presents a summary of these data, which show that in each year from 2009 through 2016, there were consistent declines in: (a) the number of college credit card agreements; (b) the total number of associated credit card accounts open at year-end; and (c) the amount paid by issuers to institutions and affiliates. In contrast, 37 issuers were parties to such agreements in

effect in 2016, three more than in the previous year.[12] Further, 2016 saw slightly more new accounts than in 2009; this metric's fluctuation over the period these data have been collected appears uncorrelated with other indicators of the overall size of this market.

3.2 Issuers

Bank of America, via its subsidiary FIA Card Services, remains the largest player in this market. By examining solely the number of agreements by issuer, Bank of America's presence is relatively stable, representing 81 of 225 agreements, 36% as compared to 34% in 2015. However, Bank of America represented 78% of all accounts open under such agreements and 70% of payments made to institutions and their affiliates under such agreements. The nearest competitors by those metrics have a 4% and 8% market share, respectively.

Although Bank of America has been the dominant player in this market in every year for which this report has been prepared, the number of Bank of America agreements, accounts, and payments continues to fall significantly. In 2015, Bank of America maintained 99 agreements. By 2016, that number was down to 81 agreements. That fall of 18%, however, is slower than the pace of decline in the remaining market, from 193 to 144 agreements. This decline was driven by significant declines at many of the larger remaining issuers in this space, including the near-exit of Discover Bank.[13]

[12] Two issuers submitted data for the first time this year; however, they appear to have had agreements in past years, suggesting that a comprehensive retroactive submission from them would result in minor alterations to previous year data.

[13] Discover had only one agreement remaining active at any point during 2016, which was itself terminated by year's end. Two issuers exited the market completely in 2015, and were therefore not included in our 2016 survey, but one had only one agreement and one transferred its existing agreements to another issuer who already maintained other agreements, meaning the impact of those exits on the total stock of agreements was minimal.

Overall, 37 issuers submitted agreements for 2016; each issuer's aggregate metrics can be seen in Table 1 below. Five issuers that submitted agreements in 2016 did not submit agreements in 2015. The new issuers in the 2016 submission are one bank and four credit unions: Farmers & Merchants State Bank, Georgia's Own Credit Union, Goldenwest Federal Credit Union, Stanford Federal Credit Union, and Texas Trust Credit Union.[14] These five issuers accounted for five agreements, 2,782 accounts, and $1,740,361 in payments to institutions and their affiliates.

TABLE 1: REPORTED METRICS WITH COLLEGE AGREEMENTS IN EFFECT 2016, BY ISSUER

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
Apple Federal Credit Union	1	164	$15,000	30
Banco Popular de Puerto Rico	1	15,168	$60,587	592
Bank of America	81	574,050	$19,114,493	27,222
Boeing Employees' Credit Union	1	17,330	$305,000	9,158
Carolina Trust Federal Credit Union	1	204	$1,536	58
Christian Community Credit Union	1	176	$5,271	38
Comenity Capital Bank	1	143	$100,000	25
Commerce Bank	25	1,402	$32,901	649
Discover Bank	1	-	$57,142	9
Farmers & Merchants State Bank	1	-	$16,000	-

[14] One of these issuers submitted 2014 data, but not 2015.

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
First Interstate Bank	1	119	$7,625	34
First National Bank of Omaha	7	7,974	$550,407	901
Georgia's Own Credit Union	1	113	$102,633	60
Goldenwest Federal Credit Union	1	1,435	$21,728	900
Harvard University Employees Credit Union	1	11,583	$923,068	1,005
MidFirst Bank	3	2,207	$136,270	432
MIT Federal Credit Union	1	2,147	$60,528	368
Mountain America Federal Credit Union	1	3,450	$80,797	2,037
Nationwide Bank	7	1,742	$221,500	167
Oregon Community Credit Union and OCCU Card Services, LLC	2	6,577	$100,000	663
Pen Air Federal Credit Union	3	127	$1,193	34
Pennsylvania State Employees Credit Union	27	851	$5,710	211
ProFed Federal Credit Union	1	1	$270	1
Purdue Federal Credit Union	1	28,663	$1,000,000	2384
Stanford Federal Credit Union	1	1,069	$600,000	1,078
Texas Trust Credit Union	1	165	$0	202
The Southern Credit Union	1	16	$120	5
U.S. Bank National Association ND	10	24,892	$2,134,211	295
UMB Bank	23	969	$18,186	21

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
University Credit Union	1	279	$5,249	20
University First Federal Credit Union	1	9,626	$0	5,280
University of Illinois Community Credit Union	1	15,000	$625,271	1,687
University of Wisconsin (UW) Credit Union	4	2,781	$295,000	1,091
USAA Savings Bank	8	6,622	$634,875	687
USC Credit Union	1	1,796	$241,645	160
USF Federal Credit Union	1	2,138	$114,432	222
Wright-Patt Credit Union	1	496	$7,359	60
Grand Total	**225**	**741,475**	**$27,596,007**	**57,786**

3.3 Agreements

Issuers submitted 225 college credit card agreements for 2016. Of these, 12 were entered into in 2016. Seven issuers accounted for these new agreements. Overall, there was a significant net decrease of 68 agreements in effect in 2016 relative to 2015, a 23% decline. The pace of agreement termination continued to slow in 2016, with 12 terminations in 2016. That 5% closure rate was less than half the pace of 2015, which itself was half the pace of the previous year.[15]

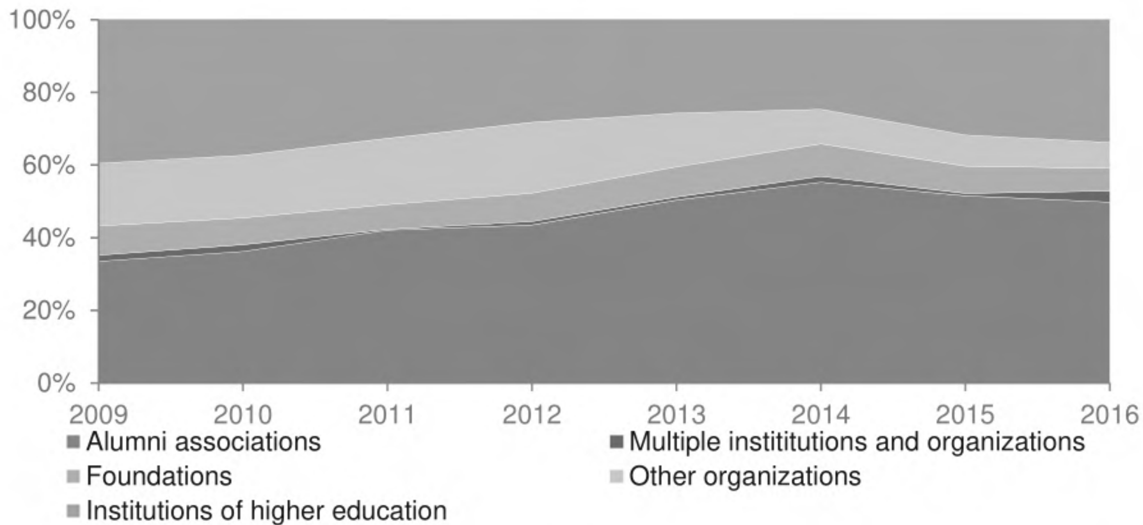
[15] The linked dataset allows users to see all agreements terminated in 2016 as well as earlier years. *See College credit card marketing agreements and data* at https://www.consumerfinance.gov/data-research/student-banking/marketing-agreements-and-data/.

Bank of America continued to be the major driver behind agreement termination, comprising five of the 12 closed agreements.

3.4 Partner entities

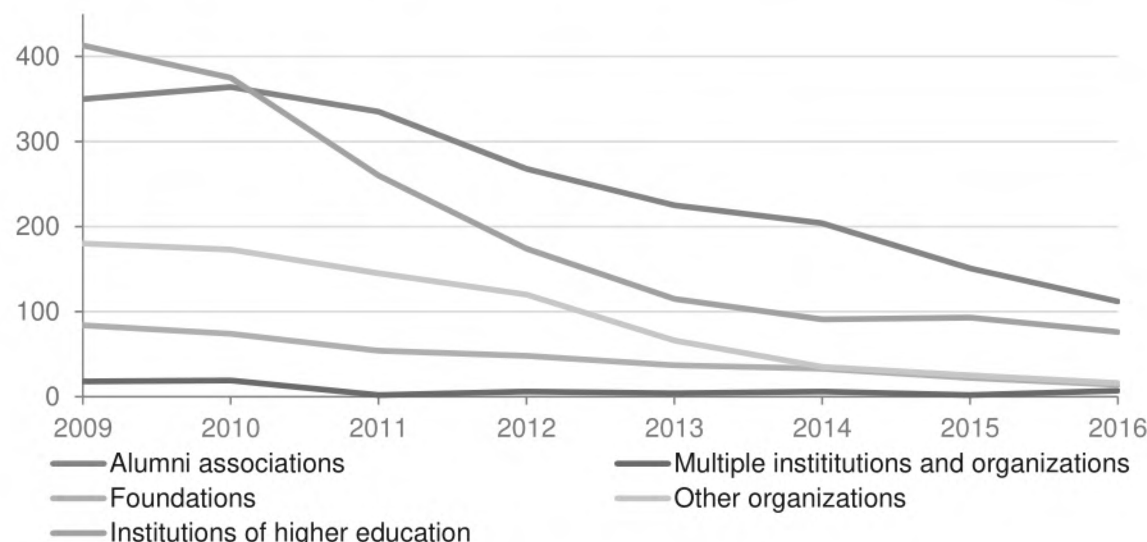
Continuing last year's trend, the share of agreements with institutions of higher education increased. As shown in Figure 2, the institution of higher education agreement share inched upwards in 2016; a more modest gain in share than in 2015, though still notable given the previous trend of decline.

FIGURE 2: AGREEMENT SHARE BY PARTNER TYPE



However, Figure 3 shows that this gain in share was once again driven almost completely by a decline in every other kind of agreement, from 200 agreements with other types of institutions in 2015 to 149 in 2016. Agreements with institutions of higher education also declined, from 93 in 2015 to 76 in 2016, but that 18% decline was slightly slower than the 25% decline in other agreements, resulting in a larger share.

FIGURE 3: TOTAL AGREEMENTS BY PARTNER TYPE



As shown in Table 2, alumni associations' share of all agreements slipped below the 50% mark for the first time since 2012. However, alumni association agreements maintained a stable two-thirds share of all associated accounts and slightly increased their share of associated payments.

TABLE 2: ISSUER REPORTED METRICS BY AGREEMENT PARTNER TYPE, 2016

Type of institution or organization	Agreements in effect in 2016	New agreements in 2016	Total open accounts at year-end	Payments by issuer in 2016	New accounts opened in 2016
Alumni associations	112	4	501,194	$20,521,819	38,948
Institutions of higher education	76	3	135,361	$4,508,439	9,363
Other organizations	16	1	63,228	$1,724,104	2,309
Foundations	14	2	31,789	$836,645	1,744
Multiple institutions and organizations	7	2	9,903	$5,000	5,422
Total	**225**	**12**	**741,475**	**$27,596,007**	**57,786**

3.5 Account volume

The total number of open college credit card accounts at year-end declined in each year from 2009 through 2016. The cumulative decline across these years was well over 60%. While in fact most issuers in our survey saw a net increase in accounts from year-end 2015 to year-end 2016, these increases were offset by much larger declines experienced by a small number of larger issuers. Total year-end open accounts declined for each type of partner institution in aggregate, as shown below in Figure 4, with the exception of agreements with multiple institutions, which ticked up slightly. That decline was steepest for foundations, which comprised 22% of the total net decline despite only representing 6% of all accounts at year-end 2016. The total number of new accounts opened each year remained uncorrelated with other metrics tracked in this report; in 2016 that number was almost perfectly stable from the previous year's figure, even as most other metrics declined.

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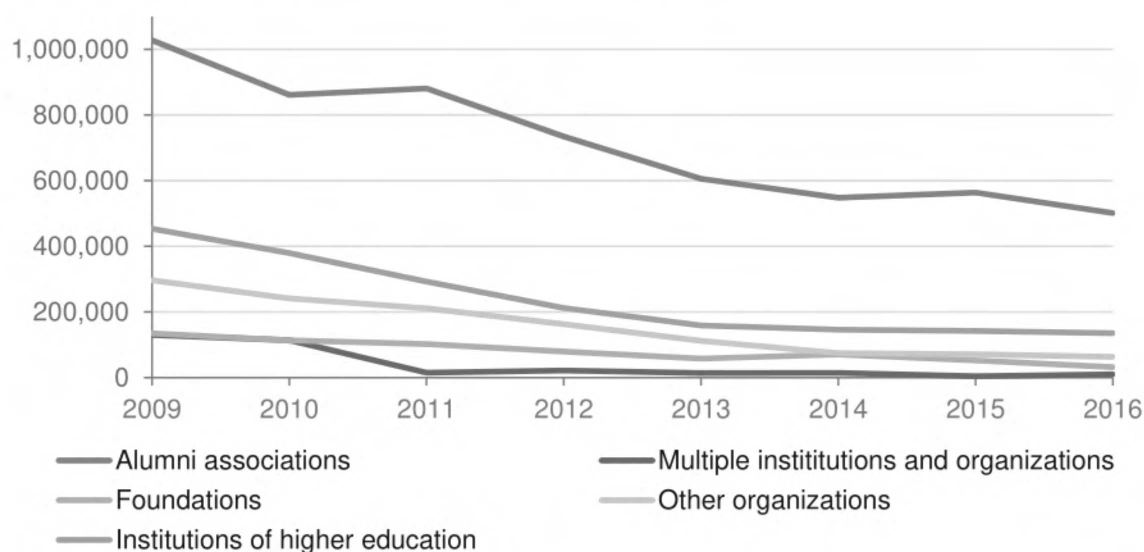

3.6 Payments

The total amount paid to partners, including institutions and affiliates, rose for the first time since the Bureau (and before it, the Board) began collecting these data. This rise, however, was minuscule—just over $3,700 from a base of over $27 million, or about 0.014%. The cumulative

decline from 2009 through 2016 was nearly 70%. While issuers that reported agreements in 2015 experienced a net decline from that year to 2016, new entrants reported payments that cancelled that decline just about exactly; those payments were overwhelmingly made by a single issuer to a single institution. Payment data can be seen in Figure 5 below.

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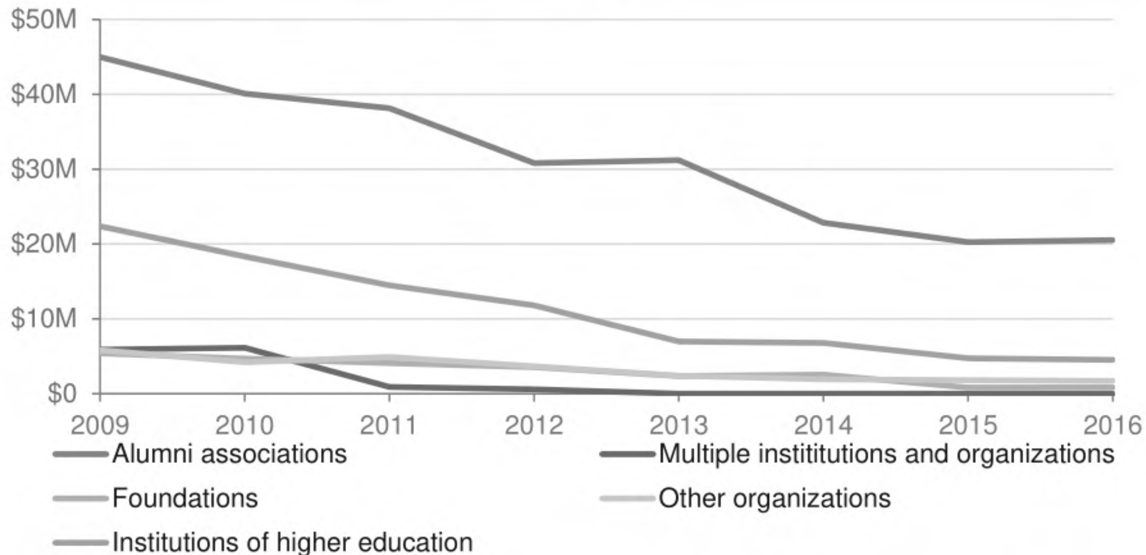
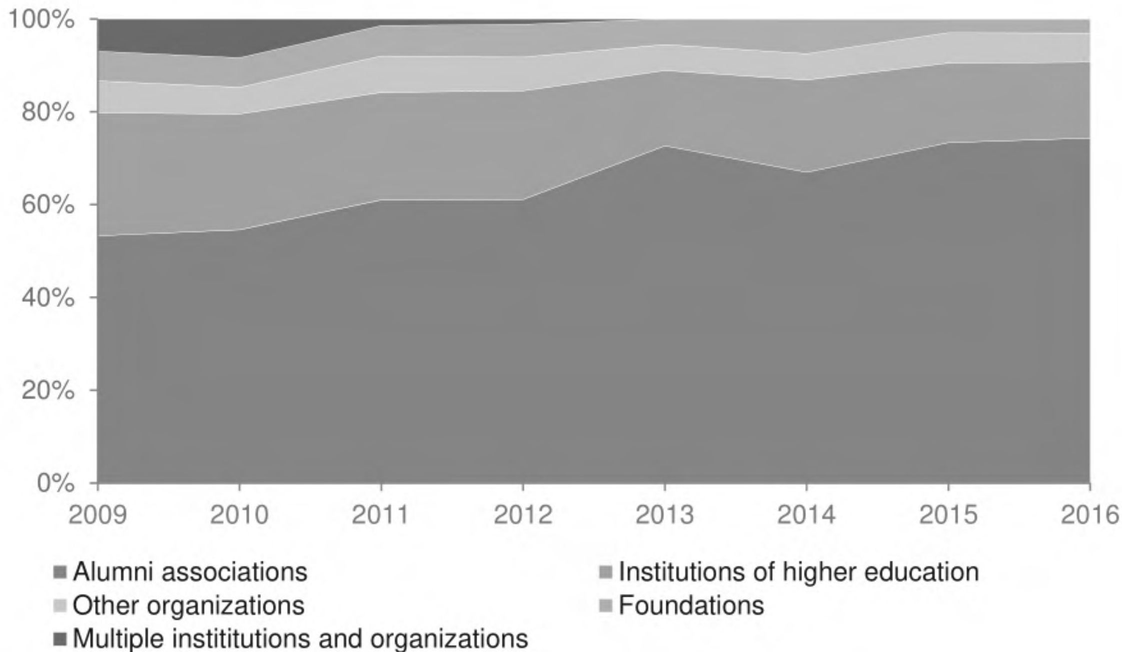


Continuing a trend interrupted only in 2014, agreements with alumni associations increased their share to fully 72% of all payments, exceeding the previous peak from 2013. After increasing to nearly 20% in 2014, payments made under the terms of agreements with institutions of higher education declined to under 16% in 2016. This can be seen below in Figure 6.

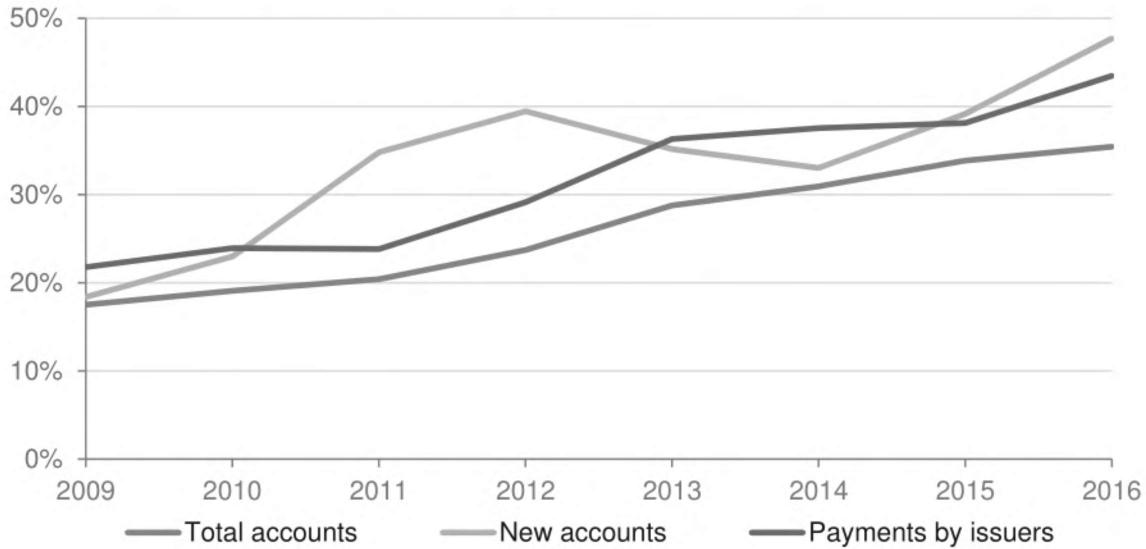
FIGURE 6: PAYMENT SHARES BY PARTNER TYPE



3.7 Concentration

Since 2009, the ten largest agreements by each of the three metrics of agreement size—year-end open accounts, new accounts, and payment volume—have tended to represent an increasing share of the market. In 2016, this trend continued, with the top ten agreements by each of those three metrics once again reaching their largest share of the market since these data have been collected. This suggests that, in any given year, the decline in the overall size of the market is concentrated in the termination of agreements that are relatively smaller, as measured by the available metrics. Concentration data can be seen in Figure 7 below.

FIGURE 7: MARKET SHARE OF TOP TEN AGREEMENTS BY METRIC



There is significant overlap between each of the three groups of top ten agreements. Overall, 18 agreements comprise the three lists, with six agreements appearing on two lists and three agreements appearing on three. Of those 18 agreements, 14 (or just over 84%) are agreements with alumni associations, reflecting the dominant role that agreements with alumni associations continue to play in this market.

APPENDIX A: COLLEGE CREDIT CARD DATA

The Bureau is continuing its practice from 2016 and is updating an associated comma separated value file ("CSV file") that contains all college credit card data collected to date with the most recent year's data. The Bureau intends to update the CSV file each year as it collects new data from college credit card issuers.

The Bureau intends to ensure that the publically-available dataset is as accurate as possible on a continually updated basis. This means that the dataset (as well as some of the charts and figures in this report) may not be completely consistent with past iterations of this report as parties make corrections to earlier submissions. In all cases, the Bureau intends for the public dataset to be as definitive as possible.

Below is a brief guide to interpreting the dataset:

- The CSV file consists of rows and columns.
- Each row beyond the first consists of an individual agreement-year.
  - This means that if an agreement existed across multiple years, each year's data would be a separate row in the dataset.
- The first row consists of headers which explain what data fields are contained in each column. Those headers are explicated below:
  - "REPORTING YEAR" – this field contains the year associated with the agreement-year. Note that this is the year represented by the data, not the year the data was collected and published. For example, a row whose reporting year was listed as 2014 contains data regarding that agreement's metrics in calendar year 2014, not the data collected and published in 2014.
  - "INSTITUTION OR ORGANIZATION" – this is the name of the institution of higher education or affiliate that is party to the agreement.
  - "TYPE OF INSTITUTION OR ORGANIZATION" – this designates the institution as one or more of four types:
    - University;

- Alumni association;
- Foundation; or
- Other.

- "CITY" – this is the city in which the institution of higher education or affiliate that is party to the agreement is located.
- "STATE" – this is the State in which the institution of higher education or affiliate that is party to the agreement is located.
- "CREDIT CARD ISSUER" – the name of the credit card issuer that is party to the agreement.
- "STATUS" – a field which denotes the status of the agreement. In general, there are three valid responses issuers can provide for this field[16]:
  - "Same" – the status of the agreement has not changed from the previous year;
  - "Amended" – the status of the agreement has in some way changed from the previous year, or the agreement has been amended;
  - "New" – the agreement is new to this year.
- "IN EFFECT AS OF BEGINNING OF NEXT YEAR" – a "yes/no" question regarding whether the agreement in question was in force as of January 1st of the year following the reporting year (*e.g.*, whether an agreement whose reporting year was 2011 was or was not in force as of January 1st, 2012).

[16] In a few cases, issuers provided invalid responses to this question. In those cases in which the Bureau was, as of publication, unable to receive corrected responses from issuers, those invalid responses were published as submitted.

- "TOTAL OPEN ACCOUNTS AS OF END OF REPORTING YEAR" – the total number of open credit card accounts associated with the agreement, as of December 31st of the reporting year.
- "PAYMENTS BY ISSUER" – the sum of all payments made by the issuer to the institution pursuant to the agreement over the course of the reporting year.
- "NEW ACCOUNTS OPENED IN REPORTING YEAR" – the total number of all credit card accounts opened associated with the agreement over the course of the reporting year.

1700 G Street NW, Washington, DC 20552

January 3, 2018

The Honorable Paul Ryan
Speaker
United States House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Speaker Ryan: Paul

Enclosed is the Consumer Financial Protection Bureau's report to Congress on college credit card agreements, as required by Section 305(a) of the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act).

Should you have any questions concerning this report, please do not hesitate to contact me, or have your staff contact Matt Pippin in the Bureau's Office of Legislative Affairs. Mr. Pippin can be reached at (b)(6)

Sincerely,

Mick Mulvaney
Acting Director

consumerfinance.gov

College credit card agreements

Annual report to Congress

Consumer Financial Protection Bureau

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1. Introduction

The Credit Card Accountability, Responsibility, and Disclosure Act ("CARD Act" or "Act") requires the Consumer Financial Protection Bureau (the "Bureau") to submit to Congress, and to make available to the public, an annual report that lists information submitted to the Bureau concerning agreements between credit card issuers and institutions of higher education or certain organizations affiliated with such institutions.[1] This report refers to these agreements as "college credit card agreements" or simply "agreements."[2] Affiliated organizations include fraternities, sororities, alumni associations, or foundations affiliated with or related to an institution of higher education.

This is the eighth annual report pursuant to the CARD Act. The Federal Reserve Board submitted the first two reports. Pursuant to title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), responsibility for collecting data and submitting to Congress annual reports regarding college credit card agreements transferred from the Federal Reserve Board ("Board") to the Bureau on July 21, 2011. [3] The Bureau has since submitted five reports.[4]

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[1] The mandate is at section 305(a) of the CARD Act, Pub. L. No. 111–24, § 305(a), 123 Stat. 1734, 1749-50 (2009). Section 305(a) amended section 127 of the Truth in Lending Act. This provision is codified at 15 U.S.C. § 1637(r).

[2] This report refers to credit card issuers as "issuers," to institutions of higher education as "institutions," and to organizations affiliated with such institutions as "affiliates" or "affiliated organizations."

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[4] *See* Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Oct. 2012), *available at* https://www.consumerfinance.gov/documents/1685/201612_cfpb_StudentBankingReport2016.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2013), *available at* http://files.consumerfinance.gov/f/201512_cfpb_college-credit-card-agreements.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2014), *available at*

The regulations implementing section 305 of the CARD Act require credit card issuers to submit to the Bureau each year the terms and conditions of any college credit card agreement that was in effect at any time during the preceding calendar year between an issuer and an institution of higher education.[5] The same requirement applies to agreements between an issuer and an affiliated organization of the institution, such as an alumni organization or a foundation associated with the institution.[6]

Issuers are required to submit the following information with respect to each such agreement:

- the number of credit card accounts covered by the agreement ("college credit card accounts") that were open at year-end;
- the amount of payments made by the issuer to the institution or organization during the year;[7]
- the number of new college credit card accounts covered by the agreement that were opened during the year; and
- any Memorandum of Understanding ("MOU") between the issuer and institution or affiliated organization that directly or indirectly relates to any aspect of the agreement.[8]

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http://files.consumerfinance.gov/f/201412_cfpb_college-card-agreement-report-2014.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2015), *available at* http://files.consumerfinance.gov/f/201312_cfpb_report_college-credit-card-agreements.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2016), *available at* http://files.consumerfinance.gov/f/201210_cfpb_report_College_Credit_Card_Agreements.pdf.

[5] *See* 15 U.S.C. § 1637(r); 12 C.F.R. § 1026.57(d); *see also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).

[6] 12 CFR 1026.57(a)(4) and (5) and (d). In some cases, issuers submitted to the Bureau agreements with other types of organizations, such as fraternities, sororities, and professional or trade organizations that relate to the issuance of credit cards to college students. Such agreements are included in this report and categorized as agreements with "other organizations."

[7] All payments included in this report are rounded to the nearest dollar.

Appendix A provides more information on the dataset consolidating this year's submission with past years' data. Institutions of higher education are also required to make agreements available to the public.[9]

The CARD Act requires the Bureau to issue a report each year on the information and documents provided by card issuers, including the number of new accounts opened pursuant to agreements between card issuers and colleges and universities and the compensation paid by issuers to these institutions.[10] This report is based on the information and agreements submitted to the Bureau by credit card issuers. The information is current as of the end of 2016.[11] Information included in this report also is available on the Bureau's public website at www.consumerfinance.gov.

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[8] *See* 12 C.F.R. § 1026.57(d)(2).

[9] This obligation applies to "any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card." 12 C.F.R. § 1026.57(b); *see also* 15 U.S.C. § 1650(f)(1).

[10] 15 U.S.C. § 1637(r)(3).

[11] Issuers were required to make their annual submission by March 31, 2017. This submission comprised college credit card agreements to which the issuer was a party during 2016 and information regarding payments and accounts as of December 31, 2016.

2. Summary

This report makes the following findings:

- Further continuing an established trend, the number of agreements between credit card issuers and colleges, universities, and affiliated organizations sponsoring credit card programs decreased in 2016, as did the number of accounts open pursuant to such agreements and the total amount paid by issuers to counterparties pursuant to such agreements;

- Alumni associations remain the predominant entity type in this market; while institutions of higher education regained some market share as measured by agreements and open accounts, alumni associations nevertheless increased their share of issuer payments; and

- The largest few agreements continue to increase the share of the overall market that they account for, with the ten most-lucrative agreements representing an unprecedented 43% of all payments by issuers.

These findings are subject to a number of limitations. Some college agreements cover other financial products besides credit cards, such as deposit accounts, so payments made by issuers under these agreements may not relate solely to credit card accounts. In addition, some or all of the accounts opened in connection with these agreements, even those directly between issuers and institutions, may have been opened by individuals who are not students, such as alumni, faculty, and staff of an institution of higher education. (Conversely, it is theoretically possible that students may have opened accounts under the terms of alumni agreements.) Furthermore, card issuers' submissions do not include information regarding credit card accounts opened by students independent of a college credit card agreement, such as when a student responds to an offer made to the general public. Finally, because issuers were required to submit all college credit card agreements to which they were a party at any time during 2016, issuers' submissions include agreements that are no longer in effect.

3. Findings

3.1 Overall trends

The Bureau received 225 college credit card agreements from 37 credit card issuers for 2016. This section of the report presents data about these agreements and compares that to data for earlier years.

FIGURE 1: TRENDS IN ISSUER-REPORTED METRICS (INDEXED TO 100% IN 2009)

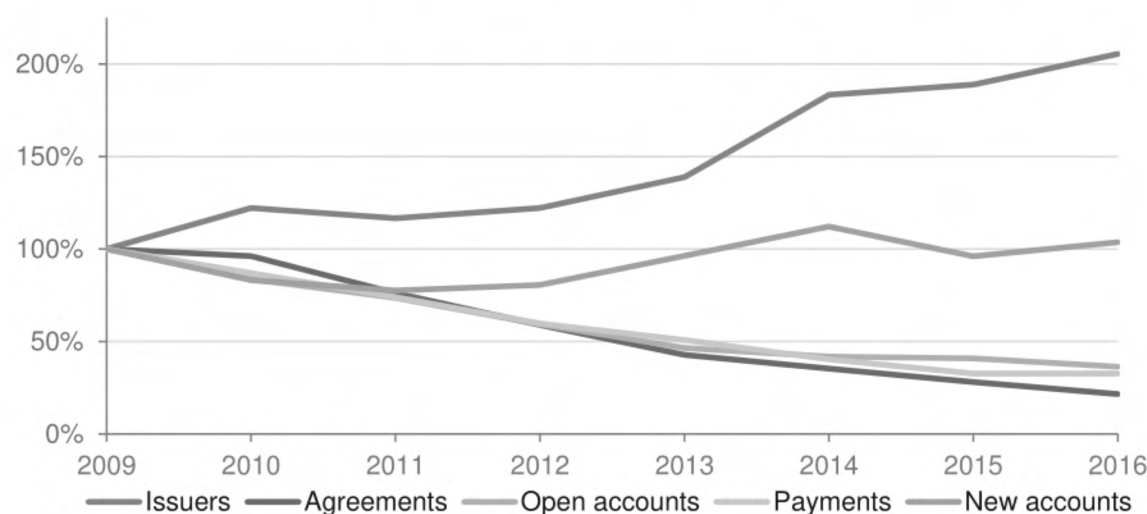

Figure 1 presents a summary of these data, which show that in each year from 2009 through 2016, there were consistent declines in: (a) the number of college credit card agreements; (b) the total number of associated credit card accounts open at year-end; and (c) the amount paid by issuers to institutions and affiliates. In contrast, 37 issuers were parties to such agreements in

effect in 2016, three more than in the previous year.[12] Further, 2016 saw slightly more new accounts than in 2009; this metric's fluctuation over the period these data have been collected appears uncorrelated with other indicators of the overall size of this market.

3.2 Issuers

Bank of America, via its subsidiary FIA Card Services, remains the largest player in this market. By examining solely the number of agreements by issuer, Bank of America's presence is relatively stable, representing 81 of 225 agreements, 36% as compared to 34% in 2015. However, Bank of America represented 78% of all accounts open under such agreements and 70% of payments made to institutions and their affiliates under such agreements. The nearest competitors by those metrics have a 4% and 8% market share, respectively.

Although Bank of America has been the dominant player in this market in every year for which this report has been prepared, the number of Bank of America agreements, accounts, and payments continues to fall significantly. In 2015, Bank of America maintained 99 agreements. By 2016, that number was down to 81 agreements. That fall of 18%, however, is slower than the pace of decline in the remaining market, from 193 to 144 agreements. This decline was driven by significant declines at many of the larger remaining issuers in this space, including the near-exit of Discover Bank.[13]

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[12] Two issuers submitted data for the first time this year; however, they appear to have had agreements in past years, suggesting that a comprehensive retroactive submission from them would result in minor alterations to previous year data.

[13] Discover had only one agreement remaining active at any point during 2016, which was itself terminated by year's end. Two issuers exited the market completely in 2015, and were therefore not included in our 2016 survey, but one had only one agreement and one transferred its existing agreements to another issuer who already maintained other agreements, meaning the impact of those exits on the total stock of agreements was minimal.

Overall, 37 issuers submitted agreements for 2016; each issuer's aggregate metrics can be seen in Table 1 below. Five issuers that submitted agreements in 2016 did not submit agreements in 2015. The new issuers in the 2016 submission are one bank and four credit unions: Farmers & Merchants State Bank, Georgia's Own Credit Union, Goldenwest Federal Credit Union, Stanford Federal Credit Union, and Texas Trust Credit Union.[14] These five issuers accounted for five agreements, 2,782 accounts, and $1,740,361 in payments to institutions and their affiliates.

TABLE 1: REPORTED METRICS WITH COLLEGE AGREEMENTS IN EFFECT 2016, BY ISSUER

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
Apple Federal Credit Union	1	164	$15,000	30
Banco Popular de Puerto Rico	1	15,168	$60,587	592
Bank of America	81	574,050	$19,114,493	27,222
Boeing Employees' Credit Union	1	17,330	$305,000	9,158
Carolina Trust Federal Credit Union	1	204	$1,536	58
Christian Community Credit Union	1	176	$5,271	38
Comenity Capital Bank	1	143	$100,000	25
Commerce Bank	25	1,402	$32,901	649
Discover Bank	1	-	$57,142	9
Farmers & Merchants State Bank	1	-	$16,000	-

[14] One of these issuers submitted 2014 data, but not 2015.

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
First Interstate Bank	1	119	$7,625	34
First National Bank of Omaha	7	7,974	$550,407	901
Georgia's Own Credit Union	1	113	$102,633	60
Goldenwest Federal Credit Union	1	1,435	$21,728	900
Harvard University Employees Credit Union	1	11,583	$923,068	1,005
MidFirst Bank	3	2,207	$136,270	432
MIT Federal Credit Union	1	2,147	$60,528	368
Mountain America Federal Credit Union	1	3,450	$80,797	2,037
Nationwide Bank	7	1,742	$221,500	167
Oregon Community Credit Union and OCCU Card Services, LLC	2	6,577	$100,000	663
Pen Air Federal Credit Union	3	127	$1,193	34
Pennsylvania State Employees Credit Union	27	851	$5,710	211
ProFed Federal Credit Union	1	1	$270	1
Purdue Federal Credit Union	1	28,663	$1,000,000	2384
Stanford Federal Credit Union	1	1,069	$600,000	1,078
Texas Trust Credit Union	1	165	$0	202
The Southern Credit Union	1	16	$120	5
U.S. Bank National Association ND	10	24,892	$2,134,211	295
UMB Bank	23	969	$18,186	21

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
University Credit Union	1	279	$5,249	20
University First Federal Credit Union	1	9,626	$0	5,280
University of Illinois Community Credit Union	1	15,000	$625,271	1,687
University of Wisconsin (UW) Credit Union	4	2,781	$295,000	1,091
USAA Savings Bank	8	6,622	$634,875	687
USC Credit Union	1	1,796	$241,645	160
USF Federal Credit Union	1	2,138	$114,432	222
Wright-Patt Credit Union	1	496	$7,359	60
Grand Total	**225**	**741,475**	**$27,596,007**	**57,786**

3.3 Agreements

Issuers submitted 225 college credit card agreements for 2016. Of these, 12 were entered into in 2016. Seven issuers accounted for these new agreements. Overall, there was a significant net decrease of 68 agreements in effect in 2016 relative to 2015, a 23% decline. The pace of agreement termination continued to slow in 2016, with 12 terminations in 2016. That 5% closure rate was less than half the pace of 2015, which itself was half the pace of the previous year.[15]

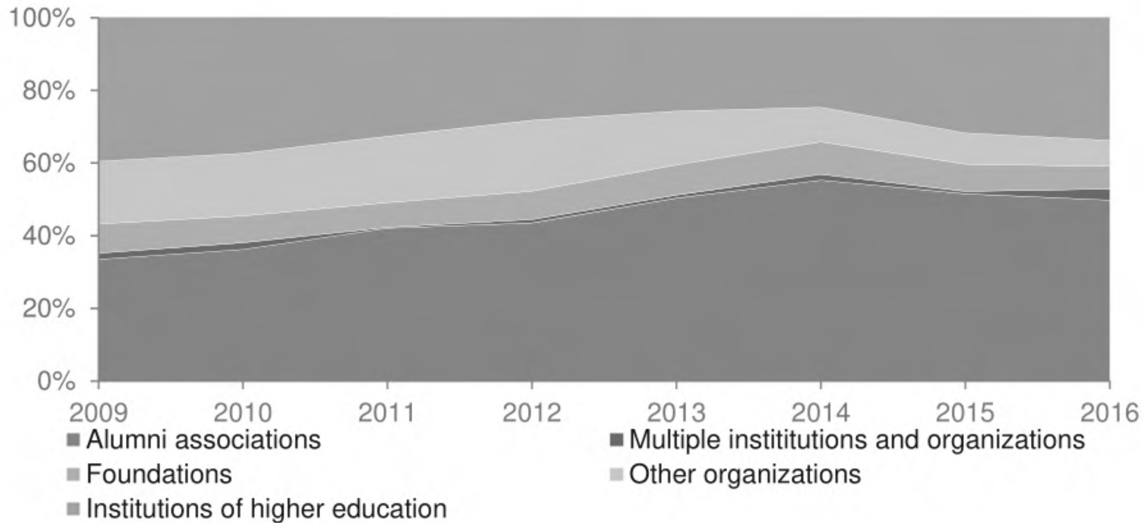
[15] The linked dataset allows users to see all agreements terminated in 2016 as well as earlier years. *See College credit card marketing agreements and data* at https://www.consumerfinance.gov/data-research/student-banking/marketing-agreements-and-data/.

Bank of America continued to be the major driver behind agreement termination, comprising five of the 12 closed agreements.

3.4 Partner entities

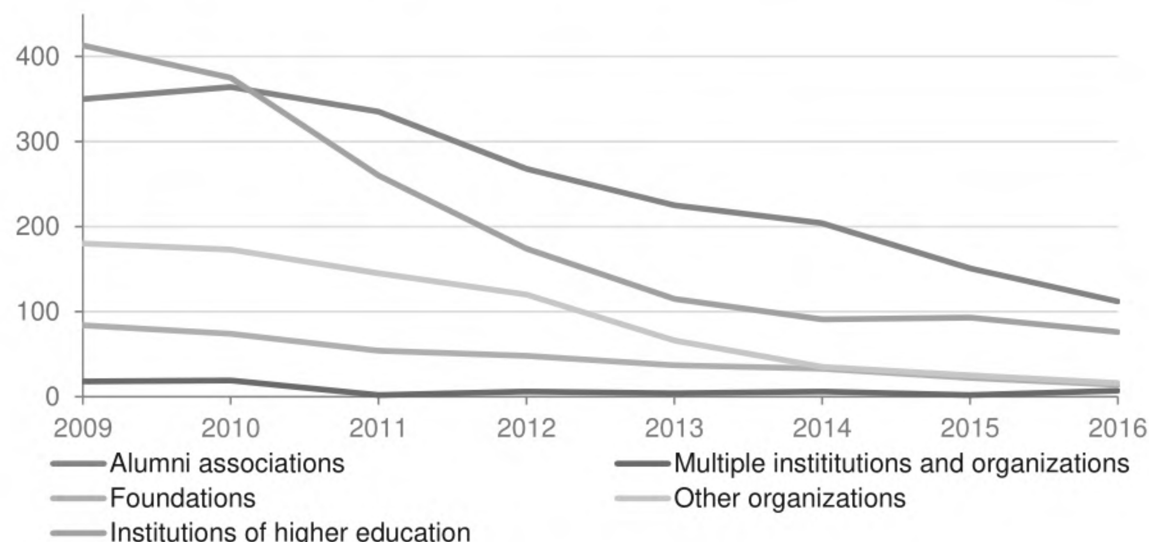
Continuing last year's trend, the share of agreements with institutions of higher education increased. As shown in Figure 2, the institution of higher education agreement share inched upwards in 2016; a more modest gain in share than in 2015, though still notable given the previous trend of decline.

FIGURE 2: AGREEMENT SHARE BY PARTNER TYPE



However, Figure 3 shows that this gain in share was once again driven almost completely by a decline in every other kind of agreement, from 200 agreements with other types of institutions in 2015 to 149 in 2016. Agreements with institutions of higher education also declined, from 93 in 2015 to 76 in 2016, but that 18% decline was slightly slower than the 25% decline in other agreements, resulting in a larger share.

FIGURE 3: TOTAL AGREEMENTS BY PARTNER TYPE



As shown in Table 2, alumni associations' share of all agreements slipped below the 50% mark for the first time since 2012. However, alumni association agreements maintained a stable two-thirds share of all associated accounts and slightly increased their share of associated payments.

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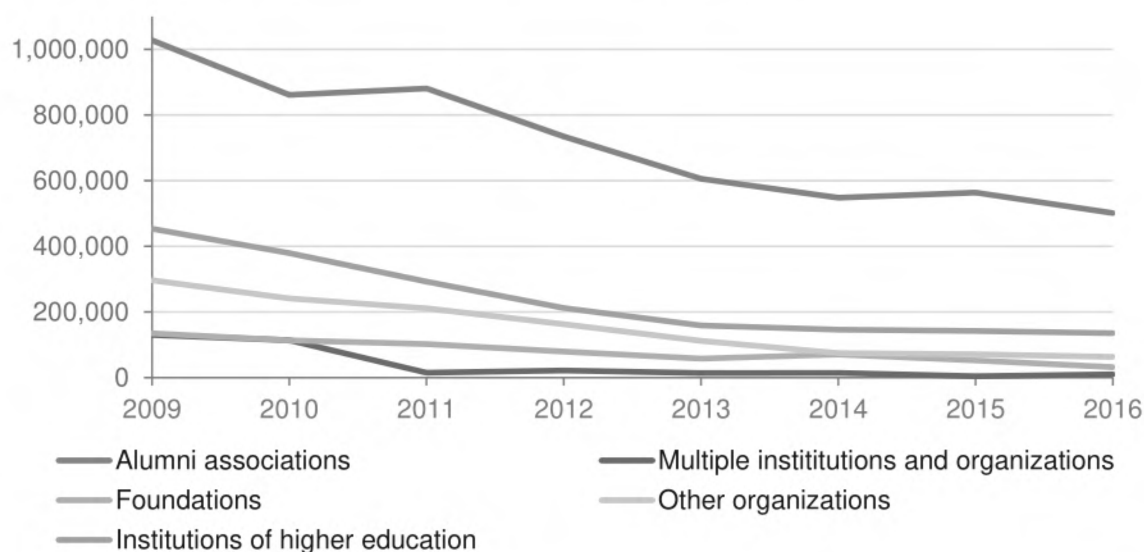
3.5 Account volume

The total number of open college credit card accounts at year-end declined in each year from 2009 through 2016. The cumulative decline across these years was well over 60%. While in fact most issuers in our survey saw a net increase in accounts from year-end 2015 to year-end 2016, these increases were offset by much larger declines experienced by a small number of larger issuers. Total year-end open accounts declined for each type of partner institution in aggregate, as shown below in Figure 4, with the exception of agreements with multiple institutions, which ticked up slightly. That decline was steepest for foundations, which comprised 22% of the total net decline despite only representing 6% of all accounts at year-end 2016. The total number of new accounts opened each year remained uncorrelated with other metrics tracked in this report; in 2016 that number was almost perfectly stable from the previous year's figure, even as most other metrics declined.

FIGURE 4: YEAR-END ACCOUNTS BY PARTNER INSTITUTION



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The total amount paid to partners, including institutions and affiliates, rose for the first time since the Bureau (and before it, the Board) began collecting these data. This rise, however, was minuscule—just over $3,700 from a base of over $27 million, or about 0.014%. The cumulative

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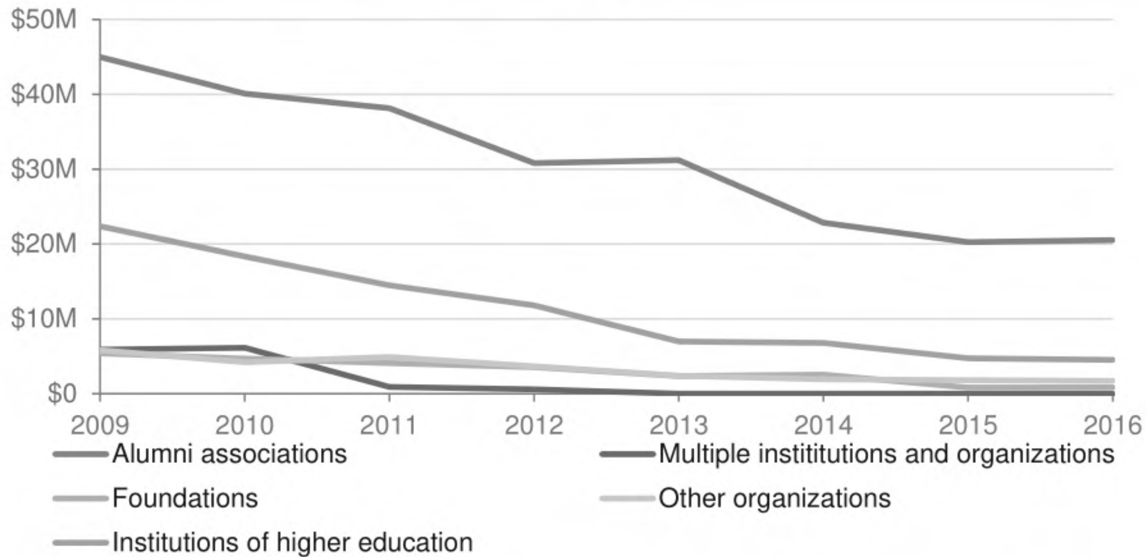
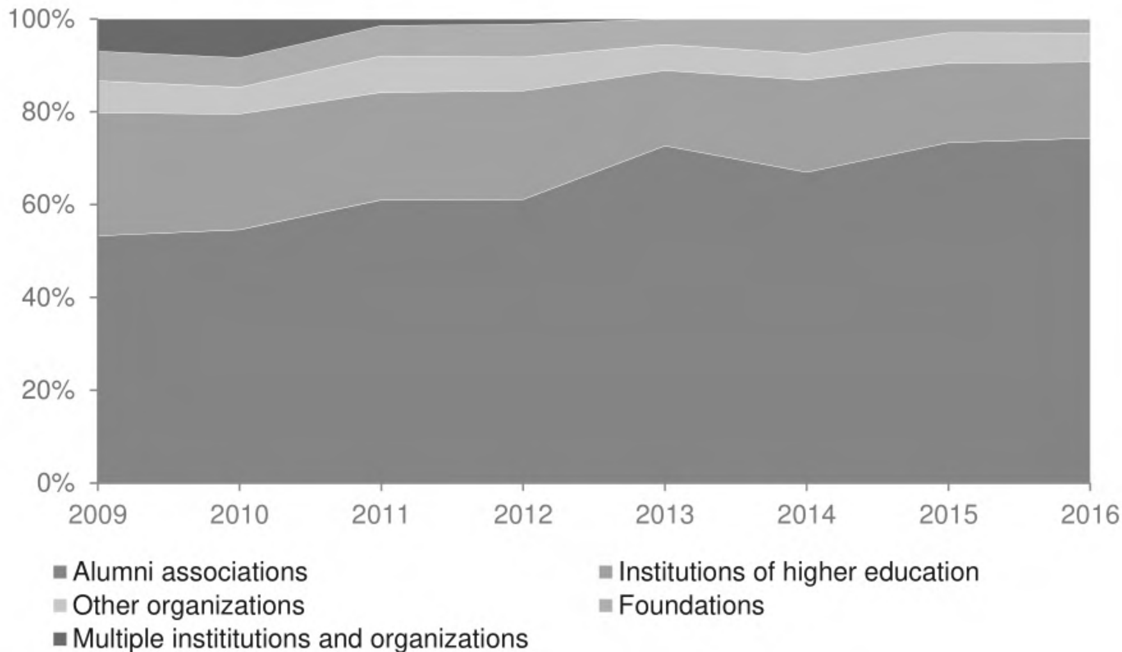


Continuing a trend interrupted only in 2014, agreements with alumni associations increased their share to fully 72% of all payments, exceeding the previous peak from 2013. After increasing to nearly 20% in 2014, payments made under the terms of agreements with institutions of higher education declined to under 16% in 2016. This can be seen below in Figure 6.

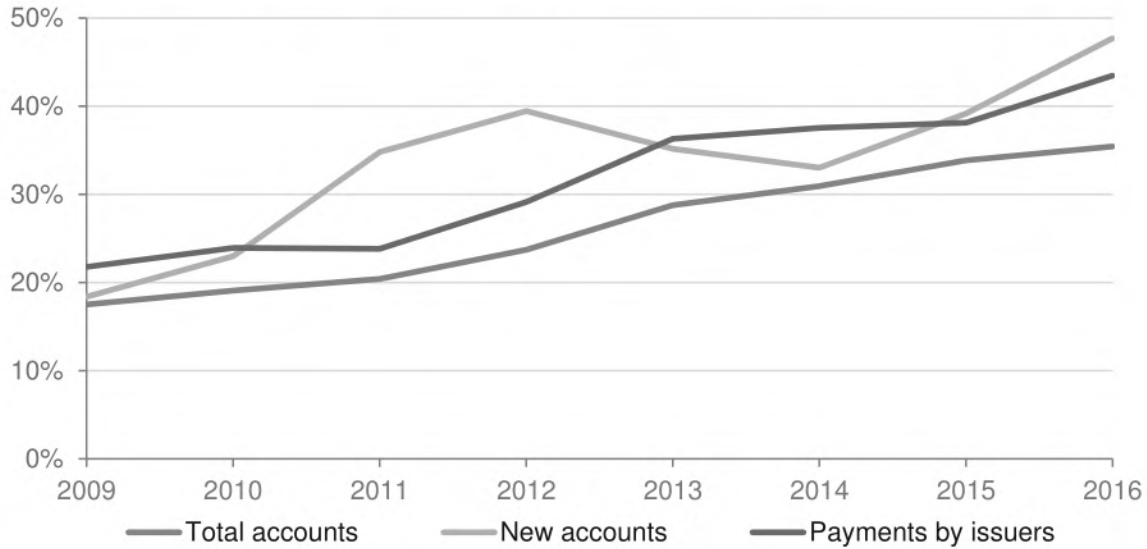
FIGURE 6: PAYMENT SHARES BY PARTNER TYPE



3.7 Concentration

Since 2009, the ten largest agreements by each of the three metrics of agreement size—year-end open accounts, new accounts, and payment volume—have tended to represent an increasing share of the market. In 2016, this trend continued, with the top ten agreements by each of those three metrics once again reaching their largest share of the market since these data have been collected. This suggests that, in any given year, the decline in the overall size of the market is concentrated in the termination of agreements that are relatively smaller, as measured by the available metrics. Concentration data can be seen in Figure 7 below.

FIGURE 7: MARKET SHARE OF TOP TEN AGREEMENTS BY METRIC



There is significant overlap between each of the three groups of top ten agreements. Overall, 18 agreements comprise the three lists, with six agreements appearing on two lists and three agreements appearing on three. Of those 18 agreements, 14 (or just over 84%) are agreements with alumni associations, reflecting the dominant role that agreements with alumni associations continue to play in this market.

APPENDIX A: COLLEGE CREDIT CARD DATA

The Bureau is continuing its practice from 2016 and is updating an associated comma separated value file ("CSV file") that contains all college credit card data collected to date with the most recent year's data. The Bureau intends to update the CSV file each year as it collects new data from college credit card issuers.

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- "NEW ACCOUNTS OPENED IN REPORTING YEAR" – the total number of all credit card accounts opened associated with the agreement over the course of the reporting year.

1700 G Street NW, Washington, DC 20552

January 3, 2018

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
United States House of Representatives
4340 Thomas P. O'Neill, Jr. House Office Building
Washington, DC 20515

Dear Ranking Member Waters:

Enclosed is the Consumer Financial Protection Bureau's report to Congress on college credit card agreements, as required by Section 305(a) of the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act).

Should you have any questions concerning this report, please do not hesitate to contact me, or have your staff contact Matt Pippin in the Bureau's Office of Legislative Affairs. Mr. Pippin can be reached at (b)(6)

Sincerely,

Mick Mulvaney
Acting Director

consumerfinance.gov

College credit card agreements

Annual report to Congress

cfpb Consumer Financial Protection Bureau

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1. Introduction

The Credit Card Accountability, Responsibility, and Disclosure Act ("CARD Act" or "Act") requires the Consumer Financial Protection Bureau (the "Bureau") to submit to Congress, and to make available to the public, an annual report that lists information submitted to the Bureau concerning agreements between credit card issuers and institutions of higher education or certain organizations affiliated with such institutions.[1] This report refers to these agreements as "college credit card agreements" or simply "agreements."[2] Affiliated organizations include fraternities, sororities, alumni associations, or foundations affiliated with or related to an institution of higher education.

This is the eighth annual report pursuant to the CARD Act. The Federal Reserve Board submitted the first two reports. Pursuant to title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), responsibility for collecting data and submitting to Congress annual reports regarding college credit card agreements transferred from the Federal Reserve Board ("Board") to the Bureau on July 21, 2011. [3] The Bureau has since submitted five reports.[4]

---

[1] The mandate is at section 305(a) of the CARD Act, Pub. L. No. 111–24, § 305(a), 123 Stat. 1734, 1749-50 (2009). Section 305(a) amended section 127 of the Truth in Lending Act. This provision is codified at 15 U.S.C. § 1637(r).

[2] This report refers to credit card issuers as "issuers," to institutions of higher education as "institutions," and to organizations affiliated with such institutions as "affiliates" or "affiliated organizations."

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[4] *See* Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Oct. 2012), *available at* https://www.consumerfinance.gov/documents/1685/201612_cfpb_StudentBankingReport2016.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2013), *available at* http://files.consumerfinance.gov/f/201512_cfpb_college-credit-card-agreements.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2014), *available at*

The regulations implementing section 305 of the CARD Act require credit card issuers to submit to the Bureau each year the terms and conditions of any college credit card agreement that was in effect at any time during the preceding calendar year between an issuer and an institution of higher education.[5] The same requirement applies to agreements between an issuer and an affiliated organization of the institution, such as an alumni organization or a foundation associated with the institution.[6]

Issuers are required to submit the following information with respect to each such agreement:

- the number of credit card accounts covered by the agreement ("college credit card accounts") that were open at year-end;
- the amount of payments made by the issuer to the institution or organization during the year;[7]
- the number of new college credit card accounts covered by the agreement that were opened during the year; and
- any Memorandum of Understanding ("MOU") between the issuer and institution or affiliated organization that directly or indirectly relates to any aspect of the agreement.[8]

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http://files.consumerfinance.gov/f/201412_cfpb_college-card-agreement-report-2014.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2015), *available at* http://files.consumerfinance.gov/f/201312_cfpb_report_college-credit-card-agreements.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to* Congress, (Dec. 2016), *available at* http://files.consumerfinance.gov/f/201210_cfpb_report_College_Credit_Card_Agreements.pdf.

[5] *See* 15 U.S.C. § 1637(r); 12 C.F.R. § 1026.57(d); *see also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).

[6] 12 CFR 1026.57(a)(4) and (5) and (d). In some cases, issuers submitted to the Bureau agreements with other types of organizations, such as fraternities, sororities, and professional or trade organizations that relate to the issuance of credit cards to college students. Such agreements are included in this report and categorized as agreements with "other organizations."

[7] All payments included in this report are rounded to the nearest dollar.

Appendix A provides more information on the dataset consolidating this year's submission with past years' data. Institutions of higher education are also required to make agreements available to the public.[9]

The CARD Act requires the Bureau to issue a report each year on the information and documents provided by card issuers, including the number of new accounts opened pursuant to agreements between card issuers and colleges and universities and the compensation paid by issuers to these institutions.[10] This report is based on the information and agreements submitted to the Bureau by credit card issuers. The information is current as of the end of 2016.[11] Information included in this report also is available on the Bureau's public website at www.consumerfinance.gov.

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[8] *See* 12 C.F.R. § 1026.57(d)(2).

[9] This obligation applies to "any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card." 12 C.F.R. § 1026.57(b); *see also* 15 U.S.C. § 1650(f)(1).

[10] 15 U.S.C. § 1637(r)(3).

[11] Issuers were required to make their annual submission by March 31, 2017. This submission comprised college credit card agreements to which the issuer was a party during 2016 and information regarding payments and accounts as of December 31, 2016.

2. Summary

This report makes the following findings:

- Further continuing an established trend, the number of agreements between credit card issuers and colleges, universities, and affiliated organizations sponsoring credit card programs decreased in 2016, as did the number of accounts open pursuant to such agreements and the total amount paid by issuers to counterparties pursuant to such agreements;
- Alumni associations remain the predominant entity type in this market; while institutions of higher education regained some market share as measured by agreements and open accounts, alumni associations nevertheless increased their share of issuer payments; and
- The largest few agreements continue to increase the share of the overall market that they account for, with the ten most-lucrative agreements representing an unprecedented 43% of all payments by issuers.

These findings are subject to a number of limitations. Some college agreements cover other financial products besides credit cards, such as deposit accounts, so payments made by issuers under these agreements may not relate solely to credit card accounts. In addition, some or all of the accounts opened in connection with these agreements, even those directly between issuers and institutions, may have been opened by individuals who are not students, such as alumni, faculty, and staff of an institution of higher education. (Conversely, it is theoretically possible that students may have opened accounts under the terms of alumni agreements.) Furthermore, card issuers' submissions do not include information regarding credit card accounts opened by students independent of a college credit card agreement, such as when a student responds to an offer made to the general public. Finally, because issuers were required to submit all college credit card agreements to which they were a party at any time during 2016, issuers' submissions include agreements that are no longer in effect.

3. Findings

3.1 Overall trends

The Bureau received 225 college credit card agreements from 37 credit card issuers for 2016. This section of the report presents data about these agreements and compares that to data for earlier years.

FIGURE 1: TRENDS IN ISSUER-REPORTED METRICS (INDEXED TO 100% IN 2009)

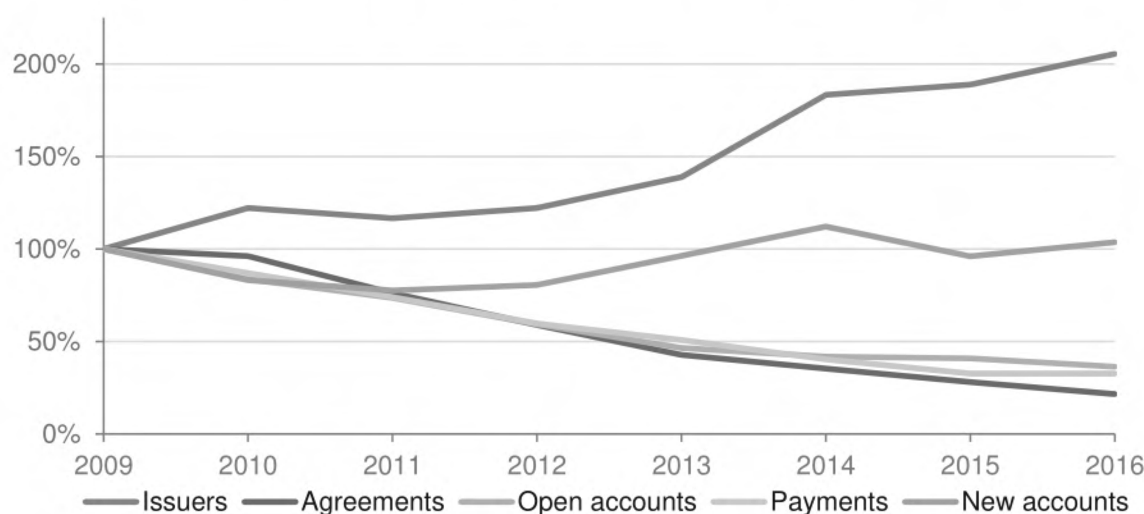


Figure 1 presents a summary of these data, which show that in each year from 2009 through 2016, there were consistent declines in: (a) the number of college credit card agreements; (b) the total number of associated credit card accounts open at year-end; and (c) the amount paid by issuers to institutions and affiliates. In contrast, 37 issuers were parties to such agreements in

effect in 2016, three more than in the previous year.[12] Further, 2016 saw slightly more new accounts than in 2009; this metric's fluctuation over the period these data have been collected appears uncorrelated with other indicators of the overall size of this market.

3.2 Issuers

Bank of America, via its subsidiary FIA Card Services, remains the largest player in this market. By examining solely the number of agreements by issuer, Bank of America's presence is relatively stable, representing 81 of 225 agreements, 36% as compared to 34% in 2015. However, Bank of America represented 78% of all accounts open under such agreements and 70% of payments made to institutions and their affiliates under such agreements. The nearest competitors by those metrics have a 4% and 8% market share, respectively.

Although Bank of America has been the dominant player in this market in every year for which this report has been prepared, the number of Bank of America agreements, accounts, and payments continues to fall significantly. In 2015, Bank of America maintained 99 agreements. By 2016, that number was down to 81 agreements. That fall of 18%, however, is slower than the pace of decline in the remaining market, from 193 to 144 agreements. This decline was driven by significant declines at many of the larger remaining issuers in this space, including the near-exit of Discover Bank.[13]

[12] Two issuers submitted data for the first time this year; however, they appear to have had agreements in past years, suggesting that a comprehensive retroactive submission from them would result in minor alterations to previous year data.

[13] Discover had only one agreement remaining active at any point during 2016, which was itself terminated by year's end. Two issuers exited the market completely in 2015, and were therefore not included in our 2016 survey, but one had only one agreement and one transferred its existing agreements to another issuer who already maintained other agreements, meaning the impact of those exits on the total stock of agreements was minimal.

Overall, 37 issuers submitted agreements for 2016; each issuer's aggregate metrics can be seen in Table 1 below. Five issuers that submitted agreements in 2016 did not submit agreements in 2015. The new issuers in the 2016 submission are one bank and four credit unions: Farmers & Merchants State Bank, Georgia's Own Credit Union, Goldenwest Federal Credit Union, Stanford Federal Credit Union, and Texas Trust Credit Union.[14] These five issuers accounted for five agreements, 2,782 accounts, and $1,740,361 in payments to institutions and their affiliates.

TABLE 1: REPORTED METRICS WITH COLLEGE AGREEMENTS IN EFFECT 2016, BY ISSUER

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
Apple Federal Credit Union	1	164	$15,000	30
Banco Popular de Puerto Rico	1	15,168	$60,587	592
Bank of America	81	574,050	$19,114,493	27,222
Boeing Employees' Credit Union	1	17,330	$305,000	9,158
Carolina Trust Federal Credit Union	1	204	$1,536	58
Christian Community Credit Union	1	176	$5,271	38
Comenity Capital Bank	1	143	$100,000	25
Commerce Bank	25	1,402	$32,901	649
Discover Bank	1	-	$57,142	9
Farmers & Merchants State Bank	1	-	$16,000	-

[14] One of these issuers submitted 2014 data, but not 2015.

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
First Interstate Bank	1	119	$7,625	34
First National Bank of Omaha	7	7,974	$550,407	901
Georgia's Own Credit Union	1	113	$102,633	60
Goldenwest Federal Credit Union	1	1,435	$21,728	900
Harvard University Employees Credit Union	1	11,583	$923,068	1,005
MidFirst Bank	3	2,207	$136,270	432
MIT Federal Credit Union	1	2,147	$60,528	368
Mountain America Federal Credit Union	1	3,450	$80,797	2,037
Nationwide Bank	7	1,742	$221,500	167
Oregon Community Credit Union and OCCU Card Services, LLC	2	6,577	$100,000	663
Pen Air Federal Credit Union	3	127	$1,193	34
Pennsylvania State Employees Credit Union	27	851	$5,710	211
ProFed Federal Credit Union	1	1	$270	1
Purdue Federal Credit Union	1	28,663	$1,000,000	2384
Stanford Federal Credit Union	1	1,069	$600,000	1,078
Texas Trust Credit Union	1	165	$0	202
The Southern Credit Union	1	16	$120	5
U.S. Bank National Association ND	10	24,892	$2,134,211	295
UMB Bank	23	969	$18,186	21

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
University Credit Union	1	279	$5,249	20
University First Federal Credit Union	1	9,626	$0	5,280
University of Illinois Community Credit Union	1	15,000	$625,271	1,687
University of Wisconsin (UW) Credit Union	4	2,781	$295,000	1,091
USAA Savings Bank	8	6,622	$634,875	687
USC Credit Union	1	1,796	$241,645	160
USF Federal Credit Union	1	2,138	$114,432	222
Wright-Patt Credit Union	1	496	$7,359	60
Grand Total	**225**	**741,475**	**$27,596,007**	**57,786**

3.3 Agreements

Issuers submitted 225 college credit card agreements for 2016. Of these, 12 were entered into in 2016. Seven issuers accounted for these new agreements. Overall, there was a significant net decrease of 68 agreements in effect in 2016 relative to 2015, a 23% decline. The pace of agreement termination continued to slow in 2016, with 12 terminations in 2016. That 5% closure rate was less than half the pace of 2015, which itself was half the pace of the previous year.[15]

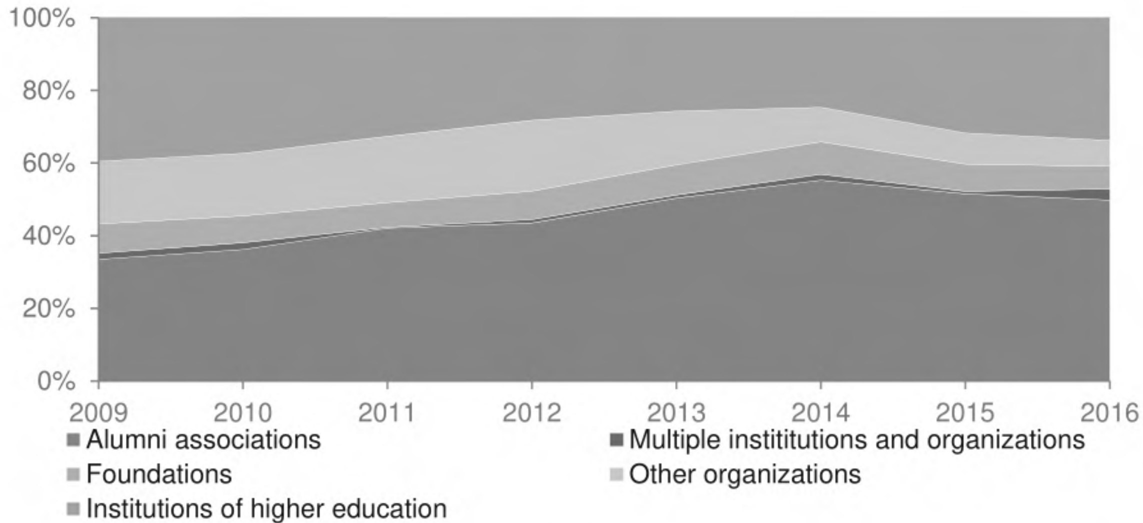
[15] The linked dataset allows users to see all agreements terminated in 2016 as well as earlier years. *See College credit card marketing agreements and data* at https://www.consumerfinance.gov/data-research/student-banking/marketing-agreements-and-data/.

Bank of America continued to be the major driver behind agreement termination, comprising five of the 12 closed agreements.

3.4 Partner entities

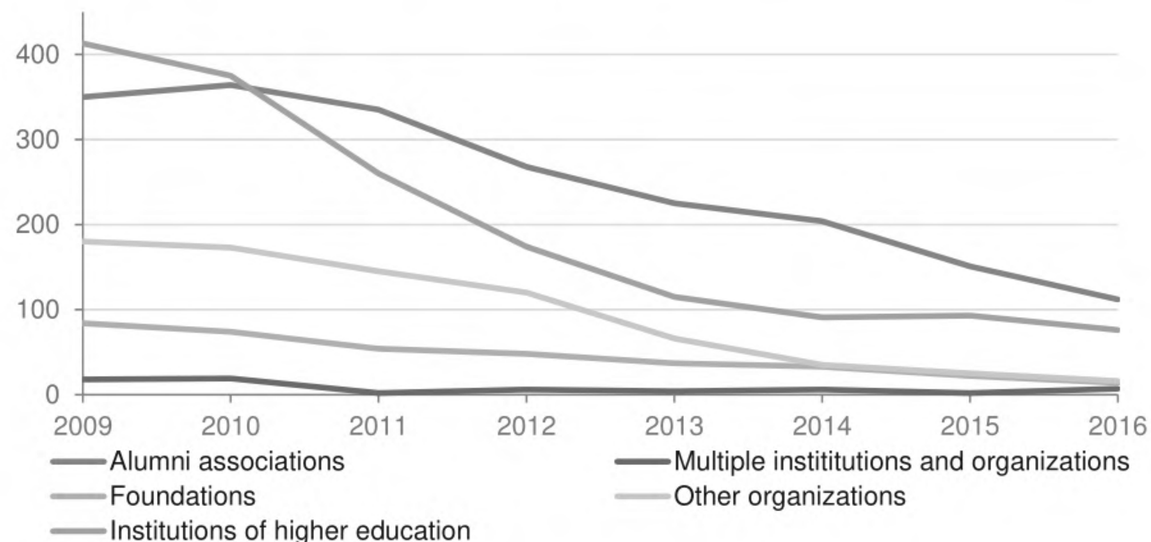
Continuing last year's trend, the share of agreements with institutions of higher education increased. As shown in Figure 2, the institution of higher education agreement share inched upwards in 2016; a more modest gain in share than in 2015, though still notable given the previous trend of decline.

FIGURE 2: AGREEMENT SHARE BY PARTNER TYPE



However, Figure 3 shows that this gain in share was once again driven almost completely by a decline in every other kind of agreement, from 200 agreements with other types of institutions in 2015 to 149 in 2016. Agreements with institutions of higher education also declined, from 93 in 2015 to 76 in 2016, but that 18% decline was slightly slower than the 25% decline in other agreements, resulting in a larger share.

FIGURE 3: TOTAL AGREEMENTS BY PARTNER TYPE



As shown in Table 2, alumni associations' share of all agreements slipped below the 50% mark for the first time since 2012. However, alumni association agreements maintained a stable two-thirds share of all associated accounts and slightly increased their share of associated payments.

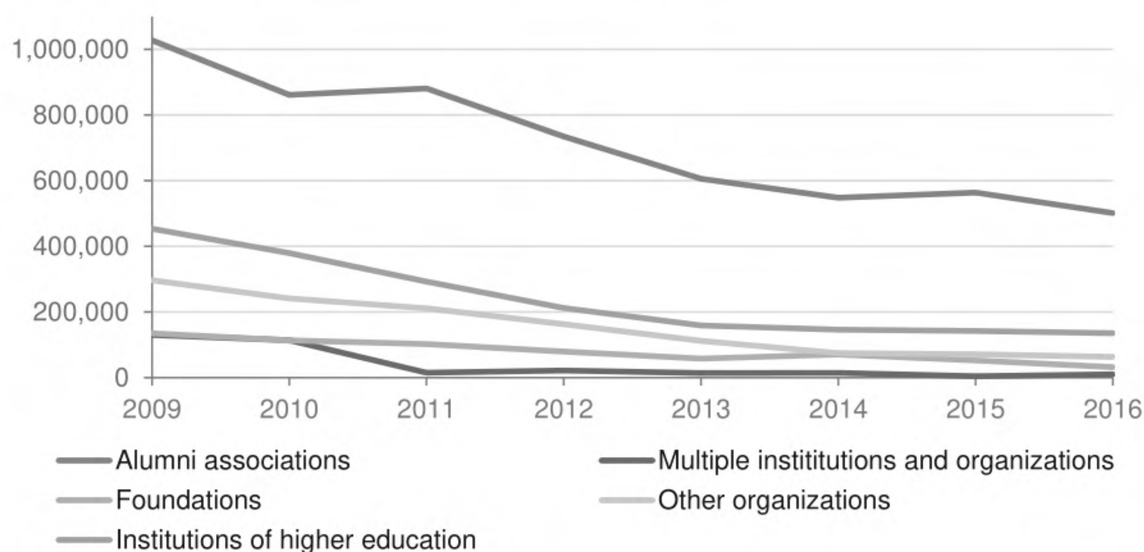
TABLE 2: ISSUER REPORTED METRICS BY AGREEMENT PARTNER TYPE, 2016

Type of institution or organization	Agreements in effect in 2016	New agreements in 2016	Total open accounts at year-end	Payments by issuer in 2016	New accounts opened in 2016
Alumni associations	112	4	501,194	$20,521,819	38,948
Institutions of higher education	76	3	135,361	$4,508,439	9,363
Other organizations	16	1	63,228	$1,724,104	2,309
Foundations	14	2	31,789	$836,645	1,744
Multiple institutions and organizations	7	2	9,903	$5,000	5,422
Total	**225**	**12**	**741,475**	**$27,596,007**	**57,786**

3.5 Account volume

The total number of open college credit card accounts at year-end declined in each year from 2009 through 2016. The cumulative decline across these years was well over 60%. While in fact most issuers in our survey saw a net increase in accounts from year-end 2015 to year-end 2016, these increases were offset by much larger declines experienced by a small number of larger issuers. Total year-end open accounts declined for each type of partner institution in aggregate, as shown below in Figure 4, with the exception of agreements with multiple institutions, which ticked up slightly. That decline was steepest for foundations, which comprised 22% of the total net decline despite only representing 6% of all accounts at year-end 2016. The total number of new accounts opened each year remained uncorrelated with other metrics tracked in this report; in 2016 that number was almost perfectly stable from the previous year's figure, even as most other metrics declined.

FIGURE 4: YEAR-END ACCOUNTS BY PARTNER INSTITUTION

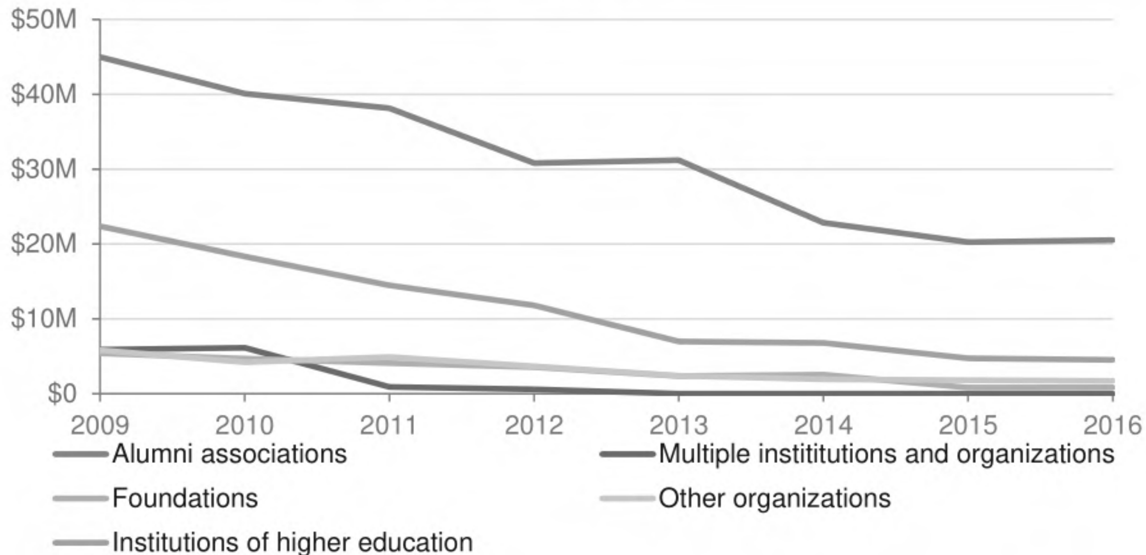


3.6 Payments

The total amount paid to partners, including institutions and affiliates, rose for the first time since the Bureau (and before it, the Board) began collecting these data. This rise, however, was minuscule—just over $3,700 from a base of over $27 million, or about 0.014%. The cumulative

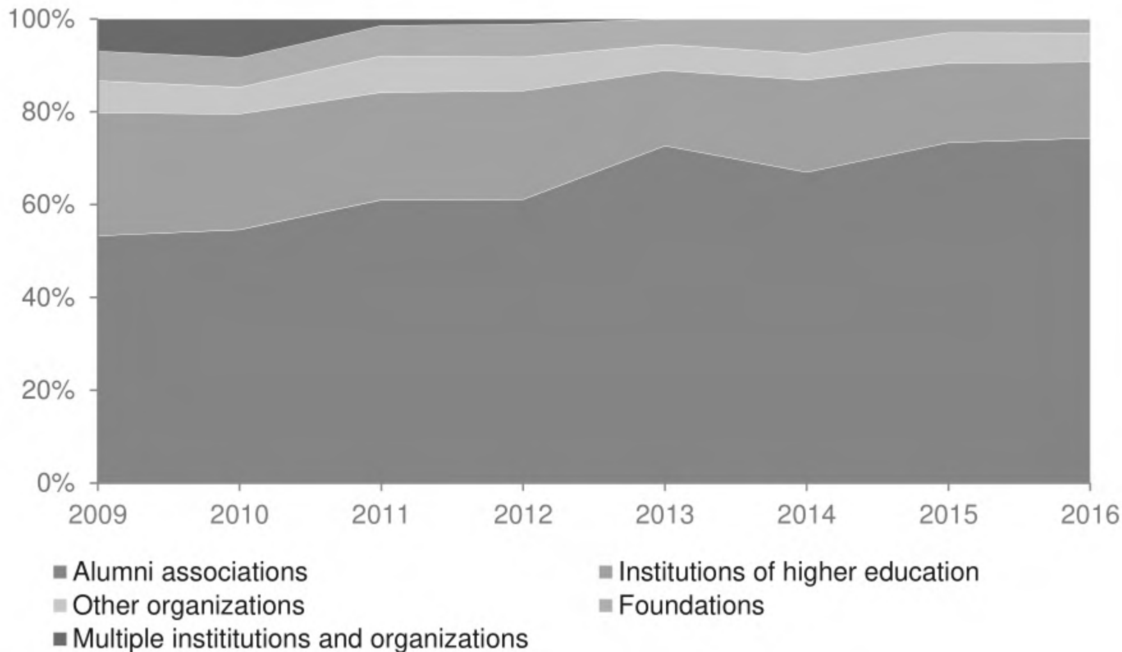
decline from 2009 through 2016 was nearly 70%. While issuers that reported agreements in 2015 experienced a net decline from that year to 2016, new entrants reported payments that cancelled that decline just about exactly; those payments were overwhelmingly made by a single issuer to a single institution. Payment data can be seen in Figure 5 below.

FIGURE 5: ISSUER PAYMENTS BY PARTNER TYPE



Continuing a trend interrupted only in 2014, agreements with alumni associations increased their share to fully 72% of all payments, exceeding the previous peak from 2013. After increasing to nearly 20% in 2014, payments made under the terms of agreements with institutions of higher education declined to under 16% in 2016. This can be seen below in Figure 6.

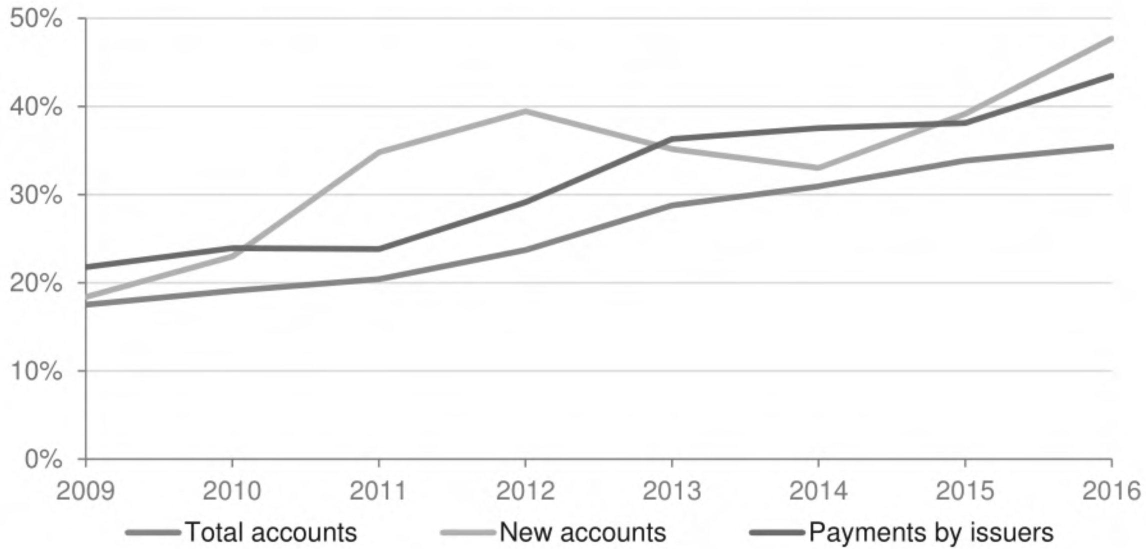
FIGURE 6: PAYMENT SHARES BY PARTNER TYPE



3.7 Concentration

Since 2009, the ten largest agreements by each of the three metrics of agreement size—year-end open accounts, new accounts, and payment volume—have tended to represent an increasing share of the market. In 2016, this trend continued, with the top ten agreements by each of those three metrics once again reaching their largest share of the market since these data have been collected. This suggests that, in any given year, the decline in the overall size of the market is concentrated in the termination of agreements that are relatively smaller, as measured by the available metrics. Concentration data can be seen in Figure 7 below.

FIGURE 7: MARKET SHARE OF TOP TEN AGREEMENTS BY METRIC



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Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

December 21, 2018

The Honorable Paul Ryan
Speaker
United States House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Speaker Ryan:

Enclosed is the Bureau of Consumer Financial Protection's report to Congress on college credit card agreements, as required by Section 305(a) of the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act).

Should you have any questions concerning this report, please do not hesitate to contact me, or have your staff contact Meredith Manna in the Bureau's Office of Legislative Affairs. Ms. Manna can be reached at (b)(6)

Sincerely,

Kathleen L. Kraninger
Director

consumerfinance.gov

BUREAU OF CONSUMER FINANCIAL PROTECTION | DECEMBER 2018

College credit card agreements

Annual report to Congress

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1. Introduction

The Credit Card Accountability, Responsibility, and Disclosure Act ("CARD Act" or "Act") requires the Bureau of Consumer Financial Protection (the "Bureau") to submit to Congress, and to make available to the public, an annual report that lists information submitted to the Bureau concerning agreements between credit card issuers and institutions of higher education or certain organizations affiliated with such institutions in connection with the issuance of credit cards.[1] This report refers to these agreements as "college credit card agreements" or simply "agreements."[2] Affiliated organizations include fraternities, sororities, alumni associations, or foundations affiliated with or related to an institution of higher education.

This is the ninth annual report pursuant to the CARD Act. The Federal Reserve Board ("Board") submitted the first two reports. Pursuant to title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), responsibility for collecting data and submitting to Congress annual reports regarding college credit card agreements transferred from the Federal Reserve Board to the Bureau on July 21, 2011.[3] The Bureau has since submitted six reports.[4]

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[1] The mandate is at section 305(a) of the CARD Act, Pub. L. No. 111–24, § 305(a), 123 Stat. 1734, 1749-50 (2009). Section 305(a) amended section 127 of the Truth in Lending Act. This provision is codified at 15 U.S.C. § 1637(r).

[2] This report refers to credit card issuers as "issuers," to institutions of higher education as "institutions," and to organizations affiliated with such institutions as "affiliates" or "affiliated organizations."

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[4] *See* Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to Congress*, (Oct. 2012), *available at* https://www.consumerfinance.gov/documents/3110/2012_cfpb_college_credit_card_agreements_report.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to Congress*, (Dec. 2013), *available at* https://www.consumerfinance.gov/documents/3124/2013_cfpb_college-credit-card-agreements_report.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to Congress*, (Dec. 2014), *available at* https://www.consumerfinance.gov/documents/3108/2014_cfpb_college-credit-card-agreements-report.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to Congress*, (Dec. 2015), *available at* https://www.consumerfinance.gov/documents/3106/2015_cfpb_college-credit-card-agreements-report.pdf; Consumer Fin. Prot. Bureau, *Student Banking: Annual Report to Congress*, (Dec. 2016), *available at* https://www.consumerfinance.gov/documents/3104/2016_cfpb_student_banking_report.pdf; Consumer Fin. Prot. Bureau, *College Credit Card Agreements: Annual Report to Congress*, (Dec. 2017), *available at* https://www.consumerfinance.gov/documents/5948/cfpb_college-credit-card-agreements-report_2017.pdf.

The regulations implementing section 305 of the CARD Act require credit card issuers to submit to the Bureau each year the terms and conditions of any college credit card agreement that was in effect at any time during the preceding calendar year between an issuer and an institution of higher education.[5] The same requirement applies to agreements between an issuer and an affiliated organization of the institution, such as an alumni organization or a foundation associated with the institution.[6] All such institutions and affiliated organizations are referred to as "educational or affiliated entities," or simply "entities," throughout this report.

Issuers are required to submit the following information with respect to each such agreement:

- the number of credit card accounts covered by the agreement ("college credit card accounts") that were open at year-end;
- the amount of payments made by the issuer to the entity during the year;[7]
- the number of new college credit card accounts covered by the agreement that were opened during the year; and
- any Memorandum of Understanding ("MOU") between the issuer and entity that directly or indirectly relates to any aspect of the agreement.[8]

The Bureau makes public all agreements submitted to the Bureau and a dataset containing all data submitted by issuers regarding agreements, both from the current year and from past

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[5] *See* 15 U.S.C. § 1637(r); 12 C.F.R. § 1026.57(d); *see also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).

[6] 12 CFR 1026.57(a)(4) and (5) and (d). In some cases, issuers submitted to the Bureau agreements with other types of organizations, such as fraternities, sororities, and professional or trade organizations that relate to the issuance of credit cards to college students. Such agreements are included in this report and categorized as agreements with "other organizations."

[7] All payment amounts included in this report are rounded to the nearest dollar.

[8] *See* 12 C.F.R. § 1026.57(d)(2).

years. Appendix A provides more information on how to access and interpret that dataset. Institutions of higher education are also required to make agreements available to the public.[9]

The CARD Act requires the Bureau each year to submit to Congress and make publicly available a report on the information and documents provided by card issuers, including the number of new accounts opened pursuant to agreements between card issuers and educational or affiliated entities and the compensation paid by issuers to these entities. [10] This report is based on the information and agreements submitted to the Bureau by credit card issuers, which provide data current as of the end of 2017.[11] Information included in this report also is available on the Bureau's public website at www.consumerfinance.gov.

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[9] This obligation applies to "any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card." 12 C.F.R. § 1026.57(b); *see also* 15 U.S.C. § 1650(f)(1).

[10] 15 U.S.C. § 1637(r)(3).

[11] Issuers were required to make their annual submission by March 30, 2018. These submissions were required by the applicable regulations to cover college credit card agreements to which the issuer was a party during 2017 and information regarding payments and accounts as of December 31, 2017.

2. Summary

This report makes the following findings:

- Reversing a long-standing trend, the number of agreements between credit card issuers and educational or affiliated entities sponsoring credit card programs increased in 2017. The number of issuers maintaining at least one such agreement also increased. However, accounts open pursuant to such agreements and the total amount paid by issuers to entities pursuant to such agreements continued to declined;

- Alumni associations remain the predominant type of educational or affiliated entity which partners with issuers in offering credit cards to student. Fluctuations in the proportion of the agreements between issuers and entities attributable to each type of entity were small and did not appear to represent an obvious trend; and

- The largest agreements continue to account for a large share of the payments made by issuers to educational or affiliated entities, with the ten most-lucrative agreements representing 41% of all payments by issuers.

These findings are subject to a number of limitations. Some college agreements cover other financial products besides credit cards, such as deposit accounts, so payments made by issuers under these agreements may not relate solely to credit card accounts. In addition, some or all of the accounts opened in connection with these agreements, even those directly between issuers and institutions, may have been opened by individuals who are not students, such as alumni, faculty, and staff of an institution of higher education. (Conversely, it is possible that students may have opened accounts under the terms of alumni agreements.) Furthermore, card issuers' submissions do not include information regarding credit card accounts opened by students independent of a college credit card agreement, such as when a student responds to an offer in a direct mail solicitation sent to him or her by an issuer. Finally, because issuers were required to submit all college credit card agreements to which they were a party at any time during 2017, issuers' submissions may include agreements that are no longer in effect. By the same token, of course, agreements first entered into in 2018 are also not reflected in the data.

3. Findings

3.1 Overall trends

The Bureau received 264 college credit card agreements from 40 credit card issuers for 2017. This section of the report presents data about these agreements and compares that to data for earlier years.

FIGURE 1: TRENDS IN ISSUER-REPORTED METRICS (INDEXED TO 100% IN 2009)[12]

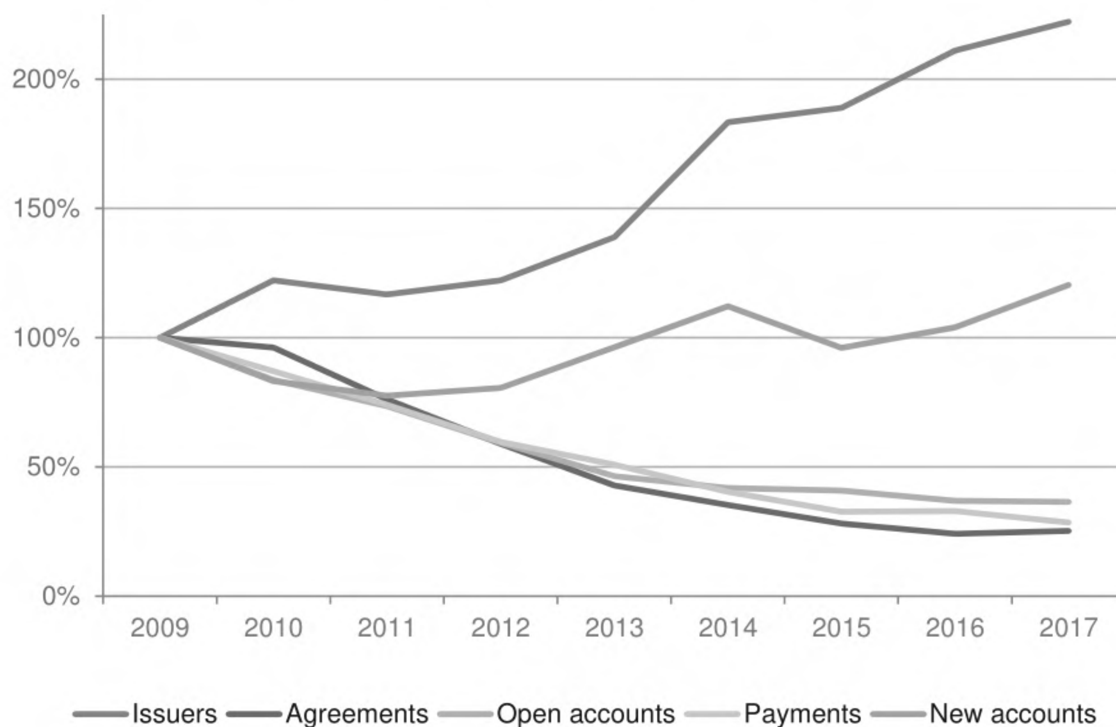


Figure 1 presents a summary of these data. It shows that in each year from 2009 through 2016, there were consistent declines in: (a) the number of college credit card agreements; (b) the total number of associated credit card accounts open at year-end; and (c) the amount paid by issuers

[12] Certain agreements and associated data for 2017 were not included in the prior year's report. This report corrects for those omissions throughout.

to institutions and affiliates. While the latter two trends persisted into 2017, the first trend reversed, with the number of agreements increasing (albeit only slightly) for the first time since these data were first collected by the Board.

Forty issuers were parties to such agreements in effect in 2017, an increase of two over 2016. This continues the trend since 2012 of the total number of issuer participants in this market increasing. There were also significantly more new accounts in 2017 than in any previous year. As noted in past reports, the number of new accounts each year has fluctuated over the period these data have been collected in a manner that appears uncorrelated with other indicators of this market's overall size.

3.2 Issuers

Bank of America's subsidiary, FIA Card Services, remains the largest issuer in this market, as it has every year since these data were first collected by the Board. However, Bank of America's share of the market is declining significantly, with its share of all agreements, open accounts, and payments all falling relative to 2016. Its share of agreements fell to 29% from 32%; its share of open accounts fell to 71% from 76%, and its share of payments fell to 64% from 69%. Bank of America's position nevertheless remains dominant, especially by the latter two metrics. Four other issuers were party to more than 20 agreements each in 2017, but those issuers collectively represented only 8% of the total accounts and 17% of the total payments made by Bank of America.

Overall, 40 issuers submitted their agreements to the Bureau for 2017. Each issuer's aggregate metrics are in Table 1 below. Four issuers that submitted agreements in 2017 did not submit agreements in 2016. The new issuers in the 2017 submission are American Trust & Savings Bank, Central Bank & Trust Co., Chief Financial Credit Union, and New Mexico Bank & Trust. These four issuers accounted for four agreements, 343 accounts, and $38,186 in payments to institutions and their affiliates. Two issuers exited the market: Comenity Capital Bank and Discover Bank. These two issuers accounted for two agreements, 143 open accounts, and $157,142 in payments in 2016.

TABLE 1: REPORTED METRICS WITH COLLEGE AGREEMENTS IN EFFECT IN 2017, BY ISSUER

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
American Trust & Savings Bank	1	51	$878	1
Apple Federal Credit Union	1	230	$15,000	38
Banco Popular de Puerto Rico	1	14,659	$58,758	389
Banco Santander Puerto Rico	8	0	$0	0
Bank of America	76	530,389	$15,327,691	25,654
Boeing Employees' Credit Union	1	25,299	$260,100	9,544
Carolina Trust Federal Credit Union	1	255	$1,648	51
Central Bank & Trust Co.	1	272	$36,060	297
Chief Financial Credit Union	1	12	$1,249	12
Christian Community Credit Union	1	218	$9,528	40
Commerce Bank	26	2,302	$204,317	916
Farmers & Merchants State Bank	1	10	$20,000	10
First Interstate Bank	1	121	$5,500	7
First National Bank of Omaha	13	7,542	$528,853	746
Georgia's Own Credit Union	1	112	$104,673	25
Goldenwest Federal Credit Union	1	4,405	$38,122	1,588

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
Harvard University Employees Credit Union	1	12,053	$97,179	746
MidFirst Bank	4	2,437	$481,773	371
MIT Federal Credit Union	1	4,561	$40,508	376
Mountain America Federal Credit Union	2	11,291	$155,588	5,189
Nationwide Bank	6	1,714	$273,107	167
New Mexico Bank & Trust	1	8	$0	8
Oregon Community Credit Union and OCCU Card Services, LLC	2	7,216	$30,833	639
Pen Air Federal Credit Union	3	227	$1,352	44
Pennsylvania State Employees Credit Union	36	1,156	$12,120	356
ProFed Federal Credit Union	1	2	$10	1
Purdue Federal Credit Union	1	29,172	$1,000,000	2,340
Stanford Federal Credit Union	2	962	$950,000	607
Texas Trust Credit Union	1	162	$0	157
The Southern Credit Union	1	21	$78	5
U.S. Bank National Association ND	27	36,799	$2,395,152	4,299
UMB Bank	21	989	$18,710	18

Issuer	Agreements in effect	Year-end open accounts	Issuer payments	New accounts
University Credit Union	1	285	$5,010	32
University First Federal Credit Union	2	17,979	$0	8,353
University of Illinois Employees Credit Union	1	15,118	$656,325	1,497
University of Wisconsin (UW) Credit Union	4	5,135	$295,000	1,577
USAA Savings Bank	8	6,853	$636,924	523
USC Credit Union	1	1,496	$251,125	192
USF Federal Credit Union	1	2404	$124,835	220
Wright-Patt Credit Union	1	574	$10,007	82
Grand Total	**264**	**744,479**	**$24,046,765**	**67,105**

3.3 Agreements

As reflected in Table 1, issuers submitted a total of 264 college credit card agreements for 2017. Of these, 30 were entered into in 2017. Thirteen issuers accounted for these new agreements. Overall, there was a net increase of eight agreements in effect in 2017 relative to 2016, which was the first net increase in the number of agreements since issuers began submitting them to comply with the CARD Act. The pace of agreement termination continued to slow in 2017, with 13 total terminations representing a 5% termination rate, a very slight decline from 2016.[13] Most of the terminated agreements were associated with three issuers. Pennsylvania State Employees

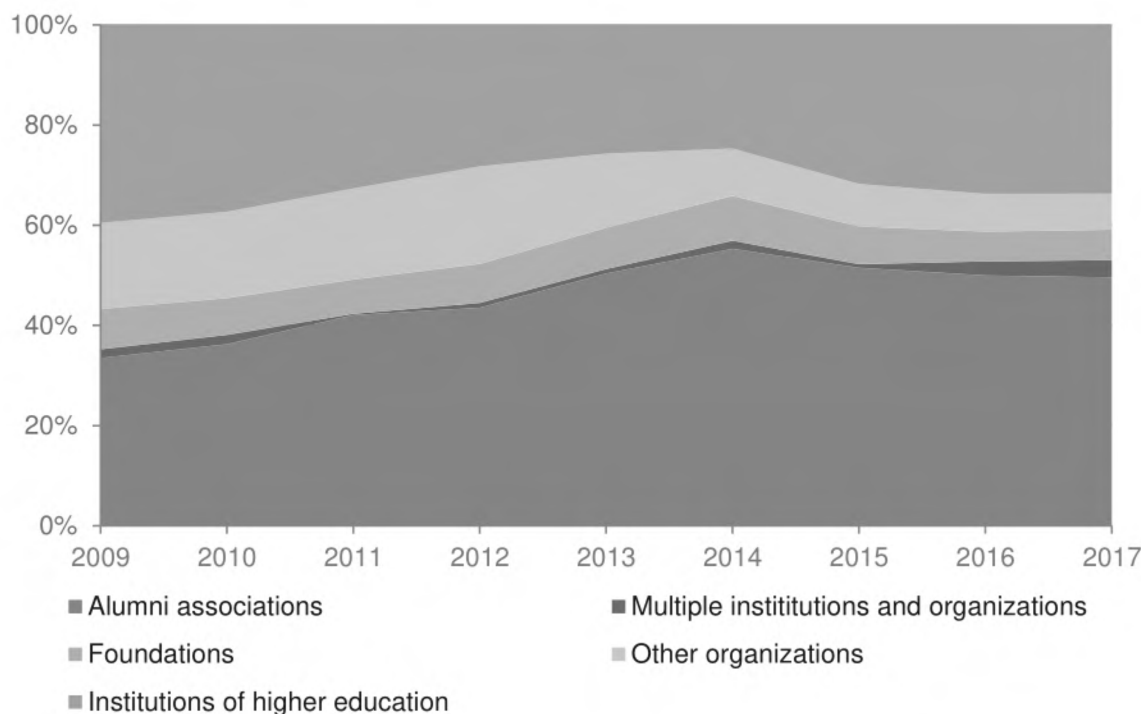
[13] The linked dataset allows users to see all agreements terminated in 2017 as well as earlier years. *See College credit card marketing agreements and data* at https://www.consumerfinance.gov/data-research/student-banking/marketing-agreements-and-data/.

Credit Union terminated five agreements; Bank of America and U.S. Bank each terminated three agreements.

3.4 Partner entities

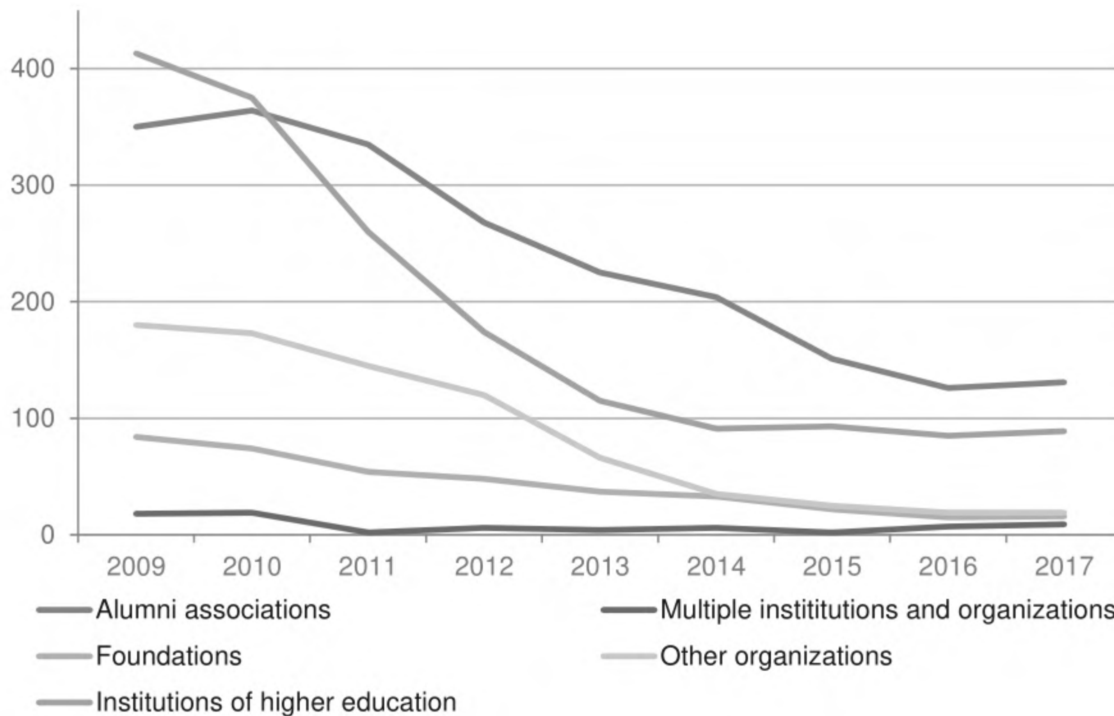
Through entering into agreements, issuers partner with educational or affiliated entities to offer credit cards to students. The shares of each type of entity entering into these agreements with issuers were stable from 2016 to 2017. As reflected in Figure 2, no type of entity gained or lost more than a single percentage point of overall share in this time period.

FIGURE 2: AGREEMENT SHARE BY ENTITY TYPE



Commensurately, Figure 3 shows that the overall growth in agreement numbers was distributed evenly across types of entities. The total number of every type of entity entering into agreements increased by between one to five agreements, with the exception of "other organizations," which remained unchanged from 2016 to 2017.

FIGURE 3: TOTAL AGREEMENTS BY ENTITY TYPE



As shown in Table 2, alumni associations' dominant position eroded slightly, but in 2017 this type of entity still represented nearly half of all agreements, over two-thirds of all accounts, and over two-thirds of all payments.

TABLE 2: ISSUER-REPORTED METRICS BY ENTITY TYPE, 2017

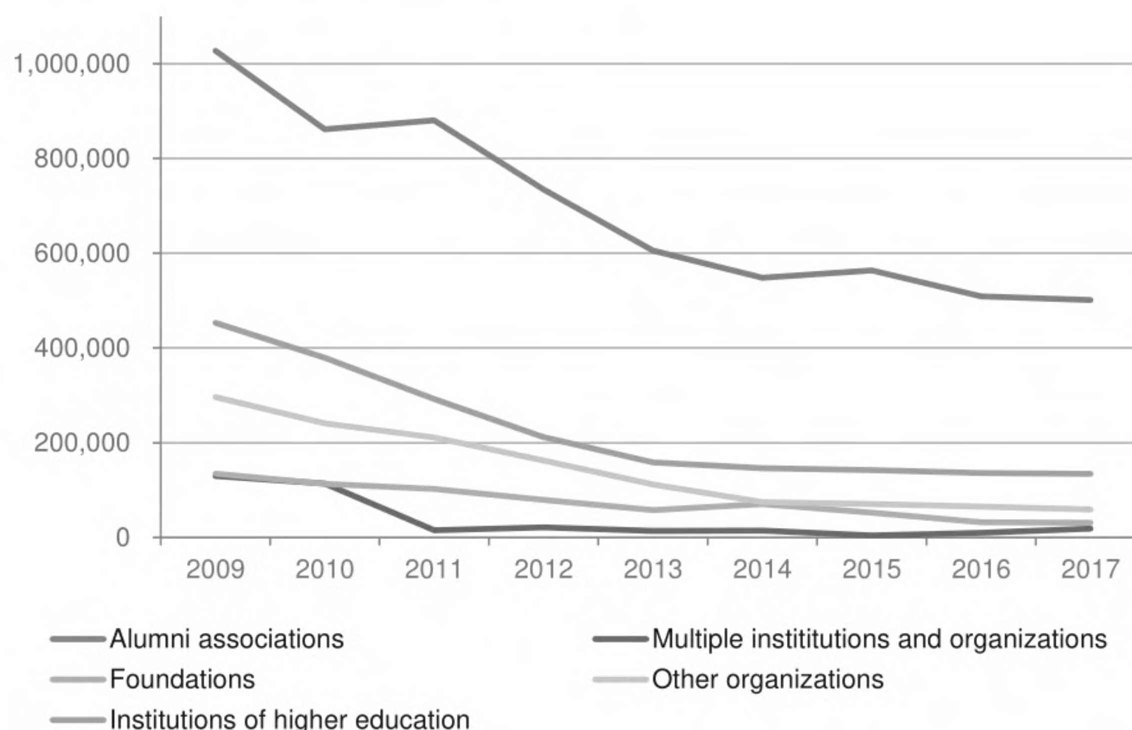
Type of institution or organization	Agreements in effect in 2017	New agreements in 2017	Total open accounts at year-end	Payments by issuer in 2017	New accounts opened in 2017
Alumni associations	131	11	501,208	$17,319,675	43,573
Institutions of higher education	89	12	134,383	$4,271,565	10,757
Other organizations	19	4	59,149	$1,628,226	2,166
Foundations	16	1	31,090	$727,330	1,850
Multiple institutions	9	2	18,661	$101,218	8,771

Type of institution or organization	Agreements in effect in 2017	New agreements in 2017	Total open accounts at year-end	Payments by issuer in 2017	New accounts opened in 2017
and organizations					
Total	**264**	**30**	**744,491**	**$24,048,014**	**67,117**

3.5 Account volume

The total number of open college credit card accounts at year-end declined in each year from 2009 through 2017. The cumulative decline across these years was over 63%. Even so, most issuers in our survey saw a net increase in accounts from year-end 2016 to year-end 2017. These increases, however, were more than offset by decreases in Bank of America's number of accounts, which saw a decline in open accounts exceeding 43,000. Total year-end open accounts declined slightly for most types of entities in aggregate, as shown below in Figure 4; the exception was agreements with multiple entities, which nearly doubled.

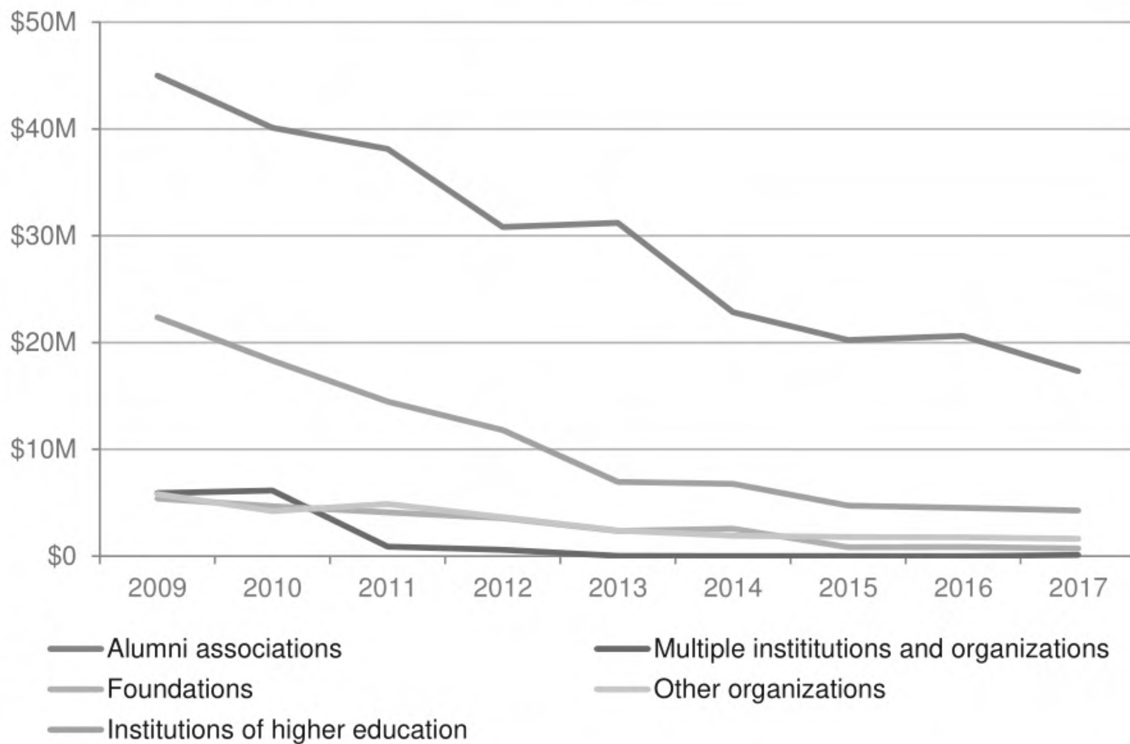
FIGURE 4: YEAR-END ACCOUNTS BY ENTITY TYPE



3.6 Payments

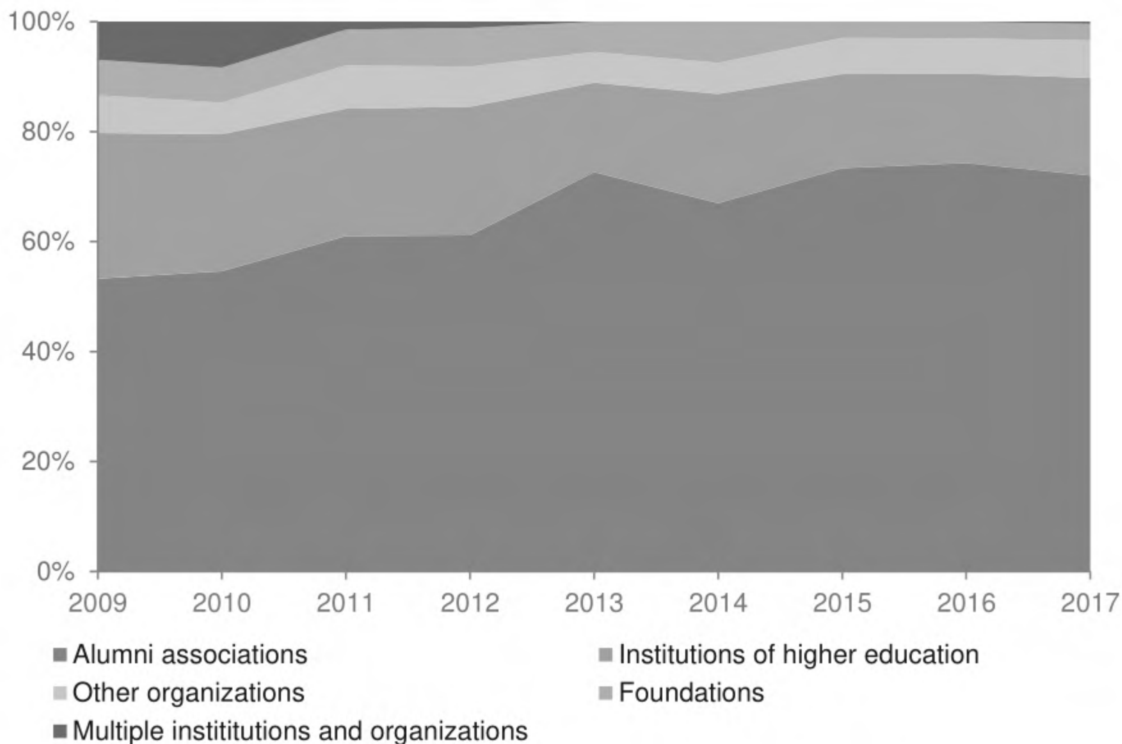
The total amount paid by issuers to educational or affiliated entities declined from 2016 to 2017. This decrease resumes a long-standing trend interrupted by a slight increase last year. Overall, the cumulative decline from 2009 through 2017 was over 71%. New agreements accounted for over $1 million in payments by issuers, but this was insufficient to offset a substantial decline overall, driven both by terminations and reductions, sometimes quite large, in payments pursuant to existing agreements. Payment data are in Figure 5 below.

FIGURE 5: ISSUER PAYMENTS BY ENTITY TYPE



As shown in Figure 6 below, payment shares by type of entity were largely stable year-over-year.

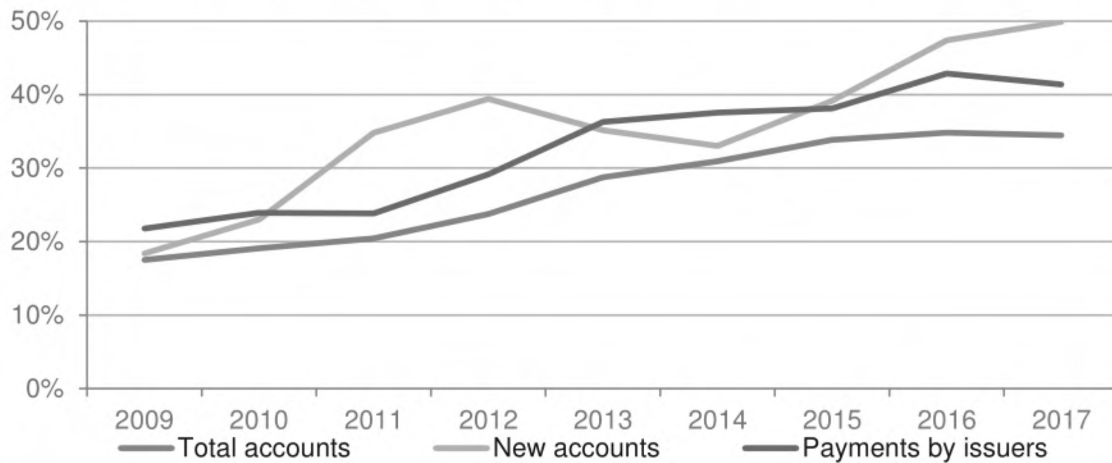
FIGURE 6: PAYMENT SHARES BY ENTITY TYPE



3.7 Concentration

Since 2009, the ten largest agreements by each of the three metrics of agreement size—year-end open accounts, new accounts, and payment volume—have tended to represent an increasing share of the market. In 2017, this metric stabilized, with the top ten agreements by each of those three metrics staying at or near 2016's high points. Concentration data are in Figure 7 below.

FIGURE 7: MARKET SHARE OF TOP TEN AGREEMENTS BY METRIC



There is significant overlap between each of the three groups of top ten agreements. Overall, 21 agreements comprise the three lists, with seven agreements appearing on two lists and two agreements appearing on all three. Of those 21 agreements, 16 are agreements with alumni associations, reflecting the dominant role that agreements with these types of entities continue to play in this market.

APPENDIX A: COLLEGE CREDIT CARD DATA

The Bureau is updating the comma separated value file ("CSV file") that contains all college credit card data collected to date with the most recent year's data. The Bureau intends to continue updating the CSV file each year as it collects new data from college credit card issuers.

The Bureau intends to ensure that the publically-available dataset is as accurate as possible. This means that the dataset (as well as some of the charts and figures in this report) may not be completely consistent with past iterations of this report because submitting entities sometimes make corrections to earlier submissions. In all cases, the Bureau intends for the public dataset to be the Bureau's definitive account of the data.

Below is a brief guide to interpreting the dataset:

- The CSV file consists of rows and columns.
- Each row beyond the first consists of an individual agreement-year.
  - This means that if an agreement existed across multiple years, each year's data would be a separate row in the dataset.
- The first row consists of headers that explain what data fields are contained in each column. Those headers are explicated below:
  - "REPORTING YEAR" – this field contains the year associated with the agreement-year. Note that this is the year represented by the data, not the year the data was collected and published. For example, a row whose reporting year was listed as 2014 contains data regarding that agreement's metrics in calendar year 2014, not the data collected and published in 2014.
  - "INSTITUTION OR ORGANIZATION" – this is the name of the institution of higher education or affiliate that is party to the agreement.
  - "TYPE OF INSTITUTION OR ORGANIZATION" – this designates the institution as one or more of four types:
    - University;
    - Alumni association;
    - Foundation; or

- Other.

- "CITY" – this is the city in which the institution of higher education or affiliate that is party to the agreement is located.

- "STATE" – this is the State in which the institution of higher education or affiliate that is party to the agreement is located.

- "CREDIT CARD ISSUER" – the name of the credit card issuer that is party to the agreement.

- "STATUS" – a field which denotes the status of the agreement. In general, there are three valid responses issuers can provide for this field[14]:

  - "Same" – the status of the agreement has not changed from the previous year;

  - "Amended" – the status of the agreement has in some way changed from the previous year, or the agreement has been amended;

  - "New" – the agreement is new to this year.

- "IN EFFECT AS OF BEGINNING OF NEXT YEAR" – a "yes/no" question regarding whether the agreement in question was in force as of January 1st of the year following the reporting year (*e.g.*, whether an agreement whose reporting year was 2011 was or was not in force as of January 1st, 2012).

- "TOTAL OPEN ACCOUNTS AS OF END OF REPORTING YEAR" – the total number of open credit card accounts associated with the agreement, as of December 31st of the reporting year.

- "PAYMENTS BY ISSUER" – the sum of all payments made by the issuer to the institution pursuant to the agreement over the course of the reporting year.

- "NEW ACCOUNTS OPENED IN REPORTING YEAR" – the total number of all credit card accounts opened associated with the agreement over the course of the reporting year.

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[14] In a few cases, issuers provided invalid responses to this question. In those cases in which the Bureau was, as of publication, unable to receive corrected responses from issuers, those invalid responses were published as submitted.

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

August 27, 2019

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

Dear Speaker Pelosi:

Enclosed is the Consumer Financial Protection Bureau's report on the impact of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act) on the consumer credit card market, pursuant to Section 502(a) of the CARD Act.

Should you have any questions concerning this report, please do not hesitate to contact me or have your staff contact Meredith Manna in the Bureau's Office of Legislative Affairs. Ms. Manna can be reached at (b)(6)

Sincerely,

Kathleen L. Kraninger
Director

BUREAU OF CONSUMER FINANCIAL PROTECTION | AUGUST 2019

The Consumer Credit Card Market

Message from Kathleen L. Kraninger

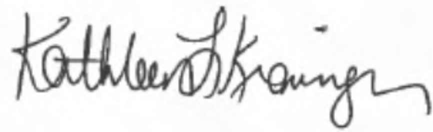
Director of the Bureau of Consumer Financial Protection

Credit cards are one of the most commonly-held and widely-used financial products in America. At last count, nearly 170 million Americans hold credit cards, many of them carrying more than one. Some consumers use these strictly as payment devices, paying their balances in full each month, while others use them as a source of credit and carry a balance from month to month.

The Credit Card Accountability Responsibility and Disclosure Act (CARD Act) requires the Bureau to prepare a biennial report to Congress regarding the consumer credit card market. This is the Bureau's fourth report, and details findings regarding, among other things, the cost and availability of credit and innovations in the credit card marketplace. The report also emphasizes that with the passage of time, it is becoming increasingly difficult to correlate the CARD Act with specific effects in the marketplace that have occurred since the issuance of the Bureau's last biennial report, and, even more so, to demonstrate a causal relationship between the CARD Act and those effects. Accordingly, while the Bureau will continue to report on the CARD Act's effects where appropriate and feasible, the Bureau anticipates future reports will focus more on overall conditions in the credit card market.

Evidence-based research like this is one way in which the Bureau discharges its statutory duty to monitor for risks to consumers in the offering or provision of consumer financial products and services. It is my hope that the publication of this report with the latest data on this important market will be useful to consumers, providers of credit card products, and policymakers.

Sincerely,



Kathleen L. Kraninger

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Executive summary

Credit cards are central to the financial lives of nearly 170 million American consumers. Over the last few years, the credit card market, the largest U.S. consumer lending market measured by number of users, has continued to grow in almost all dimensions and measures. Market conditions remain stable, in large part because of low unemployment, modest wage growth, and high consumer confidence in the past two years. Credit cardholders continue to use their cards to facilitate transactions, smooth consumption, and earn rewards, all with the added security of stringent limitations on liability. Consumer satisfaction with credit cards remains high,[1] while consumers' debt service burden remains near its lowest level recorded in more than a decade.

Late payment and default rates have risen modestly over this period but remain below pre-recession levels. In general, credit card issuers continue to generate profitable returns consistent with historical levels. Innovation has continued to reshape the market, for both users and providers. New providers, including large and small financial institutions as well as startup and mainstream technology companies have entered—or are in the process of entering—the market with competing products, features, and new ways of issuing credit cards.[2]

The Credit Card Accountability Responsibility and Disclosure Act (CARD Act or Act)[3] was enacted ten years ago. Since its passage, researchers, including the CFPB, have studied the

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[1] J.D. Power reported that in 2018 consumer satisfaction with credit cards remained near its record high. *See* Press Release, J.D. Power, *Credit Card Rewards Battle Continues as Customers Seek Better Programs, J.D. Power Finds* (Aug. 16, 2018), *available at* https://www.jdpower.com/business/press-releases/2018-credit-card-satisfaction-study.

[2] Reference in this report to any specific commercial product, service, firm, or corporation name is for the information and convenience of the public, and does not constitute endorsement or recommendation by the Bureau.

[3] Pub. L. No. 111-24, 123 Stat. 1734 (2009).

effects of the CARD Act on the cost and availability of credit to consumers. This report discusses that research. However, the Bureau also emphasizes that with the passage of time, it is becoming increasingly difficult to correlate the CARD Act with specific effects in the marketplace that have occurred since the issuance of the Bureau's most recent biennial report, and, even more so, to demonstrate a causal relationship between the CARD Act and those effects. Accordingly, while the Bureau will continue to report on the CARD Act's effects where appropriate and feasible, the Bureau anticipates that future reports will focus more on overall conditions in the credit card market.

This executive summary provides some background for the report, then summarizes key findings.

BACKGROUND

In 2009, Congress passed the CARD Act.[4] The Act made substantial changes to the credit card market. The CARD Act mandated new disclosures and underwriting standards, curbed certain fees, and restricted interest rate increases on existing balances. Among the CARD Act's many provisions was a requirement that the Board of Governors of the Federal Reserve System (Board) report every two years on the state of the consumer credit card market. With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010, that requirement passed to the Bureau of Consumer Financial Protection (Bureau) alongside broader responsibility for administering most of the CARD Act's provisions. This is the fourth report published pursuant to that obligation, building on prior reports published by the Bureau in 2013, 2015, and 2017.[5]

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[4] The Act superseded a number of earlier regulations that had been finalized, but had not yet become effective, by the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the Board of Governors of the Federal Reserve System. Those earlier rules were announced in December of 2008 and published in the Federal Register the following month. *See* 74 Fed. Reg. 5244 (Jan. 29, 2009); 74 Fed. Reg. 5498 (Jan. 29, 2009). The rules were withdrawn in light of the CARD Act. *See* 75 Fed. Reg. 7657, 75 Fed. Reg. 7925 (Feb. 22, 2010).

[5] *See* Bureau of Consumer Fin. Prot., *Card Act Report*, (Oct. 1, 2013) (2013 Report), http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market*, (Dec. 2015)(2015 Report),

The Bureau's 2013 Report focused on trends in the credit card marketplace before and after the CARD Act. Because the implementation of the Act coincided with a period of economic recovery, the effects of the CARD Act were difficult to discern. The Bureau found that the CARD Act "significantly enhanced transparency for consumers" and largely eliminated "[o]verlimit fees and repricing actions."[6] The report found that from early 2009 and continuing through February 2010 when many provisions of the Act took effect, the interest rate on credit card accounts increased. But because back-end fees also decreased across this period the total cost of credit "*declined* by 194 basis points from Q4 2008 to Q4 2012."[7] The report was not able to conclude how much of that change was attributable to the CARD Act. The report also noted declines in credit availability beginning in 2008, prior to the enactment of the CARD Act, but after the onset of the Great Recession. Certain metrics, such as total credit line, continued to decrease after the implementation of CARD Act provisions, with their effect disproportionately concentrated in subprime tiers.[8] With some exceptions, the report was not able to conclude the extent to which such change resulted from the Act. However, the report did find evidence that suggests the CARD Act had a discernible impact on credit availability in three respects—a substantial decrease in the number of credit card accounts originated among students and other consumers under the age of 21, a small but discernible percentage of applicants deemed otherwise creditworthy were declined as a result of insufficient income to satisfy the CARD Act's

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http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market*, (Dec. 2017) (2017 Report), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf. The Bureau also held a conference in 2011 in which numerous market stakeholders contributed information and perspective on developments in the credit card market. *See* Press Release, Bureau of Consumer Fin. Prot., *CFPB Launches Public Inquiry on the Impact of the Card Act* (Dec. 19, 2012), *available at* https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-public-inquiry-on-the-impact-of-the-card-act.

[6] *See* 2013 Report, *supra* note 5, at 5.

[7] The report defined total cost of credit as the annualized sum of all amounts paid by consumers (including both interest charges and fees) divided by the average of outstanding balances. *See id.*

[8] According to the Bureau's data, total credit line was $200 billion lower at the end of 2012 than when many provisions of the CARD Act took effect in February 2010. *See id.* at 6.

ability-to-pay requirement, and a marked decline in the percentage of consumers receiving unsolicited credit line increases.[9]

The Bureau's 2015 Report had a broader scope. It continued to assess post-CARD Act trends, generally corroborating the prior report and finding that most of the market trends identified in that 2013 Report had persisted over the next two years. The 2015 Report also laid out a broader set of market indicators, establishing potential baselines against which to measure the evolution of the market in future reports. In addition, the report included several in-depth analyses of certain issuer practices in the market—deferred interest promotions, rewards cards, and debt collection.

The Bureau's 2017 Report provided similar coverage of post-CARD Act trends. It found the cost of card credit remained "largely stable," and that by most measures credit card availability "remained stable or…increased" since the 2015 Report.[10] It repeated the debt collection analysis and added two new subjects: credit card products marketed to and used by consumers who lack prime credit scores; and issuer and consumer use of rapidly emerging "third-party comparison" websites.

THE 2019 REPORT

This report continues the approach of the Bureau's previous reports. The Bureau revisits most of the same baseline indicators as prior reports to track key market developments and trends. It also revisits some of the 2015 in-depth topics to assess how the market has changed. For example, the current report updates the debt collection analysis first conducted in the 2015 Report. In addition, this report reviews significant findings from economics scholarship focused on the CARD Act.

Below is a summary of the core findings from each section of the report:

- Total outstanding credit card balances have continued to grow and at year-end 2018 were nominally above pre-recession levels. Throughout the post-recession period, including the

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[9] *See id.*

[10] *See* 2017 Report, *supra* note 5, at 7-8.

period since the Bureau's 2017 Report, purchase volume has grown faster than outstanding balances. After falling to historical lows in the years following the recession, delinquency and charge-off rates have increased over the last two years. Late payment rates have increased for new originations of general purpose and private label cards, both overall and within different credit tiers.

- The total cost of credit (TCC) on revolving accounts has increased over the last two years and in 2018 stood at 18.7 percent, which is the highest overall level observed in the Bureau's biennial reports. Recent TCC increases are largely the result of increases in the indices underlying variable rates, such as the prime rate. General purpose cards, which generally have interest rates linked to the prime rate, have driven the increase across every credit tier. TCC has fallen over the last two years for private label cards, in part because relatively fewer of these cards have rates linked directly to index rates, offset by a decline in fees as a share of balances.

- Most measures of credit card availability—overall and across credit score tiers—have remained stable or decreased slightly since the Bureau's 2017 Report. Measured by application volume, consumer demand for credit cards peaked in 2016. Approval rates have also declined slightly since 2016. Driven by lower approval rates, annual growth in the number of credit card accounts opened and the amount of credit line on new accounts has also leveled off. Even so, total credit line across all consumer credit cards reached $4.3 trillion in 2018, nearly equal to its pre-recession high, largely due to the growth in unused line on accounts held by consumers with superprime scores.

- Cardholders have increased their use of rewards cards, thereby driving up the cost to industry to fund these products. The level and consumer cost of balance transfer and cash advance use remains largely unchanged.

- In the ten years since the CARD Act was passed, social scientists have examined the Act's effects on consumers and the credit card market as a whole. Using a range of theoretical and empirical approaches, scholarship has looked at a range of potential direct and indirect effects of the CARD Act, including pricing, credit availability, consumer repayment behavior, and cardholding.

- Since the 2017 Report, issuers have lowered the range of their daily limits on debt collection phone calls for delinquent credit card accounts. In addition, over that same period, the

volume of balances settled through for-profit debt settlement companies (DSCs) grew at a faster rate than issuers' overall accounts receivable did.

- New technologies further enhance consumers' interactions with and control over their credit cards—from originating one card rather than another, to ways of transacting and paying. Cardholders increasingly use and service their cards through digital portals, including those accessed via mobile devices. New technologies such as artificial intelligence and machine learning, as well as new data sources, are changing how providers are able to manage risk and provide customer service.

USE OF CREDIT

The credit card market is one of the United States' largest consumer financial markets and continues to grow by most measures. By the end of 2018, total credit card balances were around $900 billion, well above their pre-recession peak of $792 billion. Over the last few years, the total amount of *spending* using credit cards has grown much faster than the total volume of balances *carried* on cards. At $4.3 trillion, the aggregate of credit card lines extended (total line) is near its pre-recession high, while cardholding incidence remains further from its historic high.

Cardholders with prime or superprime credit scores continue to account for most credit card debt and spending. However, in the last few years, the share of total credit card debt held by consumers with relatively lower credit scores has been increasing. Cardholders with lower scores have also increased the average number of credit cards they hold. In addition, average credit card debt has risen faster for these cardholders over the last few years than it has for cardholders with higher scores, although all credit tiers have seen some growth in average outstanding balances. Aggregate credit card indebtedness for consumers with lower scores, however, remains below 2008 peaks.

For all credit score tiers, the share of cardholders revolving a balance continues to be higher for general purpose cards than private label ones. Private label revolving rates continue to show more variation across credit tiers. Payment rates on general purpose payment cards have continued their steady growth since the recession, whereas private label payment rates have declined in recent years.

Rates of credit card delinquency and charge-off have declined sharply since their peak during the recession, and remain lower than they were prior to the recession. Both indicators have

increased slightly in recent years. Newer originations, both overall and within each different credit tier, are showing greater incidence of late payment than older originations did after the same period. Recent private label vintages in particular show one-year cumulative delinquency rates in excess of historical norms, both overall and within different credit tiers.

COST OF CREDIT

The total cost of credit on revolving accounts has increased over the last few years, driven largely by increases in interest charges. In 2018, the average annual percentage rate (APR) for general purpose and private label cards rose to 20.3 and 26.4 percent respectively. This is in large part the result of changes in prevailing market rates.

Annual fee volume has risen significantly over the last few years, leading to an increase in annual fees as a share of total fees. Fee composition otherwise shows relatively little change. Annual fees averaged roughly $80 per card in 2018. That amount has been increasing steadily for all credit score tiers reflecting, in particular, the increased prevalence in the past two years of richer rewards credit cards with higher annual fees. The prevalence for cardholders with below-prime scores, however, has been declining since 2015.

AVAILABILITY OF CREDIT

Consumers' demand for credit as measured by application volume reached its peak in 2016 and declined somewhat in 2017 and 2018 in both general purpose and retail cards. Approval rates have also declined slightly since 2016. As a result, new credit card openings are lower than the post-recession high reached in 2016, both overall and for every credit tier. Total credit line on new accounts, both overall and within every credit tier, is down from its 2016 high point. Total credit line across all consumer credit cards reached $4.3 trillion in 2018, nearly equal to its pre-recession high. Despite this picture of increasing credit availability, most of the growth in available credit is accounted for by unused line on accounts held by consumers with superprime scores.

Consumers are increasingly obtaining credit cards through digital channels. Direct mail volume continues to fall. More consumers are finding their way to application pages via digital advertisements or third-party credit card comparison sites. More consumers are also applying for credit on their mobile devices. In 2018, applications submitted via mobile devices surpassed those submitted using desktop personal computers as the leading digital channel. The growth in the mobile channel has been significant in the past two years for both general purpose and retail

cards. Mobile application use is also disproportionately heavy for consumers with lower credit scores, even as approval rates for these channels and consumers have held relatively steady.

PRACTICES OF CREDIT CARD ISSUERS

Credit cards offering points, miles, cash back, or other rewards remain popular, with the share of credit card spending accounted for by rewards cards continuing to increase over the last few years. That is true both overall and for each of the main credit tiers with growth particularly notable for consumers with lower credit scores. While rewards cards continue to account for a larger share of total credit card spending, the share of originations that are rewards cards declined in all credit score tiers except superprime. Meanwhile, the cost of offering rewards has risen over the past several years as issuers continue to compete using richer rewards offers—and as cardholders take greater advantage of the rewards that are offered. Since the first quarter of 2015, data available to the Bureau show a roughly 84 percent increase in overall rewards expense incurred by issuers to support rewards programs.

Balance transfers remain popular among consumers. Annual balance transfer volume rose roughly 38 percent from 2015 through the end of 2018, outpacing growth in balances and purchase volume. Meanwhile, the cost of balance transfers to consumers has been declining in recent years. Cash advance usage growth has significantly lagged behind growth in balances and purchase volume, with declines most notably in the below-prime market segment. The cost to consumers of cash advances has remained stable since the Bureau's 2017 Report.

SCHOLARSHIP ON CARD ACT EFFECTS

This report also reviews recent academic research in the social sciences that has examined the CARD Act's effects. In many cases, these academic analyses corroborate the Bureau's findings from prior years' card market reports including, for example, findings that the Act led to reductions in consumers' total payments toward certain fees such as late fees and over-limit fees. However, across the methodologies and analyses reviewed in this section, a consistent theme is the challenge of disentangling the *effects* of the CARD Act itself, rather than the effects of other market changes such as the Great Recession.

Overall, the scholarship reviewed in this section suggests that the CARD Act's effect on consumer welfare is mixed. The reviewed analyses examine, both theoretically and empirically, how the CARD Act may have had unintended consequences (but not necessarily unanticipated ones) in parts of the market not explicitly regulated by the Act: for example, whether interest

rates at account opening may have risen in response to the CARD Act's restrictions on later repricing of interest rates on future outstanding balances. Academic research indicates that the direct and indirect consequences from the CARD Act may vary by consumer credit score, age, and other characteristics. The scholarship also highlights how these effects may depend on various features of the credit card market, such as market competitiveness and to what extent there is asymmetric information between different market participants.

DEBT COLLECTION

Issuers have lowered their daily limits on debt collection phone calls for delinquent credit card accounts since the Bureau's last report. Average daily attempts remained well below these stated limits, which is consistent with findings from the 2017 Report. Most issuers now supplement their internal collections communication strategy with email and text messages, but these channels are used primarily for account servicing and not for delivering required collections notices. Issuers' third-party collection networks typically do not use email and text.

The volume of balances settled through for-profit DSCs grew faster than did issuers' overall accounts receivable. Most issuers will not work with DSCs without receiving a signed or verbal authorization from the consumer. When engaging with DSCs, issuers generally apply the same settlement policies available to consumers who call the creditor directly to request settlements.

INNOVATION

Digital technology is being leveraged to offer consumers more tools to control how they shop for credit cards, how they qualify for different products, how they transact with physical cards or mobile phones, and how they pay for the associated debts. Some of these tools implicate a broad array of regulatory provisions that card issuers working in this space must navigate carefully. Technological advancements like machine learning and artificial intelligence incorporating new data sources are increasingly enabling the responsible expansion of credit availability to populations that lack a traditional credit score while also lowering the cost of credit to those with poor credit history. However, these same advancements may also bring new risks, such as unintended side effects and greater potential for discrimination, which companies must monitor closely.

1. Introduction

1.1 Review mandate

The Dodd-Frank Act which became law on July 21, 2010, established the Bureau. One year later, pursuant to that Act, authority and responsibility for implementing and enforcing the CARD Act were transferred from the Board to the Bureau. The CARD Act became law on May 22, 2009. Its stated purpose was to "establish fair and transparent practices related to the extension of credit" in the credit card marketplace.[11]

Among those responsibilities Congress originally assigned the Board was a mandate to "review, within the limits of its existing resources available for reporting purposes, [the] consumer credit card market [every two years]."[12] In 2012, the Board and the Bureau agreed that responsibility

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[11] *Supra* note 3, at 1. A full summary of the CARD Act rules implemented by the Board is at pages 11 through 13 of the Bureau's 2013 Report. *See* 2013 Report, *supra* note 5. The Bureau subsequently reissued these rules without material changes in December 2011. The Bureau later revised one CARD Act rule issued by the Board. On November 7, 2012, the Bureau proposed selected revisions to the ability-to-pay rules, which were intended to address a number of unintended impacts of the prior rule on consumers who did not work outside the home. The final rule implementing this revision became effective on May 3, 2013, with an associated compliance deadline of November 4, 2013. *See* 78 Fed. Reg. 25818 (May 3, 2013). On March 22, 2013, the Bureau finalized another revision to the CARD Act rules in response to a federal court ruling in 2012 that had granted a preliminary injunction to block a part of the Board's 2011 rule from taking effect. The final rule became effective March 28, 2013. *See* 78 Fed. Reg. 18795 (Mar. 28, 2013). *See also* Press Release, Bureau of Consumer Fin. Prot., *CFPB Finalizes Credit CARD Act Rule* (Mar. 22, 2013), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-finalizes-credit-card-act-rule.

[12] 15 U.S.C. § 1616(a) (2012).

for the review passed to the Bureau under the terms of the Dodd-Frank Act. This report represents the Bureau's fourth mandated review of the consumer credit card market, following the Bureau's reports on the market in 2013, 2015, and 2017.[13]

1.2 Report scope

This report fulfills Congress' directive to review the consumer credit card market in two overlapping ways.

First, it responds to the general congressional mandate in section 502 of the CARD Act to review and report on the "consumer credit card market." Second, it addresses "within the limits of [the Bureau's] existing resources available for reporting purposes" topics explicitly enumerated by Congress for inclusion in this review, including:

1. the terms of credit card agreements and the practices of credit card issuers;
2. the effectiveness of disclosure of terms, fees, and other expenses of credit card plans;
3. the adequacy of protections against unfair or deceptive acts or practices relating to credit card plans; and
4. whether or not, and to what extent, the implementation of this Act and the amendments made by this Act have affected:
    a. the cost and availability of credit, particularly with respect to non-prime borrowers;
    b. the safety and soundness of credit card issuers;
    c. the use of risk-based pricing; or

[13] *See generally*, *supra* note 5.

d. credit card product innovation.[14]

The CARD Act also requires the Bureau to "solicit comment from consumers, credit card issuers, and other interested parties" in connection with its review.[15] As in past years, the Bureau has done so through a Request for Information (RFI) published in the Federal Register, and the Bureau discusses specific evidence or arguments provided by commenters throughout the report.[16]

1.3 Methodology

This section reviews several aspects of the Bureau's general methodology in compiling this report. Methodological approaches used in specific sections of this report are explained in more detail in those sections.

1.3.1 Data sources

This report leverages several data sources. It emphasizes sources already held by the Bureau, by other Federal regulators, and by industry stakeholders. All results reported from data throughout this report aggregate results from multiple industry participants.[17]

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[14] 15 U.S.C. § 1616(a) (2012). While this report presents information which may be relevant to assessments of safety and soundness issues relating to credit card issuers, the Bureau does not produce any further analysis on this subject in this report. The prudential regulators (*e.g.*, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration) have the primary responsibility for monitoring the safety and soundness of financial institutions.

[15] 15 U.S.C. § 1616(b) (2012).

[16] Request for Information Regarding Consumer Credit Card Market, 84 Fed. Reg. 647 (Jan. 31, 2019).

[17] No results in this report can be used to identify the outcomes or practices of individual entities. At the same time, outcomes and patterns observed in the market as a whole may not be true for (or may only apply in a limited degree to) any particular industry player.

Sources include the following:

1. Data from the Bureau's Consumer Credit Panel (CCP), which is a 1-in-48 longitudinal sample of de-identified credit records purchased from one of the three nationwide credit reporting agencies, which is representative of U.S. consumers with credit records. These data also inform other Bureau products, such as the Consumer Credit Trends reports.[18] These data contain no personal identifiers, such as name, address, or Social Security number.

2. De-identified information that the Board collects as part of its "Y-14M" (Y-14) data collection. The Board collects these data monthly from bank holding companies that have total consolidated assets exceeding $50 billion.[19] The Board shares with the Bureau data from Y-14 banks. The data received by the Bureau cover the period from the middle of 2012 through the present, and accounted for just under 70 percent of outstanding balances on consumer credit cards as of year-end 2018.[20]

Information in the Y-14 data do not include any personal identifiers. Additionally, accounts associated with the same consumer are not linked across issuers. The Y-14 does not include transaction-level data pertaining to consumer purchases. In addition, this study reports only aggregate metrics, and reveals no information about any specific issuer.

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[18] *See* Bureau of Consumer Fin. Prot., *Consumer Credit Trends*, https://www.consumerfinance.gov/data-research/consumer-credit-trends/ (last visited July 15, 2019).

[19] *See* Bd. of Govs. of the Fed. Reserve System, *Report Forms FR Y-14M*, https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDYnbIw+U9pka3sMtCMopzoV (last visited July 15, 2019) (for more information on the Y-14M collection).

[20] The Board has expanded the fields it collects from banks over time; therefore, some results reported below do not extend all the way back to 2012. Additionally, these data are periodically revised retroactively, and are therefore not fully static. These issuers represent a large portion of the market, but are not necessarily representative of the portion of the market not covered by the data the Bureau receives. A substantial number of consumer credit cards, cumulatively representing the remainder of the market as measured by outstanding balances, are outside the scope of the Y-14 data used by the Bureau because, among other reasons, they are issued by banks with assets of less than $50 billion, or are issued by non-banks, such as credit unions. Results reported from Y-14 data throughout this report should be interpreted accordingly.

These data replace loan-level credit card collections that the Bureau previously collected.[21] The Bureau no longer requires or oversees the collection of any loan-level credit card data on an ongoing basis.

3. Information provided in response to a series of data requests made to several industry participants, comprised of two distinct sets:[22]

a. Data requested from a broad and diverse group of issuers to address a range of topics that neither CCP nor Y-14 data can address. This report refers to these data as Mass Market Issuer (MMI) data. These data cover application and approval volumes, rates, and channels, digital account servicing, and debt collection.

b. Data requested from a diverse group of specialized issuers. These summary data, which focus on basic metrics of usage and cost, in places supplement the Y-14 to allow for a broader or more detailed perspective into certain facets of the market than either the Y-14 or CCP allow. Where these data supplement Y-14 data, those data are collectively called "Y-14+".

4. The CFPB's Credit Card Agreement Database, an online database available to the public at http://www.consumerfinance.gov/credit-cards/agreements, was created pursuant to the CARD Act. It contains most credit card agreements available to consumers as of quarter's end for each quarter from the third quarter of 2011 to the fourth quarter of 2014, and from the first quarter of 2016 to present.[23] After the fourth quarter of 2014, the Bureau temporarily suspended collection of agreements for one year to reduce burden while the

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[21] *See generally* Bureau of Consumer Fin. Prot., *Sources and Uses of Data*, at 57-58 (Sept. 26, 2018), *available at* https://www.consumerfinance.gov/data-research/research-reports/sources-and-uses-data-bureau-consumer-financial-protection/.

[22] The Bureau notes that many players in the credit card industry are also entities with which the Bureau has one or more institutional relationships, such as a research partnership or membership on a Bureau-convened body.

[23] Credit card issuers are not required to submit any credit card agreements to the Bureau if the card issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. 12 C.F.R. § 1026.58(c)(5).

Bureau developed a more streamlined and automated electronic submission system.[24] Submission and publication resumed in the first quarter of 2016.

5. Responses to the RFI, which sought comment on all aspects of the review described in Section 1.2 above.[25] The RFI generated 11 comments. That total includes six letters from trade associations representing credit card issuers and other market participants, two letters from individual issuers, one letter from an industry-side market participant, one letter from a consumer advocacy group, and one letter from a consumer.

6. Credit card complaints that consumers have submitted to the Bureau's Office of Consumer Response.

7. Commercially available data sources to which the Bureau subscribes that focus on the credit card industry, including mail volume monitoring reports, industry analyst reports, and data services and analytics from industry consultants.

8. Numerous public sources, including but not limited to Securities and Exchange Commission (SEC) filings, analyst reports, studies and data produced by other regulators, academic scholarship, and the trade press.

9. Other information gathered informally through Bureau market monitoring activities.

1.3.2 Credit scores

Throughout this report, the Bureau refers to consumer credit scores. Lenders use these scores to predict a consumer's relative likelihood of repaying a debt compared to other consumers. Credit scores provided by major national consumer reporting agencies are used by most credit card issuers to determine consumers' eligibility for credit and to set pricing for credit lines.[26] Data relied upon in this report include widely-used, commercially-available credit scores.

There are two important limitations to the way the Bureau uses credit scores in this report. Different credit score models, while fundamentally similar, may include or exclude different

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[24] 80 Fed. Reg. 21153 (Apr. 17, 2015); 12 C.F.R. § 1026.58(g).

[25] 82 Fed. Reg. 13313 (Mar. 10, 2017).

[26] Section 8.3.1 discusses the increased reliance of some credit card lenders on data and/or scores other than those provided by the major national credit bureaus.

data points or weight them differently. This means, first, that data are aggregated on the basis of credit score even though not all consumer credit scores are computed using identical methodologies. Second, it means that, when reporting certain metrics over longer time horizons, the introduction of new models and changes in the prevalence of various models complicates comparisons between different points in time. In some cases, one or both of those two issues could affect which "credit score tier" applies to a certain account or consumer. ("Credit score tiers" used are defined further below.) The Bureau believes that different credit scoring methodologies, over the time periods and set of market participants examined in this report, are sufficiently consistent that it remains informative and useful to report aggregated results and changes over time by credit score. The Bureau nevertheless proceeds with caution when assigning precision, beyond a reasonable degree, to certain results.

When reporting results by credit score in this report, scores are grouped into five tiers. This five-tier grouping aligns with the groupings used in the Bureau's 2017 Report on the credit card market and the Bureau's Consumer Credit Trends reporting. Table 1 shows the distribution of adults, scored adults, and scored cardholders in each credit score tier.

TABLE 1: CREDIT SCORE RANGE SHARES AS OF Q4 2018 (CCP)

Credit score tiers	U.S. adult population	U.S. scored population	U.S. scored credit cardholding population
Superprime (scores of 720 or greater)	42%	53%	62%
Prime (scores from 660 to 719)	12%	16%	17%
Near-prime (scores from 620 to 659)	6%	8%	8%
Subprime (scores from 580 to 619)	6%	7%	6%
Deep subprime (scores of 579 or less)	13%	16%	7%
Thin or stale score file	11%	-	-
Credit invisible[27]	11%	-	-

[27] Kenneth P. Brevoort, Philipp Grimm, & Michelle Kambara, *Data Point: Credit Invisibles*, at 6, Office of Research, Bureau of Consumer Fin. Prot., (May 2015), http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

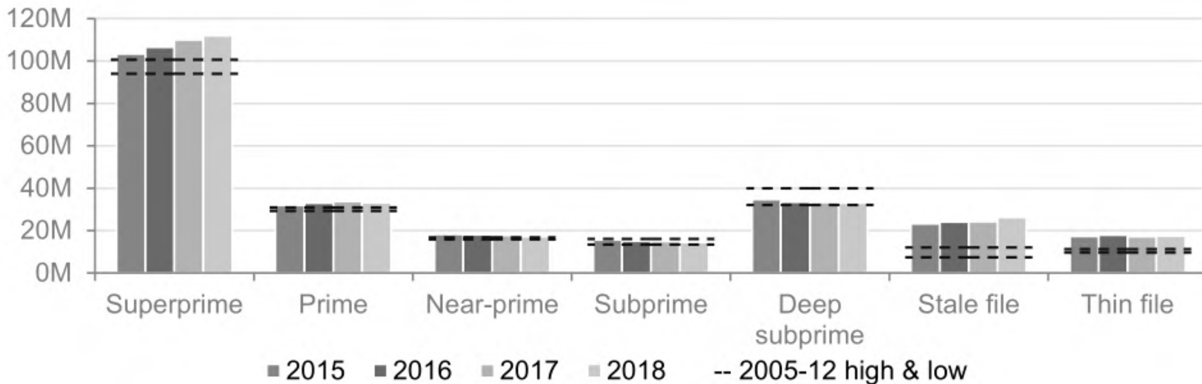
Credit scores in the CCP and Y-14 are refreshed regularly. Unless noted otherwise, accounts and consumers are classified into score tiers based on their credit score at that time. As a result, when analyzing trends over time within a particular credit score tier, the set of accounts or consumers in a tier changes over time. This fact is especially important to note given that many consumers experience changes in their credit score that are large enough to move them from one credit tier to another.[28]

Credit scores have generally shifted upward in recent years. In fact, this shift has occurred even as the total scored population has been growing, making it even more striking that the absolute numbers of consumers with lower credit scores has been declining. Since the period from 2011 through 2012, when both the absolute number and the share of consumers with below-prime credit scores peaked, the number of consumers with lower scores has fallen by 8.5 million and the share has fallen by 7 percent. Nearly all of this change was in the deep subprime tier.[29]

[28] *See* 2015 Report, *supra* note 5, at 53-55.

[29] One commenter asserted that "credit scores are currently over-inflated." *See* Randolph-Brooks Federal Credit Union Comment Letter, at 2-3. The basis for this assertion is that falling unemployment rates have contributed to this phenomenon because the relationship between unemployment and credit scores appears to have changed since the recession. The Bureau notes that many factors might contribute to increasing scores, including evolving scoring models, the adoption or use of alternative credit data, the removal of some recession-era derogatory marks, and the effect of certain CARD Act restrictions on younger and lower-income borrowers. The Bureau presents some findings on credit scores and scoring shifts in Section 4, effects of the CARD Act in Section 6, and innovations that may also be contributing to those changes in Section 8.3.1.

Figure 1: CONSUMERS WITH A CREDIT SCORE (CCP)



1.3.3 Other definitions

Throughout most of this report, the term "general purpose credit card" refers to credit cards that can transact over a network accepted by a wide variety of merchants, including the Visa, Mastercard, American Express, and Discover networks. The term "private label" refers to cards that can only be used at one merchant or a small group of related merchants.[30] In some instances, mainly in certain parts of Sections 4 and 5, the term "retail" refers to a combined category of private label cards and some network-branded cards that are managed by a business unit that specializes in retail credit cards.[31]

There are many ways to take a snapshot of consumer credit card indebtedness. The Bureau relies on two of the most prevalent, using nominal figures unless otherwise indicated. The first one entails measuring the current amount owed by consumers on a specific date, regardless of where in any individual consumer's billing cycle that date falls. Debt calculated in this manner is

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[30] Private label cards generally transact over a private network maintained by the issuer to which the merchant is granted access. Some cards can transact over both a private label network and a general purpose network. For example, a consumer may be issued a card that features a merchant's brand as well as a general purpose network brand. When used at the merchant, the transaction may be routed over the issuer's private network, but at other merchants the transaction is routed over the general purpose network. For the purposes of this report, those cards are considered to be general purpose credit cards except where explicitly noted otherwise.

[31] Retail cards do not include network-branded cards that carry hotel or airline branding, even if those cards are managed by a business unit that specializes in retail credit cards.

referred to as "outstandings." For example, if one were to report the total amount owed by consumers on credit cards as of December 31, 2018, it would be referred to as outstandings.

The second method entails measuring the amount owed by consumers at the end of their billing cycles, regardless of whether those cycles fall on a certain date. The Bureau refers to debt calculated in this manner as "balances," and in most cases as "cycle-ending balances." For example, if one were to report the total amount owed by consumers at the end of their billing cycles that concluded in December 2018, it would be referred to as cycle-ending balances and, for some accounts, would calculate balances as of, *e.g.*, the 10th of the month.

This report also uses the term "debt" to refer to both of these amounts interchangeably. Note also that consumer debt on credit cards (whether calculated as month-end outstandings or cycle-end balances) includes both "revolving" debt—the amount owed on accounts for which the balance was not paid in full by the immediately prior statement due date—and "transacting" debt—charges incurred on accounts for which the balance was paid in full by the immediately prior statement due date. While transacting accounts represent a large share of all credit card purchase volume, revolving accounts generally represent a large share of all credit card debt at any given point in time. More detail on revolving and transacting patterns is provided in the subsequent sections of this report.

Throughout this report, the Bureau refers to the "Great Recession," which officially began in the final quarter of 2007 and ended in the second quarter of 2009. This report sometimes refers to it simply using the shorthand "the recession." In many instances, these terms are used interchangeably, generally when attempting to compare or contrast trends or measurements taken in the period prior to the onset of the recession to more recent periods. Those references are generally used for convenience and should not be interpreted as a statement as to precisely when the recession began or concluded.

1.3.4 Limitations

The limitations inherent to the Bureau's methodology in this report are substantially similar to those inherent in the Bureau's previous reports on the credit card market.[32] Those limitations are restated here briefly.

First, while the Bureau would ideally like data and evidence that allows it to definitively identify the causes of certain outcomes, the data available generally do not allow it to do so. The Bureau cautions against interpreting factual observations in the study as definitively proving or disproving particular causal relationships.

Second, each of the data sources the Bureau analyzes have particular limitations. Some sources are not a comprehensive view of the market; some are limited to the account level or the aggregate level; and some are purely qualitative. Not all data sources use consistent definitions or delineations or cover the same periods, products, or phenomena. To the extent possible, the Bureau mitigates these limitations. Every attempt is made to harmonize definitions and to identify those places where the Bureau is unable to do so.

[32] See, in particular, the 2015 Report at page 27.

2. Use of credit

To provide a foundation for analyses in subsequent sections, this section reviews several market metrics that cover four aspects of the consumer credit card market.

First, this section describes the overall size of the market. By some metrics, such as total credit card debt outstanding, the market has generally grown back to or even surpassed its pre-recession size, at least in nominal terms.[33]

Second, this section looks at a number of basic metrics about consumer usage, including cardholding patterns, consumer-level and account-level balance and payment behavior, and persistent indebtedness. Some of these point to potentially significant differences between the credit card debt held by consumers prior to the recession and the debt they hold today.

Third, this section reports on delinquency and charge-off rates. These remain below historic norms but are worsening even as widely relied-upon macroeconomic indicators—like the unemployment rate—are not deteriorating.

Last, this section covers consumers' increasing use of digital technology to, for example, review transactions and pay credit card bills.

2.1 Market-level metrics

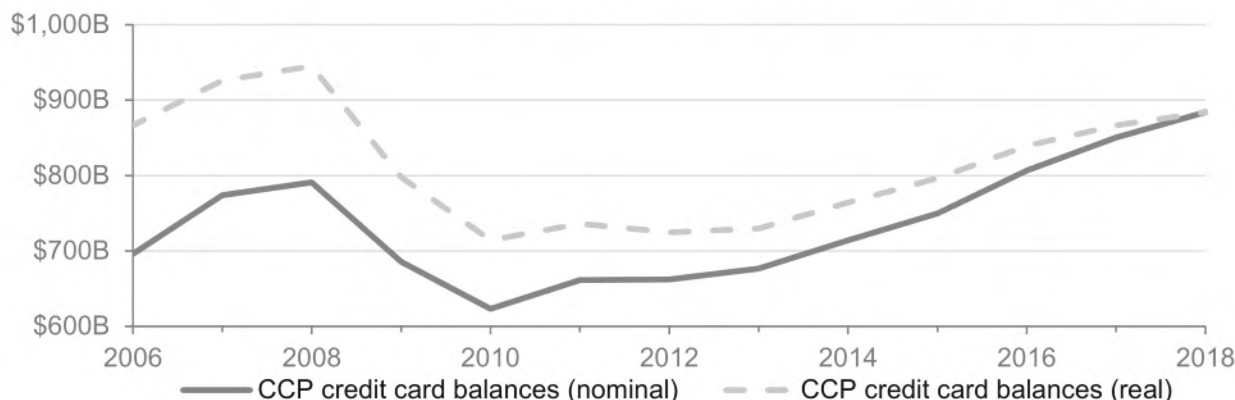
2.1.1 Total debt

Since the Bureau's 2017 Report, consumer credit card debt has continued its steady growth. In nominal terms, by the end of 2018, it was approaching $900 billion, well above its pre-recession

[33] In addition, as some commenters point out, "credit card debt as a share of disposable income has been relatively flat and remains…below pre-recession levels." ABA Comment Letter, at 3.

peak of $792 billion. Adjusted for inflation, however, current debt is more comparable to 2006 levels, as shown in Figure 1.

Figure 1: AVERAGE CREDIT CARD BALANCES, NOMINAL AND INFLATION-ADJUSTED (CCP, BLS)[34]



Considering just general purpose cards, in its last report the Bureau noted that balances had more-or-less steadily increased since the end of 2010 but had not yet returned to nominal pre-recession levels. By the fourth quarter of 2018, however, total outstanding general purpose credit card debt stood at $793 billion, well above the $732 billion mark reached in the third quarter of 2008. This result has been driven by growth in debt, including transacting debt, held by cardholders with superprime scores. General purpose card balances for consumers in every other tier remained below pre-recession highs, even in nominal terms, although consumers with prime scores were approaching those previous levels.

Private label credit card debt has also been growing rapidly in recent years. It reached $91 billion in the fourth quarter of 2018, an increase of 20 percent since the start of 2015 and a 38 percent increase since its pre-recession high in the fourth quarter of 2007. In marked contrast to general purpose balances, by the end of 2018, private balances held by consumers in every credit

[34] This chart displays average cycle-ending balances calculated across each full year, which decreases the effect of seasonality.

tier had attained pre-recession levels. Consumers with deep subprime scores were the last to cross this threshold in the fourth quarter of 2017.

2.1.2 Purchase volume

Purchase volume has continued to grow much faster than debt. Figure 2 shows the growth in annual purchase volume on general purpose cards compared to the change in debt levels, open accounts, and credit limits on these products, all indexed to 2005 levels.[35] Purchase volume has taken off while balances and credit limits have only just surpassed their pre-recession peaks and account incidence is still below pre-recession levels.[36] From 2015 through 2018, purchase volume grew 30 percent compared with growth of 20, 17, and 10 percent for balances, credit line, and account incidence respectively.

General purpose credit card purchase volume was $3.7 trillion in 2018, nearly double its pre-recession high. Consumers with superprime credit scores accounted for 82 percent of this 2018 spending, some 0.8 percentage points higher than in 2015. Consumers with prime scores accounted for 13 percent, some 0.6 percentage points lower than in 2015. The remaining tiers made up 5 percent, which was 0.15 percentage points lower than in 2015.

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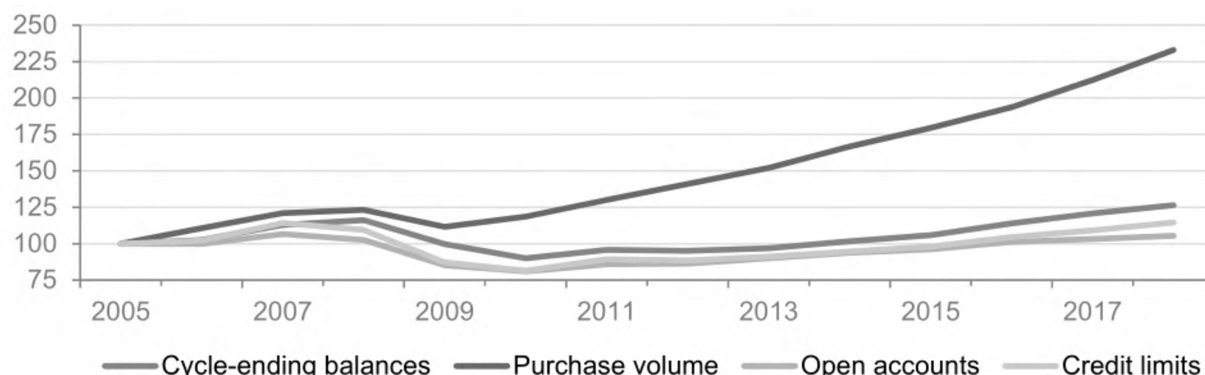
[35] Figure 2 uses *The Nilson Report* data to show a perspective on purchase volume longer than Y-14 sources permit. Data on purchase volume are not included in the CCP.

[36] General purpose balances and credit line are each up 0.3 percent on pre-recession levels. General purpose account incidence is 1.2 percent lower than its 2007 high. The Federal Reserve reports card payments "continued to show robust growth…" which may suggest an increase in tender share. Fed. Reserve Board, *The Federal Reserve Payments Study: 2018 Annual Supplement*, at 1 (Dec. 2018), *available at* https://www.federalreserve.gov/paymentsystems/2018-December-The-Federal-Reserve-Payments-Study.htm.

Figure 2: INDEXED ANNUAL GROWTH OF CREDIT CARD CYCLE-ENDING BALANCES, PURCHASE VOLUME, ACCOUNTS, AND CREDIT LIMITS, GENERAL PURPOSE (CCP, THE NILSON REPORT)



Overall, this means that the long-running trend wherein cardholders increasingly make credit card purchases that they do not revolve (or do not revolve for long) has continued into the last few years. A recent *The Nilson Report* notes that "the percentage of total credit card debt subject to finance charges, the revolving debt component of outstanding receivables, has declined almost every year over the last two decades."[37] *The Nilson Report* further states that credit card debt as a percentage of purchase volume on U.S. general purpose cards has fallen from 64.7 percent in 1996 to 26.5 percent in 2018.[38]

Private label cards show very different trends. Until recently, private label balances and purchase volume expanded roughly in tandem. Over the last few years, however, balances have grown more significantly than purchase volume. The discrepancy in growth rates peaked in 2017, when balances reached 156 percent of their 2005 level and purchase volume actually fell to 129 percent of their level in 2005. By the end of 2018, though, private label purchase volume was growing again, while balances had returned to 2016 levels. The value of total private label credit lines has continued to grow steadily over the last few years, surpassing pre-recession levels for the first time in 2018. That run-up has been achieved even as the total number of open private label accounts in 2018 was similar to the total in 2010 and still well below its 2007 peak.

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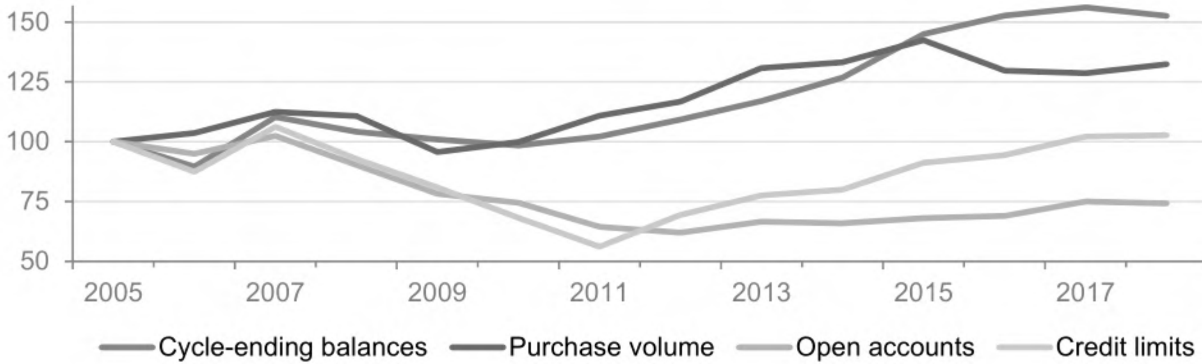
[37] The Nilson Report, *No. 1145*. Data available to the Bureau does not cover as broad a period, but confirms this trend for general purpose cards from 2015 through 2018.

[38] *Id.*

Spending on private label credit cards is also spread marginally more evenly across credit tiers, with consumers in the superprime and prime tiers together accounting for 84 percent of all private label spending in 2018.

Figure 3: INDEXED ANNUAL GROWTH OF CREDIT CARD CYCLE-ENDING BALANCES, PURCHASE VOLUME, ACCOUNTS, AND CREDIT LIMITS, PRIVATE LABEL (CCP, THE NILSON REPORT)[39]



2.2 Consumer use metrics

This subsection examines changes in a number of metrics of consumer use of credit cards. At the consumer level, this subsection reviews average credit card debt and cardholding.[40] At the account level, it reviews revolving and payment rates. This section also introduces a new measure of the amount of time that balance is carried. In contrast to the market's general return

[39] Purchase volume as reported here uses a different definition of private label cycle-ending balances than in the Bureau's 2017 Report. The latter definition relied on store cards alone. The present report includes other private label products, such as medical, oil or gas company cards, and fleet private label cards.

[40] Average purchase volume cannot be observed over this same period because the Bureau does not have purchase volume data in the CCP. The Bureau's analysis of average credit line can be found in Section 4.

to pre-recession scale, these consumer use metrics reveal some notable differences between then and now.

2.2.1 Average debt

GENERAL PURPOSE

Figure 4 shows average general purpose credit card balances for consumers who held at least one such card with a balance. These were roughly $5,700 as of the end of 2018, which is the highest figure observed since the middle of 2009. Superprime cardholders show average balances in 2018 above their recession high of nearly $5,000, which was recorded in late 2008.[41] Given that fewer than one in three cardholders with superprime scores revolve a balance on their credit cards, this likely represents less a shift in consumer indebtedness patterns than in purchase behavior, with credit cards potentially substituting for other payment instruments.[42]

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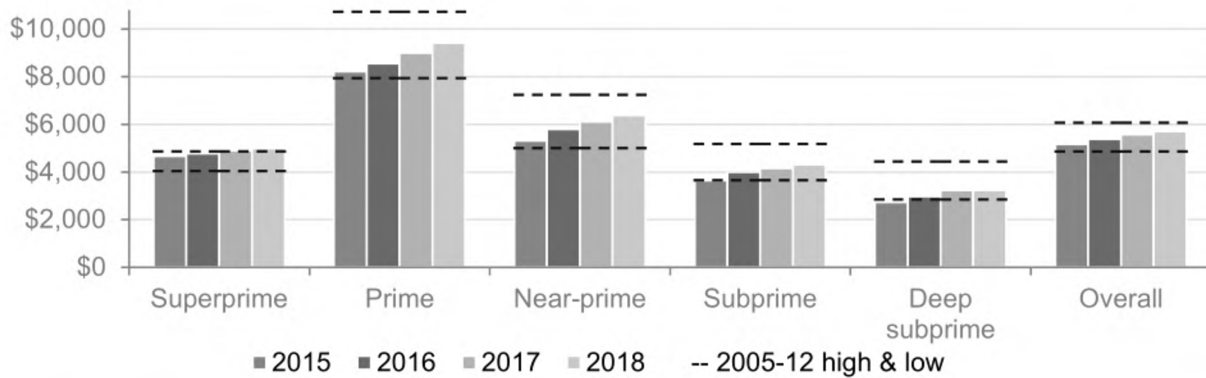
[41] In real terms, however, not even superprime consumers have reached average debt levels seen before the recession. Their 2008 level translates to $4,700 in 2018 dollars, 8 percent above their level in the fourth quarter of 2018.

[42] See Figures 8 and 9 in Section 2.2.3. General purpose credit card transactions increased 10.8 percent by value year-over-year in 2017, compared to 7.0 percent growth for non-prepaid debit cards and 3.0 percent growth for prepaid cards. Further, based on available data the Federal Reserve observed that the number of check payments and cash withdrawals from ATMs continued to decline. Fed. Reserve Board, *The Federal Reserve Payments Study – 2018 Annual Supplement*, (Dec. 20, 2018), *available at* https://www.federalreserve.gov/paymentsystems/2018-December-The-Federal-Reserve-Payments-Study.htm.

Figure 4: AVERAGE PER-CARDHOLDER YEAR-END CREDIT CARD BALANCES, GENERAL PURPOSE (CCP)[43]



General purpose card debt per cardholder has grown for all credit score tiers since 2015, although this measure remains below highs during the recession. Per-cardholder general purpose credit card debt has grown 11 percent since the beginning of 2015. In fact, consumers with deep subprime scores have seen average balances increase by 20 percent over this same time period. As discussed in more detail below, payment rates have increased much more slowly and rates of revolving in below-prime credit tiers are high. The growth in per-cardholder debt among cardholders with lower scores, therefore, represents an increase in revolving debt rather than a shift in purchase behavior.

Cardholders with prime credit scores consistently show significantly higher credit card balances on average than cardholders in any other credit score tier. Over the four quarters in 2018, general purpose balances for these consumers averaged over $8,000 per cardholder. Despite these high and increasing debt levels, these levels remain well below their peak values recorded in 2008, even in nominal terms.

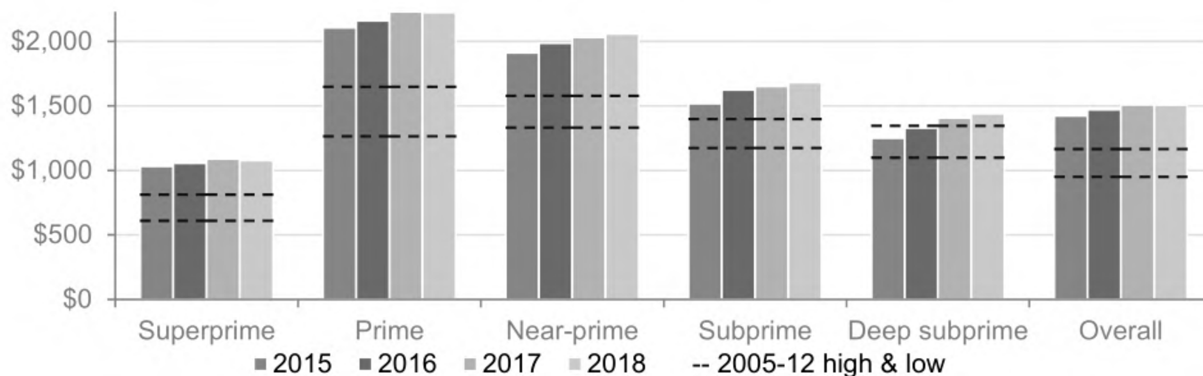
PRIVATE LABEL

Figure 5 similarly shows average per-cardholder balances for private label cardholders has grown for all tiers since 2016. Growth in average private label balances since 2011 has been

[43] Figures 4 and 5 show average per-cardholder balances for cardholders with a balance reported as of the last quarter of the year.

significant, with values in all of the credit tiers above their peak levels before or through the recession. Growth over the past three years has been more modest. Average per-cardholder private label balances were $1,507 as of the end of 2018, compared to $1,470 for the same quarter of 2016.

Figure 5: AVERAGE PER-CARDHOLDER YEAR-END CREDIT CARD BALANCES, PRIVATE LABEL (CCP)



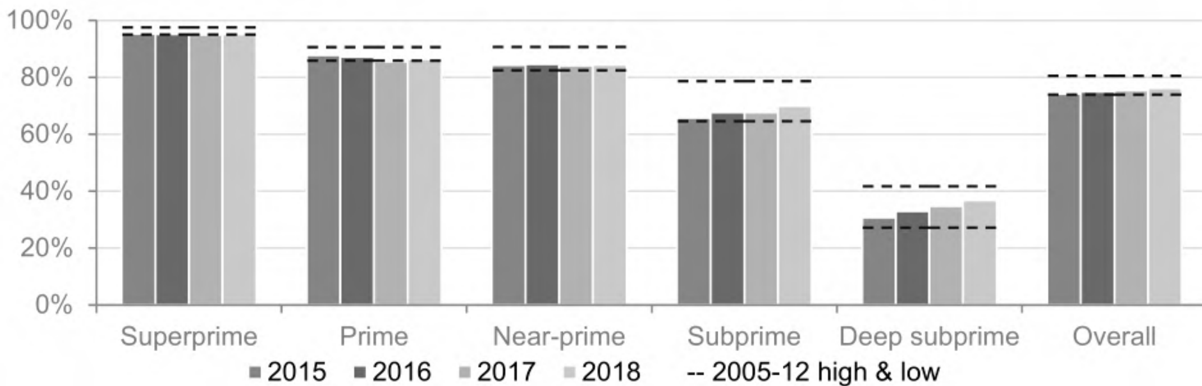
2.2.2 Consumer cardholding

The Bureau estimates 66 percent of the 255 million adults in the United States had a credit card account in their name as of the end of 2018.[44] Around 93 million consumers hold at least one general purpose and at least one private label card. Some 64 million hold only general purpose cards. Just under 10 million hold only private label cards. Private label cardholding was less common in 2018 than it was prior to the recession—in 2005, 51 percent of adults held at least one private label card, compared to 40 percent in 2018. For scored consumers, that trend holds for consumers in all credit score tiers. In contrast, general purpose cardholding is just as common today as it was prior to the recession, at 61 percent.

[44] A recent report from the Federal Reserve finds 81 percent of consumers report having at least one credit card. As noted above in this section, roughly 66 percent of consumers have one, though this does not include authorized users, who are individuals designated by the primary account holder to use the same credit account. At 12 million, authorized users would account for roughly an additional 5 percent of the adult population. *See* Fed. Reserve Board, *Report on the Economic Well-Being of U.S. Households in 2018*, at 27 (May 2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf.

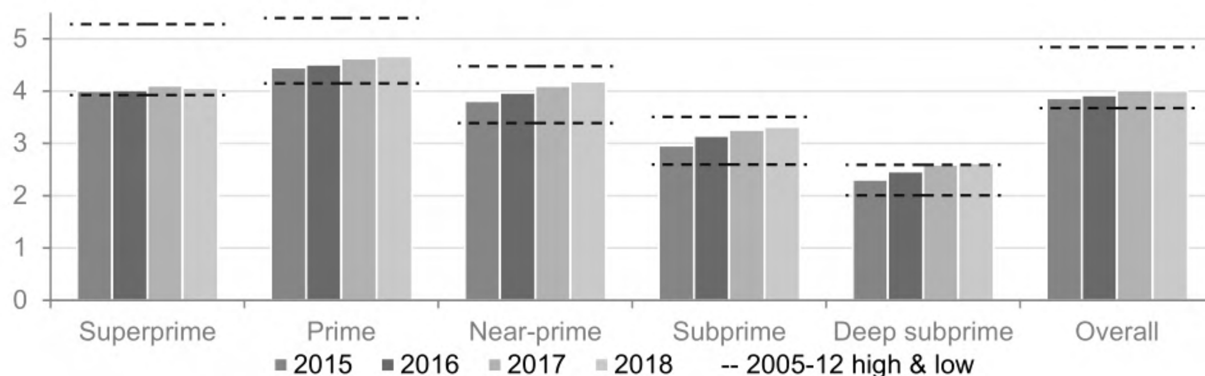
Figure 6 shows recent trends in the share of scored consumers, by credit tier, holding at least one open credit card account. Cardholding dropped significantly across every credit score tier during (and for a year or two following) the recession. This metric has grown in recent years in the lower credit tiers, but it has not yet returned to pre-recession levels for cardholders in any credit tier.

Figure 6: SHARE OF CONSUMERS WITH SCORES AND AT LEAST ONE CREDIT CARD (CCP)



As Figure 7 reflects, this same increase is also evident in the average number of open accounts held. However, Figure 7 also shows that consumers in nearly every credit tier still hold fewer cards than they did before the recession. The difference is sharpest for consumers with superprime scores, who averaged well over five open accounts in each tier before the recession, but in 2018 were at or nearer four such accounts. Cardholders in below-superprime tiers, however, have shown positive year-over-year growth in every quarter since 2012 when they reached their lowest levels. Interestingly, the average number of open accounts held by prime cardholders has increased, even while the share of prime consumers with at least one credit card has decreased since 2015.

Figure 7: AVERAGE NUMBER OF OPEN CREDIT CARD ACCOUNTS HELD PER CARDHOLDER (CCP)



2.2.3 Revolving rates

Accounts with balances can be identified as exhibiting one of two basic patterns in any given cycle. "Transacting" accounts pay off the previous cycle's balance in full before the end of the next cycle. "Revolving" accounts pay some amount less than that.[45] Although an account can move back and forth between transacting and revolving, many accounts reveal persistent payment behavior over time.[46]

Figures 8 and 9 show the average share of accounts revolving a balance from one month to the next for general purpose and private label cards, broken down by cardholder credit score. There are no significant changes in revolving rates in any credit tier over the last few years. Revolving rates decrease as credit scores increase. For all credit score tiers, general purpose revolving rates continue to be higher than private label ones.

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[45] The methodology for determining an account is revolving has changed from when the Bureau reported on this in 2017. In this report, an account is considered "revolving" in a cycle if its beginning balance is larger than the sum of payments received in a given cycle. If the sum of payments is equal to or exceeds a non-zero beginning balance, it is considered "transacting." If an account does not satisfy either condition, for example if the beginning balance is zero, it is "neither transacting nor revolving."

[46] 2015 Report, *supra* note 5, at 50-52 (citing Benjamin J. Keys & Jialan Wang, *Minimum Payments and Debt Paydown in Consumer Credit Cards*, (U. of Chicago Harris Sch. of Pub. Pol'y, Working Paper 2015), https://business.illinois.edu/finance/wp-content/uploads/sites/46/2015/01/Jialan-Wang-JMP.pdf.

Figure 8: SHARE OF ACCOUNTS REVOLVING, GENERAL PURPOSE (Y-14+)[47]

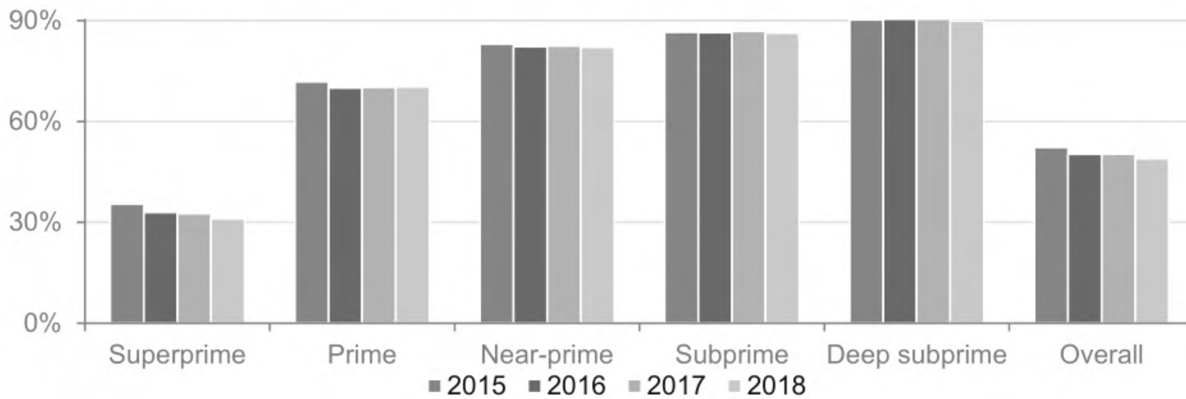
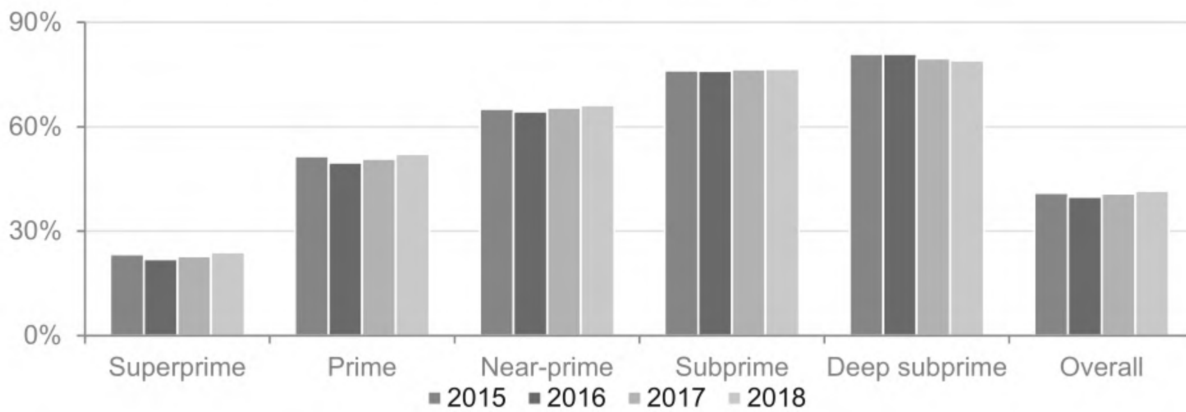


Figure 9: SHARE OF ACCOUNTS REVOLVING, PRIVATE LABEL (Y-14+)



Although the Bureau cannot quantify the share of consumers who revolve—only the share of accounts that do so—recent Federal Reserve Board data sheds some light on the consumer experience in this respect. Among those with a credit card, about one-half report that they never carried an unpaid balance during the preceding 12 months, according to the latest survey on economic well-being of U.S. households conducted by the Board. The 2018 survey also found

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[47] Figures that use Y-14 and Y-14+ data are based only on accounts that are "open and active" in a given month or cycle.

that 28 percent of those with a credit card reported paying only the minimum on their bill at least some of the time in 2017. The reported frequency of regular borrowing with credit cards during 2018 was similar to 2017, which was also similar to 2016.[48]

2.2.4 Payment rates

Payment rates provide an additional measure of consumer reliance on credit cards as a source of credit.[49] The payment rate is the share of total cycle-beginning balances that are paid that cycle.[50]

General purpose card payment rates have continued their steady growth since the recession.[51] As of the end of 2018, they exceeded 30 percent, with recent increases almost entirely driven by consumers with superprime scores. Superprime payment rates were 41 percent in 2015 and rose to 48 percent in 2018. This rise in payment rates occurred without a corresponding decline in revolving rates, indicating that consumers using general purpose cards as transaction devices are increasing purchase volume. That inference is further supported by Figure 2 in Section 2.1.2 showing that purchase volume has grown at a significantly faster rate than balances since the recession.

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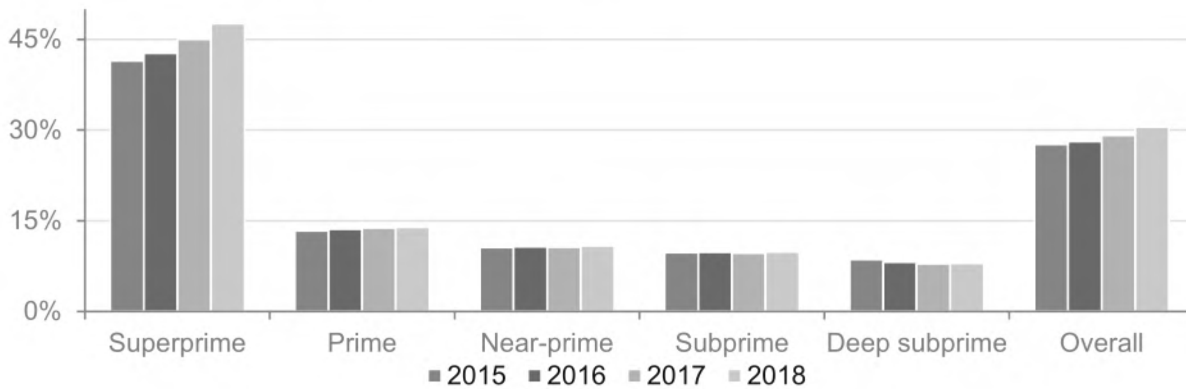
[48] *See* Fed. Reserve Board, *Report on the Economic Well-Being of U.S. Households in 2018*, at 27 (May 2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf. *See also* Fed. Reserve Board, *Report on the Economic Well-Being of U.S. Households in 2017*, at 28 (May 2018), https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf.

[49] Payment metrics cannot be shown at the consumer level because the CCP does not contain payment data. The Y-14 is used instead for these views.

[50] Thus, a payment rate of 100 percent corresponds to all account balances being paid in full, and a payment rate of 0 percent indicates that no one is paying any credit card bill even in part.

[51] *See* 2015 Report, *supra* note 5, at 49.

Figure 10: PAYMENT RATE, GENERAL PURPOSE (Y-14+)



Private label payment rates, by contrast, have fallen over recent years, further increasing the spread between general purpose and private label payment rates. Most of the discrepancy is a product of superprime consumer behavior, with superprime general purpose balances paid at a rate more than double that of superprime private label balances. One explanation for decreasing private label payment rates may be an increased prevalence of deferred interest promotions, which incentivize consumers to pay less than the full balance each month so long as the full promotional balance is repaid in full by the end of the promotional period.[52]

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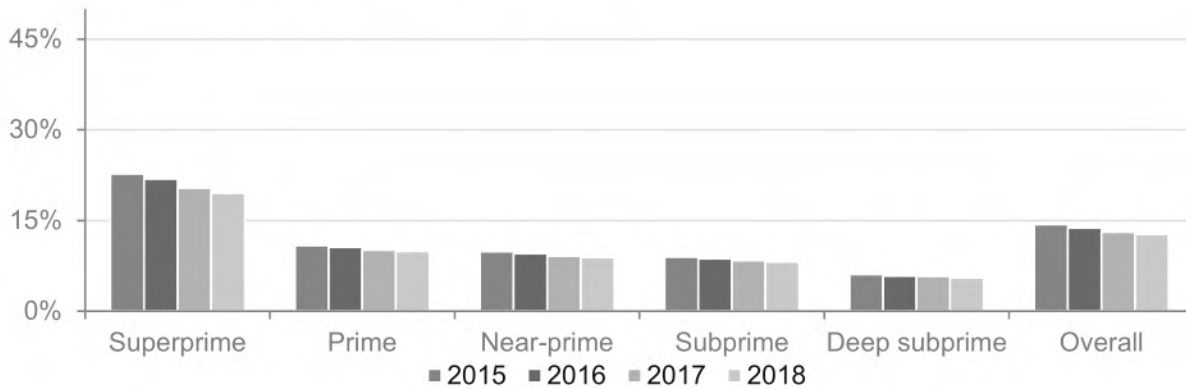
[52] *See* 2017 Report, *supra* note 5, at 58 (finding that deferred interest promotional balances outstanding for consumers with superprime scores were equivalent to over half of private label balances owed by those same consumers).

Figure 11: PAYMENT RATE, PRIVATE LABEL (Y-14+)



2.3 Delinquency and charge-off

2.3.1 Delinquency

Since 2017, both general purpose and private label card delinquency rates have continued to increase.[53] For general purpose cards, the delinquency rate—the share of accounts or balances on those accounts on which a consumer fails to pay the minimum payment by the due date—remains close to or below pre-recession levels. For private label cards, the delinquency picture is more complex.

Before and through the recession, general purpose card accounts became delinquent much more often than private label card accounts. At the height of the recession, general purpose accounts became delinquent at more than twice the rate of private label accounts. In the wake of the recession, however, account delinquency rates for the two major types of cards have moved in near lockstep. General purpose account delinquencies in 2018 were close to their 1.5 percent pre-recession average, whereas private label account delinquency rates in 2018 were higher than

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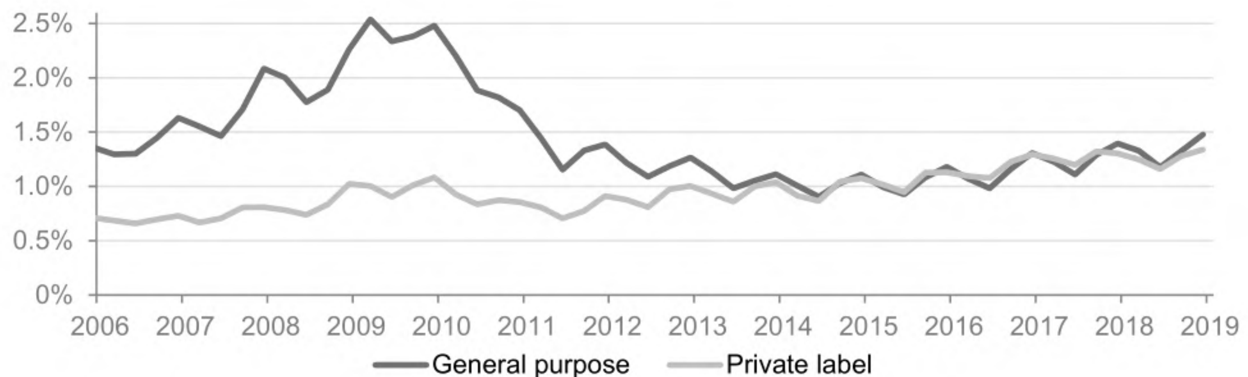
[53] When a consumer fails to make a required minimum payment by the due date, the credit card account becomes "delinquent." Because credit scores are heavily influenced by delinquency and charge-offs, these measures are not shown by credit score.

they have been at any point during the recession. Figure 12 shows account delinquency rate trends.

Figure 12: SHARE OF ACCOUNTS 60 OR MORE DAYS DELINQUENT (CCP)[54]



One explanation for the convergence in account delinquency rates for general purpose and private label cards may be that private label card issuers are increasingly offering cards to consumers with lower credit scores. As discussed in Section 4, prior to 2008, the median credit score associated with new private label cards was about 20 points higher than for general purpose cards. From 2008 until mid-2013, median credit scores on both cards dovetailed. Since late 2013, however, new private label cards have had median credit scores about 10 points lower than new general purpose cards.[55]

Even as account delinquency rates have converged in the wake of the recession, delinquency rates as shares of balances show the opposite trend, as shown in Figure 13. By mid-2015, balance delinquency rates on general purpose cards declined to 1.5 percent from its recession peak of 6 percent, while private label balance delinquency rates were around 3 percent. They have since

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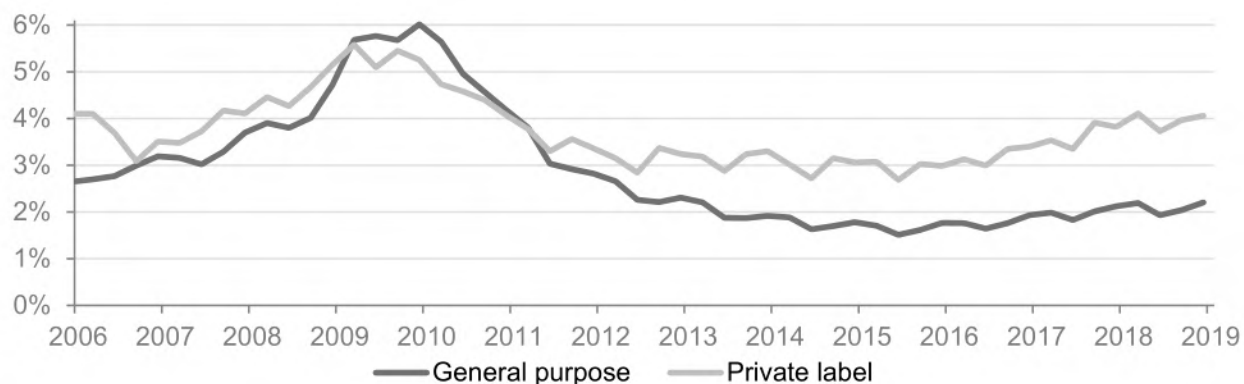
[54] Figures 12 and 13 use the delinquency definition "60 or more days delinquent," meaning that the account is at least three minimum monthly payments behind on debt repayment. This is considered "severe" delinquency.

[55] See Figures 15 and 16 in Section 2.3.2.

increased to 2 percent and 4 percent on general purpose and private label cards respectively. This discrepancy may be explained by different usage patterns between the two cards and changes in the credit profile of new accounts.[56]

Figure 13: SHARE OF BALANCES 60 OR MORE DAYS DELINQUENT (CCP)



The Bureau also looked at the share of *consumers* that fail to pay and become delinquent. The Bureau's 2017 Report showed that the share of consumers with at least one severe delinquency on a card in the preceding year started falling around 2011 for both general purpose and private label cards.[57] Since 2017, this share has increased marginally. By 2018, around 9 percent of general purpose cardholders and about 4.5 percent of private label cardholders had at least one severe delinquency in the preceding 12 months.

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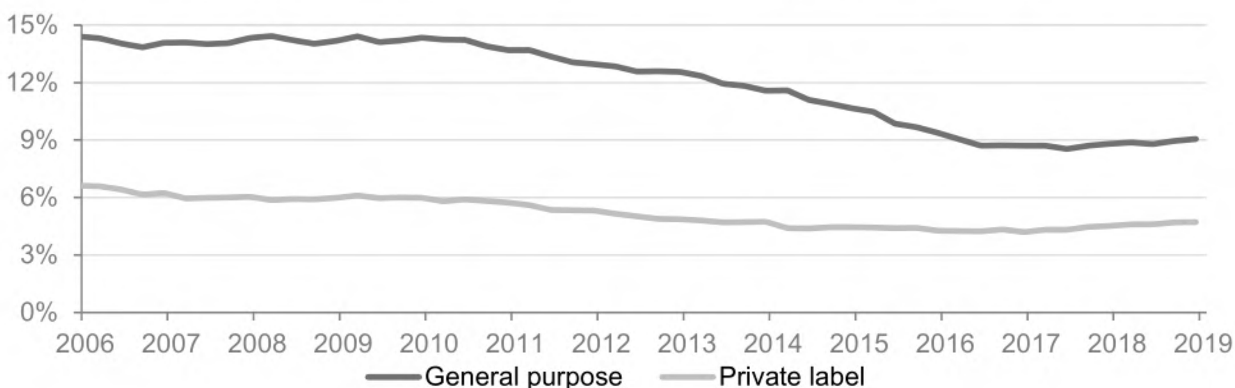
[56] See Figures 15 and 16 in Section 2.3.2.

[57] *See* 2017 Report, *supra* note 5, at 67.

Figure 14: SHARE OF CONSUMERS WITH A CREDIT RECORD WHO HAVE AT LEAST ONE 60 OR MORE DAY DELINQUENCY ON A CREDIT CARD ACCOUNT IN THE PRECEDING YEAR (CCP)



2.3.2 Vintage delinquency

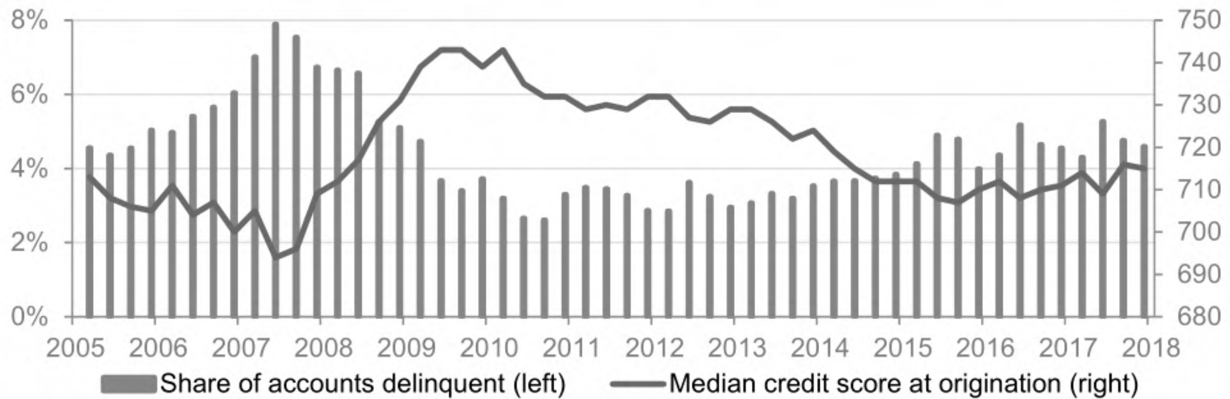
To better understand drivers of recent delinquency trends, it is helpful to review *cumulative* trends in severe delinquency by means of a vintage analysis. With snapshot views of delinquency (like those shown in Section 2.3.1. above), it can be hard to tell what is driving changes in the delinquency rate—an influx of accounts with different risk profiles or a change in delinquencies for accounts that have been open for some time. A vintage analysis can shed light on this by comparing the performance of accounts according to the time period (or "vintage") in which they opened. It is therefore possible to observe how recently-issued card "vintages" are performing compared to vintages issued previously, including those from right before and after the recession. This vintage analysis can also control for the credit profile associated with an account at origination.[58]

For quarterly vintages of general purpose cards originated since 2015, between 4 and 6 percent of accounts had at least one severe delinquency within the first year after origination. (This is referred to as the "one-year cumulative delinquency" rate.) That is well within the historic range of 2.6 to 7.9 percent for the entire data period, which is shown in Figure 15. There is typically an inverse relationship between credit scores and delinquency; for example, the vintage with the

[58] Since delinquency has a strong negative impact on a consumer's credit score, for this analysis cardholders are not grouped by their credit score at issuance.

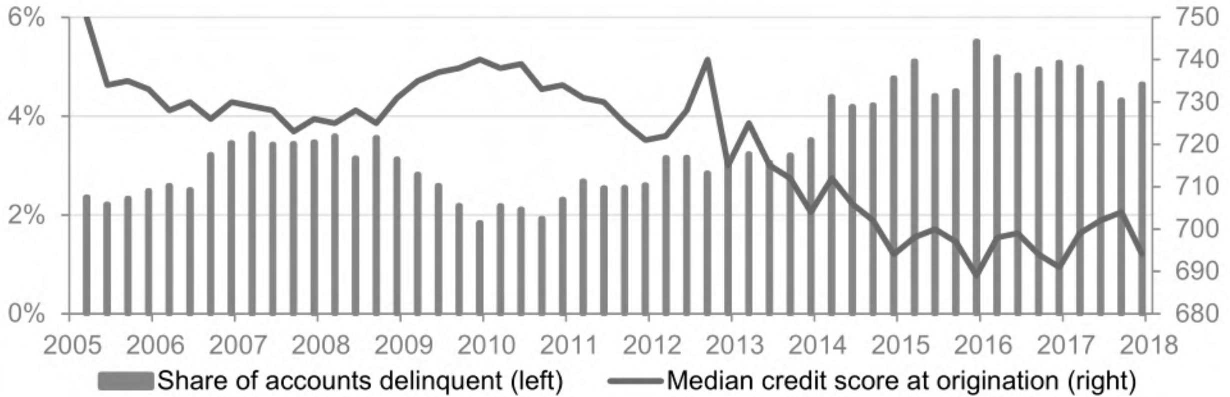
highest delinquency is also the vintage with the lowest median credit score and dates to the second quarter of 2007. However, while recent vintages have delinquency rates on par with pre-recession vintages, they also have higher median credit scores.

Figure 15: SHARE OF ACCOUNTS THAT HAVE HAD AT LEAST ONE 60-OR-MORE-DAY DELINQUENCY AT 12 MONTHS SINCE ORIGINATION AND MEDIAN CREDIT SCORE AT ORIGINATION, BY VINTAGE, GENERAL PURPOSE (CCP)



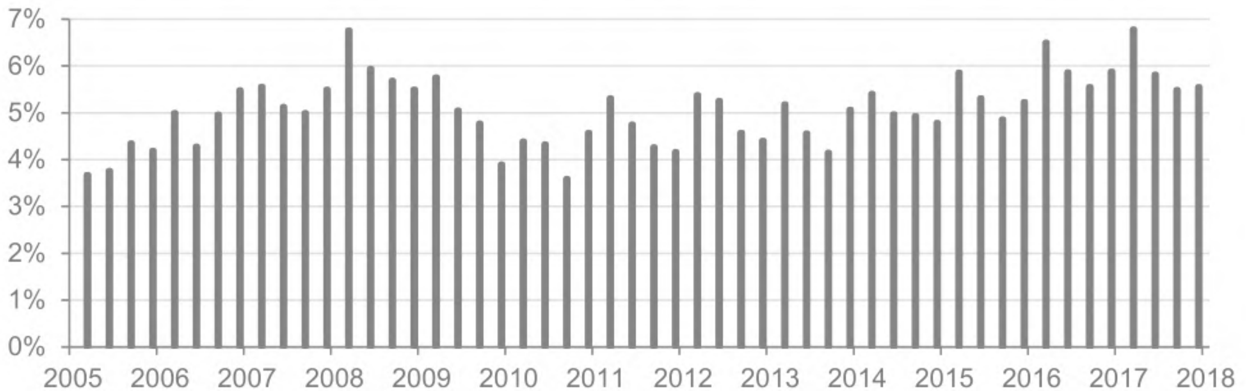
In contrast, Figure 16 shows that one-year cumulative delinquency rates for recent private label vintages markedly exceed historic norms. Part of the explanation may be the looser underwriting standards used by private label card issuers as indicated by the lower median scores at origination for those vintages. As shown in Figure 16, the median credit score on new private label cards in recent years has hovered just below 700, roughly 30 points below that recorded during pre-recession periods.

Figure 16: SHARE OF ACCOUNTS THAT HAVE HAD AT LEAST ONE 60-OR-MORE-DAY DELINQUENCY AT 12 MONTHS SINCE ORIGINATION AND MEDIAN CREDIT SCORE AT ORIGINATION, BY VINTAGE, PRIVATE LABEL (CCP)



Looking within credit score tiers, trends in delinquency rates by vintage are similar to the overall trends. As shown in Figure 17, near-prime account vintages since 2015 have experienced a delinquency trajectory more in-line with the worst-performing vintages of 2008 than with historical norms for that tier. Similarly, while at much lower delinquency rate levels, superprime account vintages from 2017 show higher cumulative delinquency numbers at 12 months than at any point between 2006 and 2014.

Figure 17: SHARE OF NEAR-PRIME ACCOUNTS THAT HAVE HAD AT LEAST ONE 60-OR-MORE-DAY DELINQUENCY AT 12 MONTHS SINCE ORIGINATION, BY VINTAGE, PRIVATE LABEL (CCP)



2.3.3 Charge-off

Charged-off balances continue to show similar trends to balance delinquencies, as Figure 18 reflects.[59] Both general purpose and private label charge-offs fell from high points during the recession to pre-recession levels or lower for most of the past five years. However, both markets have seen upticks in recent periods, recording their highest levels in several years. Forward-looking statements made by several major issuers suggest issuers expect that charge-offs will moderate as economic indicators remain positive.[60]

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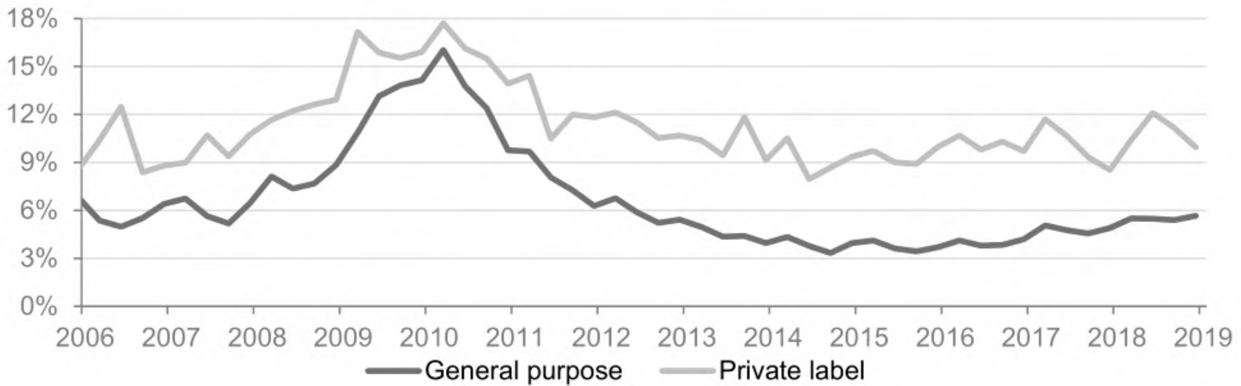
[59] Accounts that remain delinquent for 180 days must be "charged off," meaning that the issuer can no longer consider the outstanding balance as an asset on its balance sheet. Delinquent accounts may have to be charged off prior to 180 days in certain circumstances as, for example, with a bankruptcy. *See* Off. of the Comptroller of the Currency, *Policy Implementation – The Guidance Attached to this Bulletin Continues to Apply to Federal Savings Associations*, OCC Bulletin 2000-20, (June 20, 2000), *available at* https://occ.gov/news-issuances/bulletins/2000/bulletin-2000-20.html.

[60] Issuers note losses are moderating and the economic environment remains positive. "From a sequential perspective, this was the sixth consecutive quarter of slowing year over- year increases in card charge-offs. This positive trend reflects the fact that normalization continues to moderate." Discover Financial Services, *Q1 2019 Results – Earnings Call Transcript*, (Apr. 25. 2019), *available at* https://seekingalpha.com/article/4256971-discover-financial-services-dfs-ceo-roger-hochschild-q1-2019-results-earnings-call-transcript?part=single; "Our losses are still improving on a year-over-year basis" Capital One, *Q1 2019 Results – Earnings Call Transcript*, (Apr. 25. 2019), *available at* https://seekingalpha.com/article/4256945-capital-one-financial-corporation-cof-ceo-richard-fairbank-q1-2019-results-earnings-call?part=single;. "The outlook for credit as we see it remains positive...Economic indicators remain upbeat." JPMorgan Chase & Co., *Q4 2018 Results – Earnings Call Transcript*, (Jan. 15, 2019), *available at* https://seekingalpha.com/article/4233603-jpmorgan-chase-and-co-jpm-ceo-jamie-dimon-q4-2018-results-earnings-call-transcript?part=single.

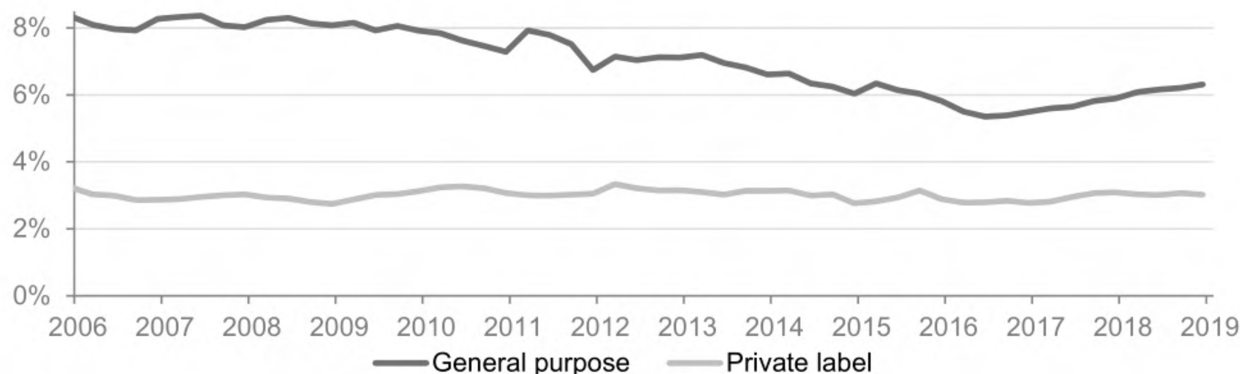
Figure 18: ANNUALIZED RATE OF GROSS OUTSTANDING BALANCES CHARGED OFF (CCP)



Annualized charge-off rates for general purpose cards rose in 2017 and 2018, and by year-end 2018 equaled 5.7 percent of balances. This represents a return to the 2005 to 2007 average charge-off rate of 6 percent, and remains well below charge-off rates observed during the recession, including the high of 16 percent in the first quarter of 2010. Private label charge-off rates follow a roughly similar pattern, but at a higher level. From 2017 to 2018, charge-off rates averaged 10.5 percent, roughly equal to the average observed from 2005 through 2007.

Figure 19 shows the share of consumers who have experienced at least one charge-off in the last year was largely stable for both general purpose and private label cards before and during the recession. From 2010 through mid-2016, the share of general purpose cardholders experiencing a charge-off followed a downward trend, declining from about 8 percent in 2009 Q4 to 5.4 percent in 2016 Q2. Since mid-2016, however, that share has begun to rise, likely owing to expanded credit access to consumers with lower credit scores. On the private label side, the share of consumers who have experienced a charge-off has hewed closely to about 3 percent since 2006.

Figure 19: SHARE OF CONSUMERS WITH A CREDIT RECORD WHO HAVE EXPERIENCED AT LEAST ONE CHARGE-OFF OF A CREDIT CARD ACCOUNT IN THE PRECEDING YEAR (CCP)



2.4 Usage of digital servicing

As discussed elsewhere in this report, digital developments are changing many aspects of the credit card market.[61] This is particularly true with respect to online and smartphone-based account servicing applications (mobile apps) for general purpose credit cards.[62] This section uses MMI data to examine how consumers use digital account servicing platforms—online account servicing portals (online portals) and mobile apps.

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[61] Credit card solicitations and applications through digital channels are discussed in Section 4.1.1. Other aspects of digital servicing are covered in Section 8.1.

[62] Private label card accounts also utilize digital tools, but the experience is likely different, since many cardholders reach them through merchant websites or also use merchants' digital tools for browsing or shopping rather than for strictly financial means. According to J.D. Power, credit card mobile app users report higher levels of satisfaction with their credit card accounts than do those who do not use mobile apps. *See* J.D. Power Satisfaction Study, *supra* note 1, (reporting that "use of a credit card mobile app is associated with a 25-point increase in customer satisfaction, although just 39% of customers are currently utilizing credit card mobile apps…").

2.4.1 Enrollment and account information

Digital engagement is growing across all age groups and platform types. The share of people electing to receive statements digitally (e-statements) rather than by mail is continuing to increase significantly. Growth in mobile app use is especially pronounced, and those who use mobile apps use them a lot—J.D. Power finds 39 percent of customers use mobile banking apps, and Citigroup finds 31 percent of customers include a mobile banking app as one of their top three most-used apps.[63] In recent years, several large bank issuers have publicly announced increases in investment into their digital servicing platforms.[64]

Figure 20 shows the share of active mass market credit card accounts enrolled in issuers' online portals and/or mobile apps.[65] As of 2018, 78 percent of active accounts are enrolled in online portals for general purpose cards, significantly higher than the 55 percent the Bureau reported as of 2014.[66] That share is nearly 85 percent for active accounts held by consumers ages 25 to 64 and over 87 percent for active account holders under age 25.

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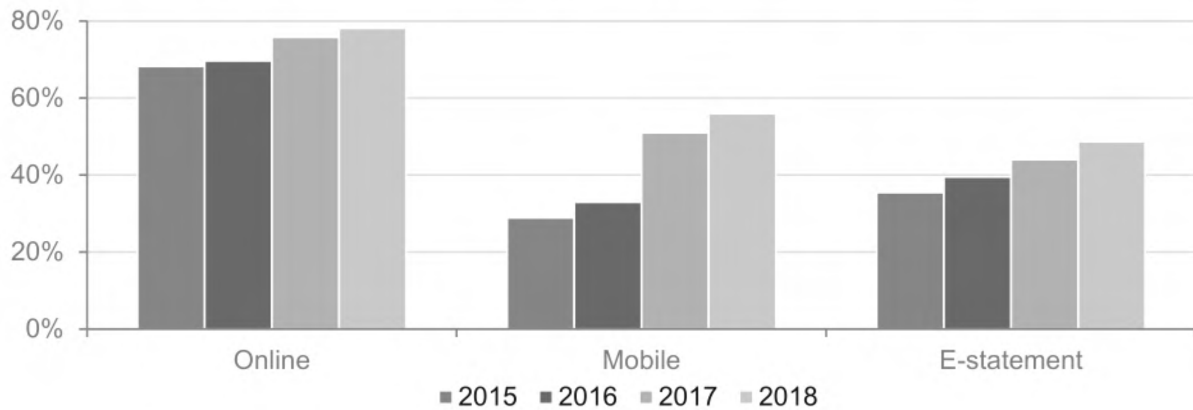
[63] *Id.* Citigroup Inc.'s 2018 Mobile Payment Study reported that 31 percent of people listed mobile banking apps in their top three most-used apps, behind social media (55 percent) and weather (33 percent). *See* Press Release, Citigroup Inc., *Mobile Banking one of the Top Three Most Used Apps by Americans, 2018 Citi Mobile Banking Study Reveals* (Apr. 26, 2018), *available at* https://www.citigroup.com/citi/news/2018/180426a.htm.

[64] *See, e.g.*, Citigroup Inc., *Q4 2018 Results – Earnings Call Transcript*, (Jan. 14, 2019), *available at* https://seekingalpha.com/article/4233320-citigroup-inc-c-ceo-mike-corbat-q4-2018-results-earnings-call-transcript?part=single; Synchrony Financial, *Q4 2018 Results – Earnings Call Transcript*, (Jan. 23, 2019), *available at* https://seekingalpha.com/article/4235000-synchrony-financial-syf-ceo-margaret-keane-q4-2018-results-earnings-call-transcript?part=single.

[65] A consumer may be enrolled in an online portal and may also have the mobile app. In fact, some issuers require online enrollment before mobile app use can be engaged.

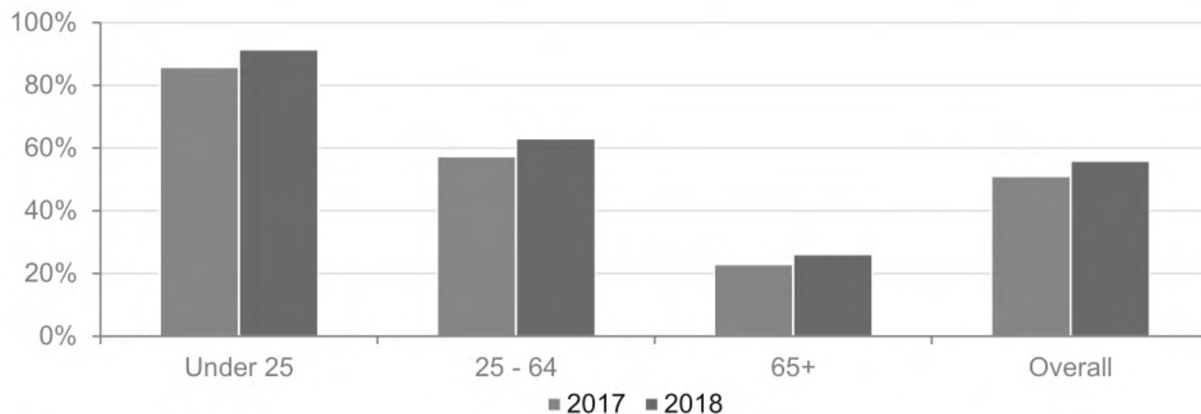
[66] 2015 Report, *supra* note 5, at 133.

Figure 20: SHARE OF ACTIVE ACCOUNTS ENROLLED IN ONLINE PORTAL, MOBILE APPS, AND RECEIVING ONLY E-STATEMENTS, GENERAL PURPOSE (MMI)



Also noteworthy is the rise in the share of accounts enrolled in mobile apps, which has nearly doubled in only three years, from 29 percent in 2015 to 56 percent in 2018. Mobile app use is more common among younger consumers, but increases in use can be seen across all age groups. In 2018, over 90 percent of active accounts held by consumers under age 25 were enrolled in the issuer's mobile app. For consumers between the ages of 25 and 64, and over 65, mobile enrollment share was 63 percent and 26 percent, respectively. Overall, the Bureau expects the trend toward increasing mobile app usage to continue.

Figure 21: SHARE OF ACTIVE ACCOUNTS ENROLLED IN MOBILE APPS BY AGE, GENERAL PURPOSE (MMI)



The share of mass market accounts that do not receive paper statements from their issuer has risen by more than one-third over the last four years and in 2018 was nearly 50 percent. This means that paperless rates have risen faster over the last few years than digital engagement generally, with the result that the phenomenon of digitally engaged consumers choosing to

continue to receive paper statements is becoming less common over time. There are indications that this change is closely related to the increase in mobile app use, particularly by younger consumers. Although younger consumers show higher rates of paperless engagement, consumers 40 and older self-report more significant benefit from transitioning to digital billing.[67] The extent to which paperless cardholders review e-statements remains an open question.[68] Consumer Action found 61 percent of the credit card consumers they surveyed online chose paper over digital delivery.[69] Further, recipients of paper statements were more likely to report reviewing transactions than did those who receive bills electronically.[70]

2.4.2 Payment methods

The most common forms of digital servicing are reviewing transaction history and making payments.[71] After entering deposit account information through their card issuer's online portal or mobile app, consumers can generally authorize non-recurring "one-time" payments or recurring "automatic" payments. For a one-time payment, consumers can generally enter any payment amount and payment date they want. In some instances, there is a pre-selected default option presented, be it the full statement balance or the minimum payment. For automatic payments, all but one issuer respondent in the MMI survey allow cardholders to choose their full statement balance or their minimum payment amount. All issuers allow cardholders to choose a different, fixed payment amount rather than the full balance or minimum payment. Only one

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[67] J.D. Power Satisfaction Study, *supra* note 1 (reporting that "although younger customers (under age 40) have been quicker to adopt digital billing, the effect of switching from paper to digital billing is most pronounced in the over-40 population. Among customers 40 years old and older, satisfaction increases 23 points when customers switch from a traditional paper bill to digital billing. That differential is just 1 point in the under-40 population…").

[68] *See* 2015 Report, *supra* note 5, at 15.

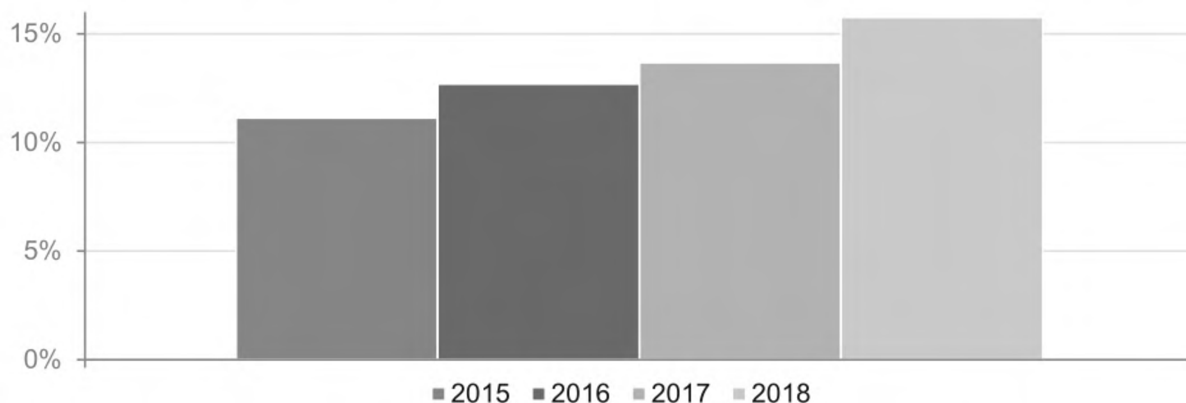
[69] Alegra Howard, *Consumer Action survey: Given the choice, consumers prefer a paper trail*, Consumer Action (Jan. 15, 2019), *available at* https://www.consumer-action.org/news/articles/paper-or-digital-winter-2018-2019.

[70] *Id.*

[71] The information contained in this section does not include information outside of the servicing relationship with the issuer (*e.g.*, payments sent to the card issuer *from a third party* at the consumer's direction).

has a pre-selected default payment option, while the rest instead force the cardholder to write in an amount or select among a set of options.

Figure 22: SHARE OF ACTIVE ACCOUNTS ENROLLED IN AUTOMATIC PAYMENTS AT YEAR-END, GENERAL PURPOSE (MMI)



As reflected in Figure 22, consumers have increasingly enrolled in automatic payments. In 2018, nearly 16 percent of active accounts within the scope of the MMI survey were enrolled in automatic payments at year-end, as compared to 11 percent in 2015.[72] Automatic payment enrollment obviously eliminates late fee charges, but the Bureau has not attempted to quantify this impact or to determine whether non-recurring payments are also associated with lower late fee incidence rates.

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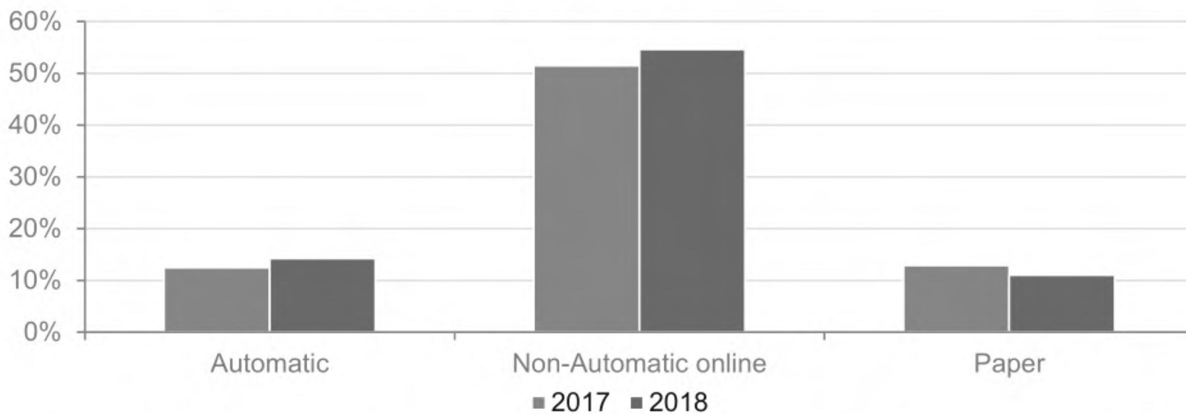
[72] Some studies have reported markedly higher consumer-reported rates of automatic payment. *See, e.g.*, Mercator Advisory Group, *U.S. Consumers and Credit: Rising Usage*, at 38 (Dec. 2018), *available at* https://www.mercatoradvisorygroup.com/Reports/Consumers-and-Credit--Rising-Usage/. It is possible that consumers who self-report overstate the extent of their use of automatic payment. Consumers may also be including *pre-authorized* one-time payments as automatic payments.

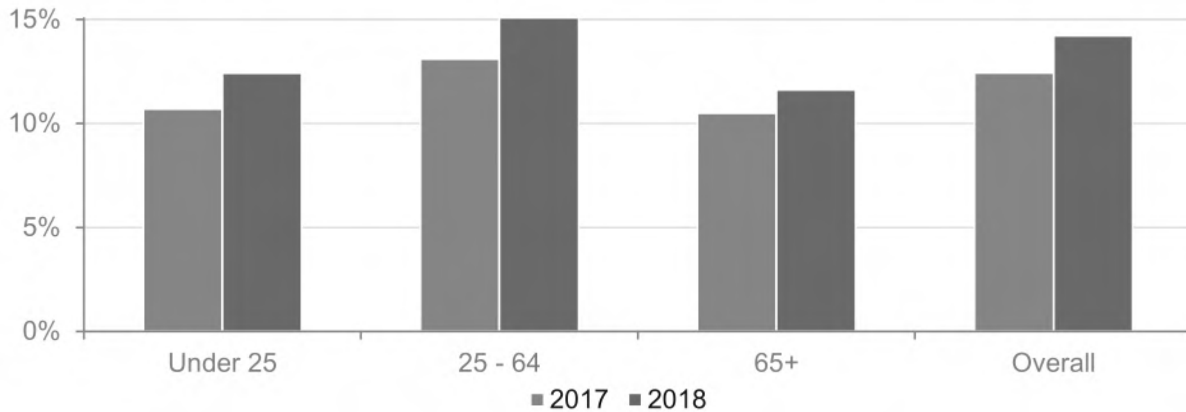
Figure 23: SHARE OF ACTIVE ACCOUNTS THAT MADE A PAYMENT IN THE LAST CYCLE OF THE YEAR BY PAYMENT METHOD, GENERAL PURPOSE (MMI)[73]



While non-automatic online payments remain the most popular, in 2018 automatic payments surpassed paper as the second-most-common payment method. Use of automatic payments has increased across consumers in all age groups. As shown in Figure 24, the age group with the highest share of accounts making an automatic payment (at 15 percent) are cardholders aged 25 to 64. But other age groups show high rates as well, with consumers under age 25 about as likely to use automatic payments as those 65 years and older—roughly 12 percent for both groups.

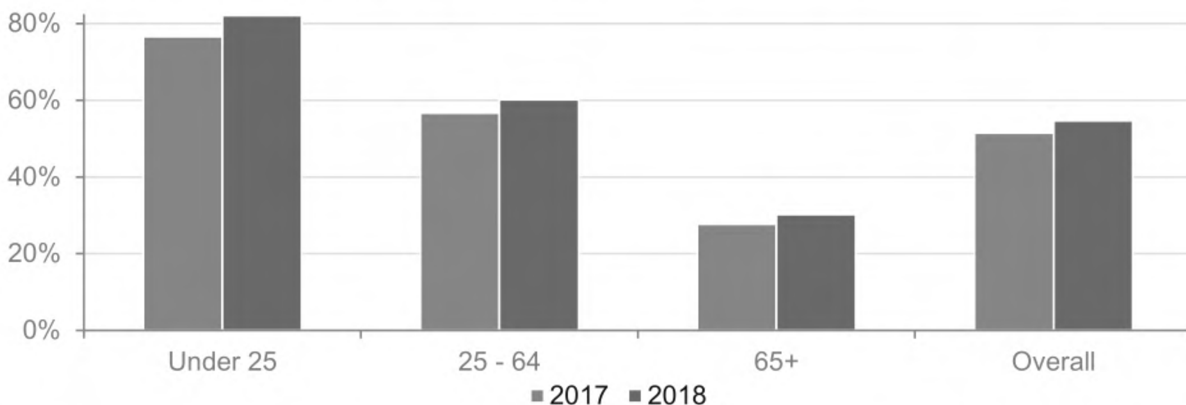
[73] Values do not sum to 100 percent as certain forms of payment, such as telephone and payments from a third-party, are not included.

Figure 24: SHARE OF ACTIVE PAYMENT-MAKING ACCOUNTS THAT MADE AT LEAST ONE AUTOMATIC PAYMENT IN THE LAST CYCLE OF THE YEAR VIA ONLINE PORTAL OR MOBILE APP BY AGE, GENERAL PURPOSE (MMI)



Unlike automatic payments, online but non-automatic payment usage displayed significant differences across age groups. Younger consumers were significantly more likely than other age groups to use online portals or mobile apps for this kind of payment. This likely reflects the relative share of these consumers enrolled in online and mobile servicing platforms. However, as with automatic payments, all age groups saw increased usage of these one-time digital payments in 2018.

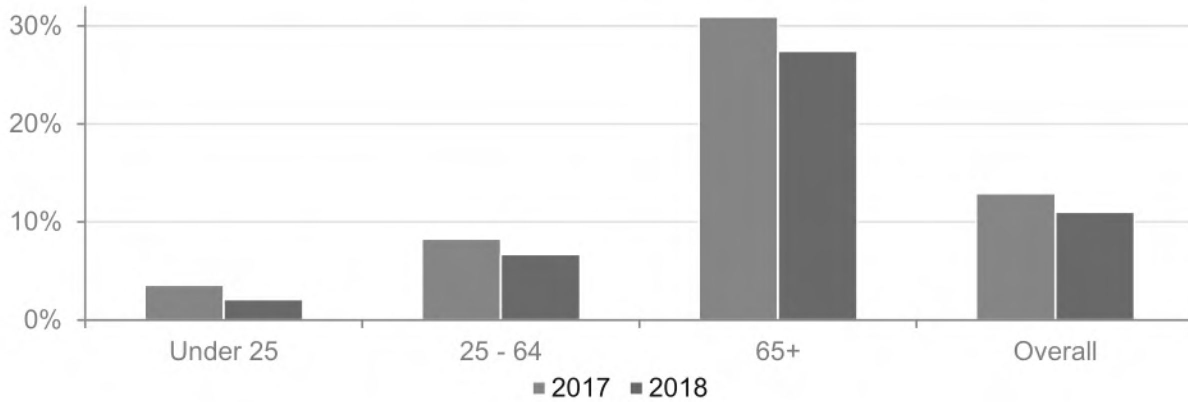
Figure 25: SHARE OF ACTIVE PAYMENT-MAKING ACCOUNTS THAT MADE AT LEAST ONE "ONE-TIME" ELECTRONIC PAYMENT IN THE LAST CYCLE OF THE YEAR VIA ONLINE PORTAL OR MOBILE APP BY AGE, GENERAL PURPOSE (MMI)



Paper-based payments remain a prominent payment method for older Americans, but that may be changing. In 2017, 31 percent of consumers 65 and older that made a payment in the final month of the year used a paper check at least once that cycle. In 2018, that figure had fallen to 27 percent. Furthermore, the difference between age groups is stark—only 2 percent of

consumers under 25 and 7 percent of consumers between the ages of 25 and 64 used a paper check to pay their credit card bill in the last payment cycle of 2018.

Figure 26: SHARE OF ACTIVE PAYMENT-MAKING ACCOUNTS THAT MADE AT LEAST ONE PAPER PAYMENT IN THE LAST CYCLE OF THE YEAR BY AGE, GENERAL PURPOSE (MMI)



3. Cost of credit

As its predecessors did, this report assesses overall costs to credit card consumers using the Bureau's total cost of credit (TCC) measure. TCC captures the totality of payments by consumers to issuers as an annualized percentage of cycle-ending balances on their accounts.[74] This section also looks separately at the main components of TCC—interest charges and fees.[75] Cardholders revolving debt from one month to the next pay the majority of fees and interest. This analysis focuses primarily (but not exclusively) on costs to revolving cardholders.

3.1 Total cost of credit

TCC on revolving accounts has increased since the Bureau's last report in 2017, driven largely by increases in interest rates. As of the end of 2018, it stood at 18.7 percent. That remains lower than its highest mark during the recession. Split by card type, TCC for revolving accounts was 17.8 percent and 23.2 percent in 2018 for general purpose and private label cards, respectively. For both general purpose and private label revolving accounts, Figures 1 and 2 show clearly that interest charges are the predominant share of consumer cost.

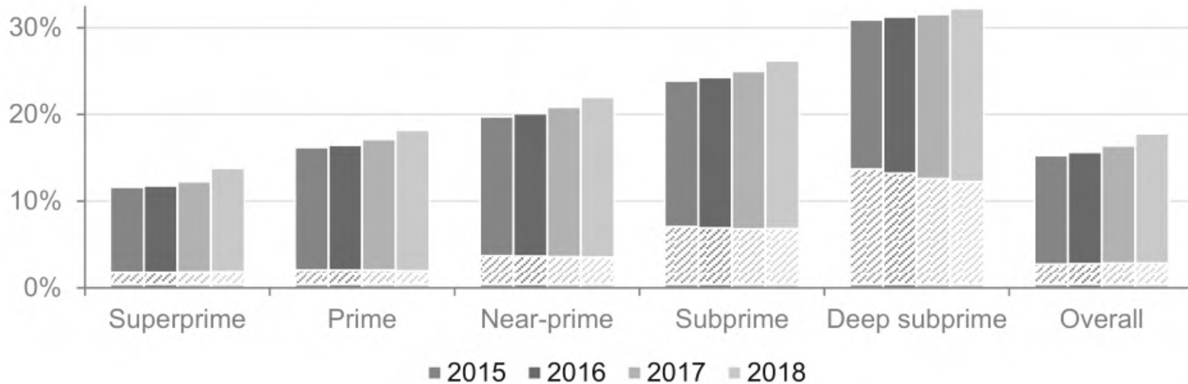
On the general purpose side, after remaining broadly stable over 2015 and 2016, TCC on revolving accounts increased in 2017 and 2018. Figure 1 shows the relevant trends. Even as TCC has been increasing, however, fee costs in every credit tier have been flat or declining. From 2015 to 2018, the prime rate has increased a total of 2 percentage points, which helps to explain

[74] Cost data are from the Y-14, augmented by summary data that the Bureau collected from a range of issuers not included in that source. Y-14 data do not permit consumer-level cost reporting. For more detail on Y-14 data, see Section 1.3.1. Although this report uses broader cost data than previous iterations did, the Bureau does not claim that these data are representative of the market not covered by the data. TCC does not include the cash value of any rewards that may have been earned by the cardholder.

[75] The TCC metric was initially introduced in the 2013 Report, and has since been used in the 2015 Report and 2017 Report. *See* 2013 Report, *supra* note 5, at 19; 2015 Report, *supra* note 5, at 76; 2017 Report, *supra* note 5, at 72.

part of the 2.5 percent rise in TCC, because most consumer credit cards have variable rates that are tied to changes in the prime rate.[76]

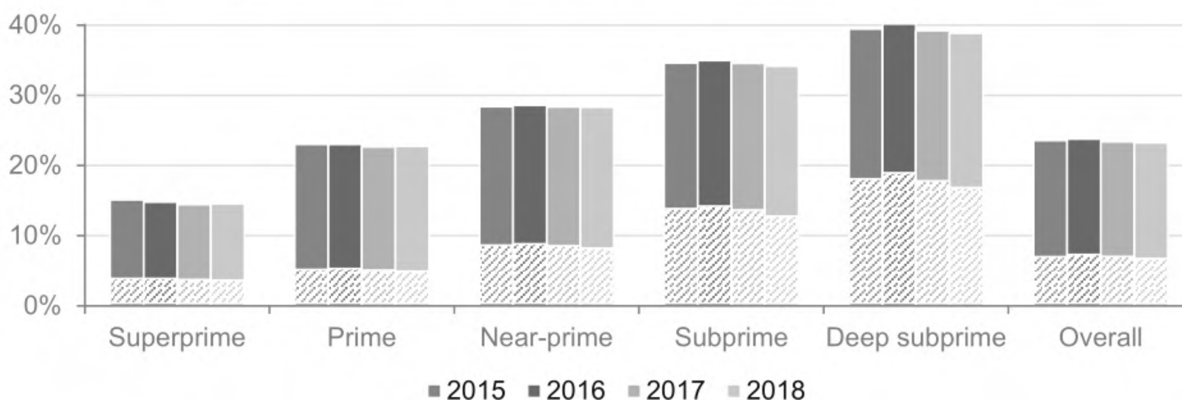
Figure 1: TOTAL COST OF CREDIT, REVOLVING ACCOUNTS, GENERAL PURPOSE (SHADED AREA REPRESENTS FEES, SOLID AREA REPRESENTS INTEREST CHARGES) (Y-14+)



On the private label side, however, TCC on revolving accounts has declined over the last two years, both overall and for every credit tier. As with general purpose cards, fee costs on private label cards have also been roughly stable on net or declining between 2015 and 2018. These trends are shown in Figure 2. Despite some narrowing over the last few years, TCC remains consistently higher, both overall, and within every credit tier, on private label accounts, as compared to general purpose accounts. In 2015, the overall gap in TCC was 8.3 percentage points between the two card types. By 2018, this had fallen to 5.5 percentage points.

[76] For further discussion of variable rates, see Section 3.2.2.

Figure 2: TOTAL COST OF CREDIT, REVOLVING ACCOUNTS, PRIVATE LABEL (SHADED AREA REPRESENTS FEES, SOLID AREA REPRESENTS INTEREST CHARGES) (Y-14+)



3.2 Interest charged

Interest charges have increased in the past few years. Both retail APRs and effective interest rates (EIR) on consumer credit cards have increased.[77] In 2018 the average APR for general purpose and private label cards rose to 20.3 percent and 26.4 percent, respectively.[78] As with TCC, the rise in interest charges is in large part the result of changes in prevailing market interest rates.[79]

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[77] For closed-end loan products, the APR captures certain fees as well as the interest rate. 15 U.S.C. § 1606(a)(1) (2012); 12 C.F.R. § 1026.22(b). However, for open-end credit, including credit cards, the APR is calculated using the periodic rate. 15 U.S.C. § 1637 (a)(4), (b)(5) (2012); 12 C.F.R. § 1026.2(a)(14), (21).

[78] *See* Appendix A, Figures 1 & 2.

[79] "Data from Form FR 2835a indicate that the average credit card interest rate across all accounts increased to a level of about 13 percent, while the two-year Treasury rate--a measure of the baseline, or "risk free," rate--rose to almost 2 percent (figure 1), leaving the spreads unchanged." Bd. of Govs. of the Fed. Reserve System, *Report to the Congress on the Profitability of Credit Card Operations of Depository Institutions - July 2018*, (July 2018), *available at* https://www.federalreserve.gov/publications/2018-july-profitability-credit-card-operations.htm.

3.2.1 Effective interest rates

While APR is a useful barometer of issuer pricing strategies, "effective interest rate" may provide a better measure of the cost of interest to cardholders because EIR incorporates the effect of short-term promotions and cash advances. An EIR is computed by annualizing the total of all interest charges consumers paid divided by those consumers' cycle-ending balances.[80] Figure 3 shows that EIRs for general purpose cards with revolving balances have risen nearly 250 basis points from 13.2 percent in 2015 to 15.6 percent in 2018. Each credit tier experienced similar increases over time.

Figure 3: EFFECTIVE INTEREST RATE, REVOLVING ACCOUNTS, GENERAL PURPOSE (Y-14+)

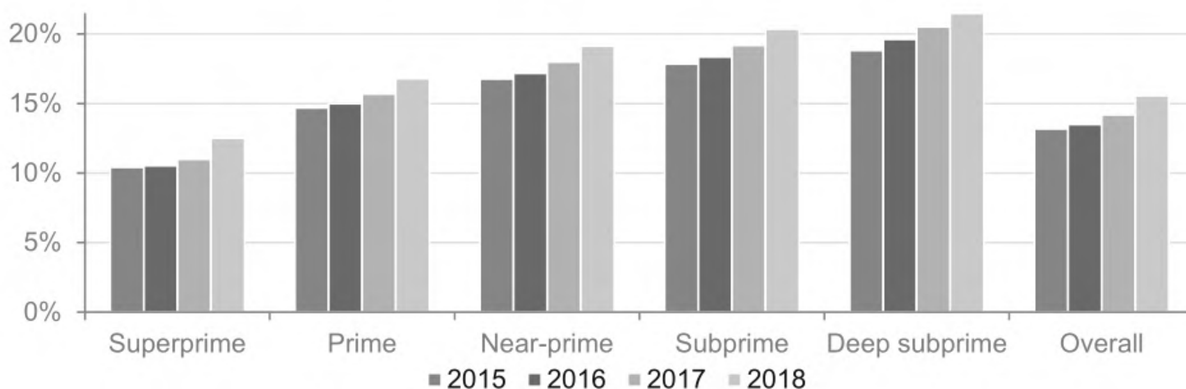

Figure 4 shows that the picture for private label is different, with EIRs across the period staying mostly flat from 2015 to 2018. As the next subsection shows, this contrast is in part due to the fact that fewer private label cards are priced with a variable rate.

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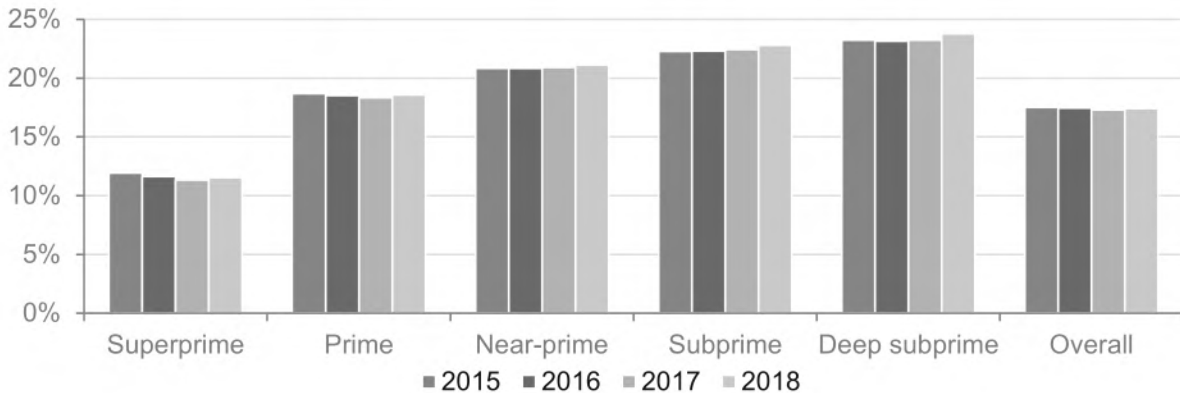
[80] EIRs differ from nominal rates for two reasons. First, consumers may have various balances on a single account (such as cash advances and balance transfers), not all of which are subject to the APR typically applied to purchases on that account. Second, consumers may have different patterns of payment and spending within a cycle. Due to the average daily balance method that most credit card issuers use to calculate interest charges, this means that two accounts subject to the same retail APR that conclude a cycle with identical balances may nevertheless properly be assessed different interest charges as a result of differences in the composition and fluctuation of those balances over the course of the cycle.

Figure 4: EFFECTIVE INTEREST RATE, REVOLVING ACCOUNTS, PRIVATE LABEL (Y-14+)



3.2.2 Upward repricing

Credit card account APRs can change, both for new transactions and existing balances, subject to limitations imposed by the CARD Act.[81,82] Perhaps most significantly, upward repricing on existing (and new) balances is allowed if a card's rate is indexed to a market rate and that rate increases.[83] Most general purpose cards are variable rate cards of this kind. As of the end of 2018, more than 90 percent of general purpose accounts in the Y-14 were variable rate cards.[84] In contrast, only about one-half of private label accounts in the Y-14 have variable rates.

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[81] The CARD Act did not prohibit all interest rate changes to existing accounts, but it limited the conditions under which issuers could reprice both new and existing balances and established new procedural steps for permitted rate increases. For more on CARD Act limits on repricing, see the 2013 Report at pages 11, 27-29.

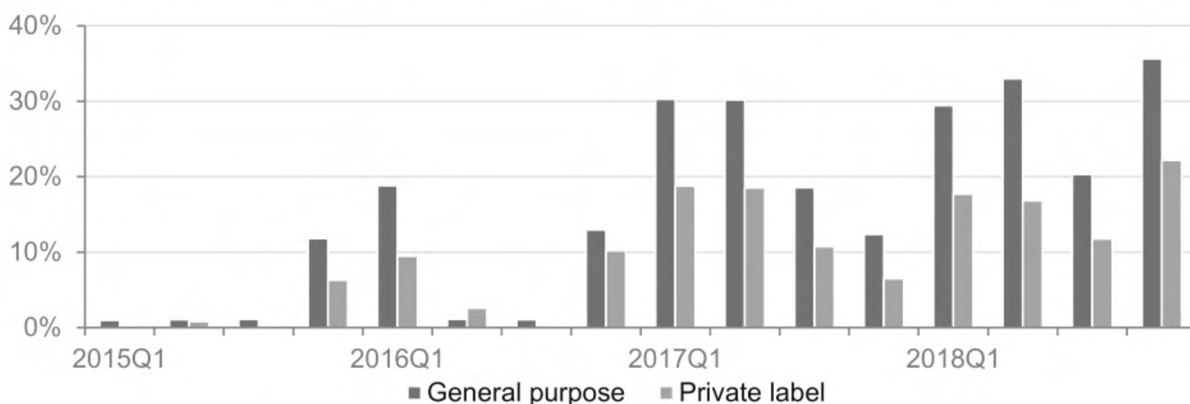
[82] In response to the Bureau's Request for Information a commentator claimed that CARD Act-imposed interest rate restrictions have limited repricing discretion and therefore limited the availability of credit card products for cardholders outside of the prime tier. It argues that these aspects of the CARD Act have limited issuers' ability to accommodate borrowers falling outside of the prime category. *See* Bank Policy Institute (BPI) Comment Letter, at 2.

[83] A card issuer is permitted to increase the APR on a variable rate card when the increase is due to an increase in an index that is outside the issuer's control and available to the general public. 12 C.F.R. § 1026.55(b)(2).

[84] Issuers that use variable rate pricing mostly rely on *The Wall Street Journal*'s U.S. prime rate. A small percentage of the accounts, however, are linked to the London interbank offered rate (LIBOR). The status of LIBOR is in flux,

As Figure 5 shows, upward APR repricing accelerated in 2017 and 2018, as variable rate increases were triggered in most quarters, and were subsequently reflected in changes to APRs for cardholders with variable rate cards.[85] Over 90 percent of the upward repricing account events shown in Figure 5 are for increases of 25 basis points, which is the most common prime rate change over the last few years. As expected, given the higher share of cards that are indexed to a variable rate, general purpose cards show a much higher rate of upwards repricing across this period than private label accounts.

Figure 5: AVERAGE MONTHLY INCIDENCE OF UPWARDS APR REPRICING, ACTIVE ACCOUNTS (Y-14+)



These changes have significantly increased consumer costs. It is difficult to assess precisely how much consumer borrowing patterns may have been affected by increases in underlying interest rates. As a result, it is difficult to state with certainty the full actual impact of such increases on borrowers. The Bureau estimates that the six rate increases by the Federal Reserve from late-

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which creates certain risks for cards linked to LIBOR. One commenter states they "expect LIBOR to be unreliable (and more volatile) by January 1, 2022 (or earlier)." BPI Comment Letter, at 7-8. The Bureau acknowledges this comment and is considering the issue further.

[85] See Appendix A at Figure 3 for a chart showing increases in the federal funds rate and the associated prime rate.

2016 through late-2018 led to a cumulative increase of roughly $11 billion that credit card borrowers paid over that two-year period.[86]

3.3 Fees assessed

Collectively, fees represent just under one-fifth of total consumer costs and for consumers who exclusively transact, fees are the only source of cost. Fees take a variety of forms including annual fees, transactional fees (*e.g.*, for cash advances), and penalty fees (such as late fees or over-limit fees). The CARD Act imposed several substantive pricing controls on both the amounts of penalty fees consumers could be charged and the conditions under which such fees could be imposed.[87]

3.3.1 Total fees

REVOLVING ACCOUNTS

Measured as a share of overall account balances, total fees on revolving accounts did not change materially over 2017 and 2018 on either general purpose or private label accounts. These trends are shown in Figures 6 and 7, which also show that, relative to balances, fees incurred on private label accounts that revolve are higher than on general purpose accounts that do so. For private

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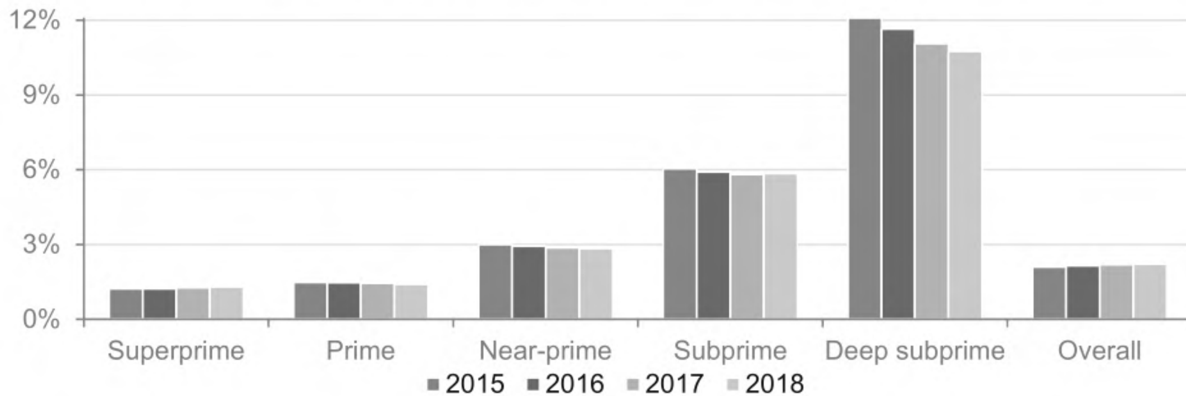
[86] Calculation uses historical quarterly balances multiplied by the cumulative changes in rates from 2016 to 2018. The increase on Dec. 20, 2018, was not included as it was not in effect for an entire quarter during the 2016 to 2018 timeframe.

[87] *See, e.g.*, 15 U.S.C. §§ 1637(k), (n), 1665d (2012). CARD Act pricing restrictions have resulted in a substantial decline in overall fee costs to consumers since the pre-CARD Act period. *See* 2013 Report, *supra* note 5, at 34. CARD Act fee restrictions, of course, may have led to compensating changes in interest rates. For example, one commenter asserts that changes brought about by the CARD Act have resulted in higher interest rate margins "as issuers sought alternative ways to manage portfolio-wide risk." *See* ABA Comment Letter, at 2. Section 6 contains a substantive review of economic scholarship on both the direct and unintended consequences of the CARD Act on interest rate and fee changes.

label accounts, fees comprised 5.8 percent of balances as of the end of 2018; on general purpose, they were 2.2 percent of balances.[88]

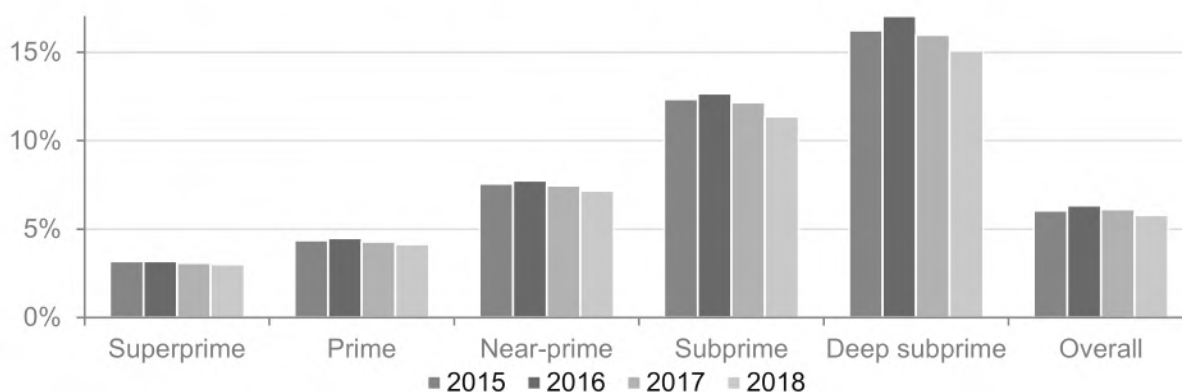
Within certain credit tiers, however, the fee picture is changing. Figure 6 shows that general purpose accounts held by consumers with deep subprime credit scores saw fee-to-balance ratios fall in every year from 2015 through 2018. Even so, these tiers have fee ratios that are several multiples of those for accounts held by consumers with higher credit scores. Figure 7 shows fee-to-balance ratios for private label accounts dropped in 2017 and 2018 for all credit score tiers except superprime. While the volume of fees has increased from 2015 to 2018, fee ratios have declined as a result of rising total balances.

Figure 6: TOTAL FEES INCURRED IN THE YEAR AS A PERCENTAGE OF AVERAGE CYCLE-ENDING BALANCES, REVOLVING ACCOUNTS, GENERAL PURPOSE (Y-14+)



[88] This is in part the product of lower average balances on private label accounts. (Section 2.2.1 contains data on average account balances for different card types, by credit tier.) The Bureau's 2017 Report contains more information on this point. *See* 2017 Report, *supra* note 5, at 87-89.

Figure 7: TOTAL FEES INCURRED IN THE YEAR AS A PERCENTAGE OF AVERAGE CYCLE-ENDING BALANCES, REVOLVING ACCOUNTS, PRIVATE LABEL (Y-14+)



TRANSACTING ACCOUNTS

For transacting accounts, this report calculates total fees as a share of purchase volume.[89] On this cost measure (which has not been used in prior reports), there were no significant overall changes for general purpose or private label accounts from 2015 through 2018. Fee ratios for private label transacting accounts have increased in lower credit tiers, though it should be noted that very few accounts in these tiers transact. This appears to be the result of relatively slow growth in purchase volume for transacting accounts. Purchase volume by transacting cardholders has grown 44 percent on general purpose cards since 2015, but only 3 percent on private label card accounts.

3.3.2 Fee composition

Over the last few years, fee composition has changed relatively little. Figure 8 shows trends for general purpose cards over this period. The largest change is the increase in annual fees as a share of total fees. Annual fee trends are covered in more detail in the next subsection below. This increase comes largely at the expense of debt suspension fees, which continue to decline,

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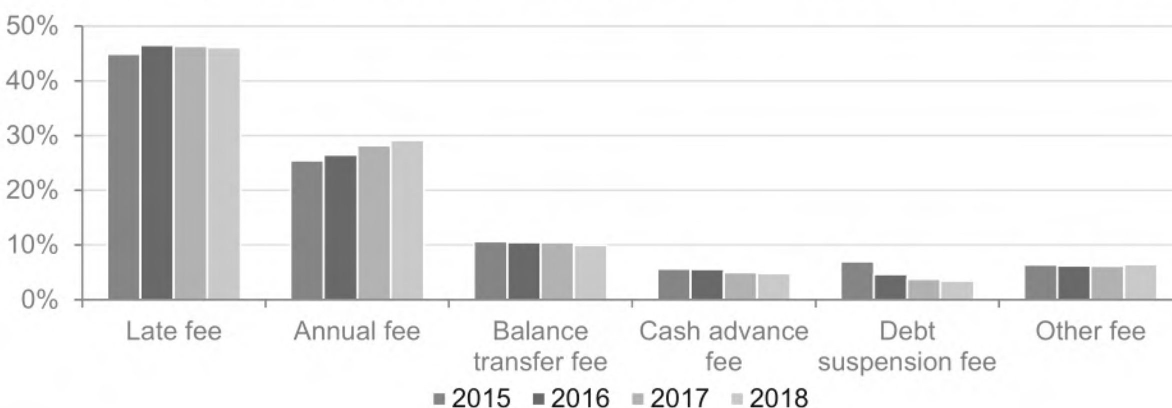
[89] For transacting accounts, cycle-ending balances are not as good a reflection of account use as purchase volume. Thus, this reports looks at fee costs for these accounts relative to purchase volume, not balances.

even as the number and volume of annual fees have increased. Figure 8 also shows that a number of other fees remain prevalent on general purpose cards, including fees for balance transfers and cash advances.[90]

For private label cards, late fees make up the overwhelming majority of all fees assessed—90 percent in 2018. This represents a slight increase over the last four years, from 86 percent in 2015, again in large part at the expense of debt suspension fees.

Figure 8: SHARE OF TOTAL FEES COSTS INCURRED BY TYPE OF FEE, GENERAL PURPOSE (Y-14+)



3.3.3 Annual fees

Annual fee volume has risen significantly over the last few years. For issuers in the data set, annual fee revenue totaled roughly $600 million in the first quarter of 2015. Annual fee revenue topped $1 billion in the first quarter of 2018.[91] As discussed further below, this is a function of increases in the average annual fee for accounts charged a fee, but is also due to steady quarterly increases in the total number of accounts incurring an annual fee, even while the percentage of accounts with such fees has decreased.

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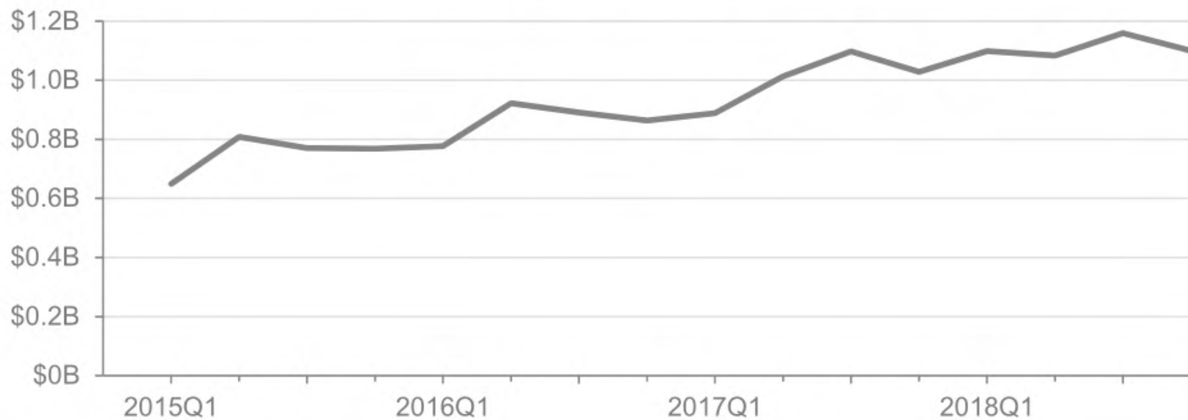
[90] For more information on cash advance and balance transfer trends, see Sections 5.2 and 5.3.

[91] As used in this report, an "annual fee" refers to any general purpose participation or maintenance fee assessed to the consumer as a condition of holding the account, regardless of any pattern of usage.

Figure 9: ANNUAL FEE VOLUME, GENERAL PURPOSE (Y-14+)



Annual fees have garnered significant attention in recent years with the introduction of new annual fee rewards cards marketed to lower-risk and affluent market segments.[92] As shown in Figure 10, annual fees averaged roughly $80 per card with a fee in 2018, and that number has been increasing steadily for all credit score tiers. In particular, annual fee accounts held by superprime consumers averaged nearly $100 in annual fees in 2018, reflecting the increased prevalence in the past two years of richer rewards credit cards that carry higher annual fees. Revenue from these cards is typically returned to cardholders to varying degrees in the form of rewards.[93]

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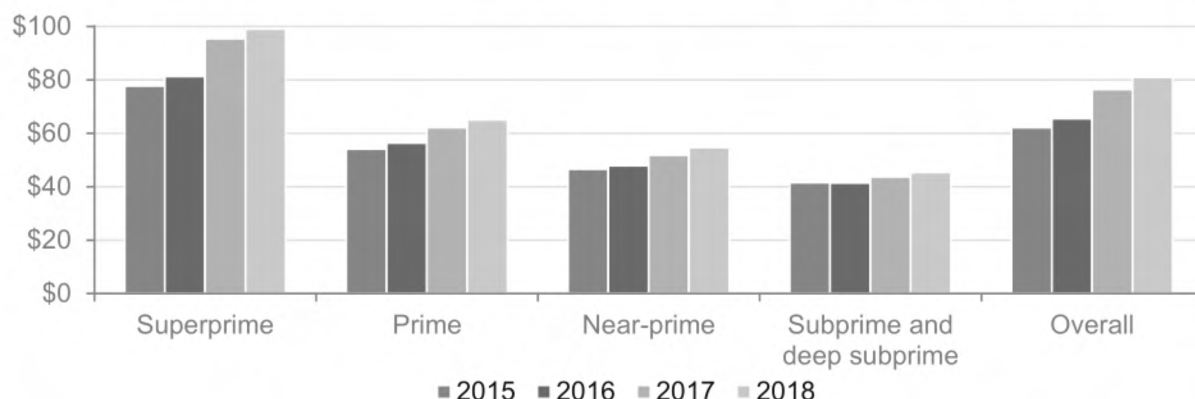
[92] *See, e.g.*, Maria LaMagna, *American Express Launches a New Credit Card for Jet-Setters – With new credit card for jet-setters – with a $450 Annual Fee*, MarketWatch, (Apr. 17, 2018), *available at* https://www.marketwatch.com/story/american-express-launches-a-new-credit-card-for-jet-setters-with-a-450-annual-fee-2018-04-16. *See also* AnnaMaria Andriotis & Emily Glazer, *Rewards Credit Cards Gained a Fanatic Following—Now Banks Are Pulling Back*, Wall St. J. (Jan. 1, 2019), *available at* https://www.wsj.com/articles/rewards-credit-cards-gained-a-fanatic-followingnow-banks-are-pulling-back-11546365926("JPMorgan and Citigroup poached top executives from AmEx, which made premium rewards—with a high annual fee—its calling card for decades, and copied the strategy.").

[93] For more on rewards, see Section 5.1.

Whereas cardholders with superprime scores typically pay an annual fee for rewards—with higher annual fees generally funding richer rewards—cardholders in lower credit tiers may pay annual fees to offset credit risk or higher operating costs relative to revolving balances.[94]

Figure 10: AVERAGE ANNUAL FEE, GENERAL PURPOSE ACCOUNTS CHARGED AN ANNUAL FEE (Y-14)[95]



While average annual fees have been rising in all credit tiers, Figure 11 shows that annual fees have actually become less common for accounts held by cardholders in every credit tier except superprime. One in four general purpose cards held by subprime and deep subprime cardholders carried an annual fee in 2018, compared to more than one in three in 2015. Similarly, in 2018 roughly one in five near-prime cardholders carried an annual fee card, compared to one in four in 2015. In part, the reduction in annual fee prevalence for cardholders with below-prime scores was driven by an increase in the share of no-annual-fee card originations to consumers in these score tiers. Since 2016, however, most of that increase was due to originations of no-annual-fee secured cards which, while they do not charge a fee, still require some money be held as a deposit.

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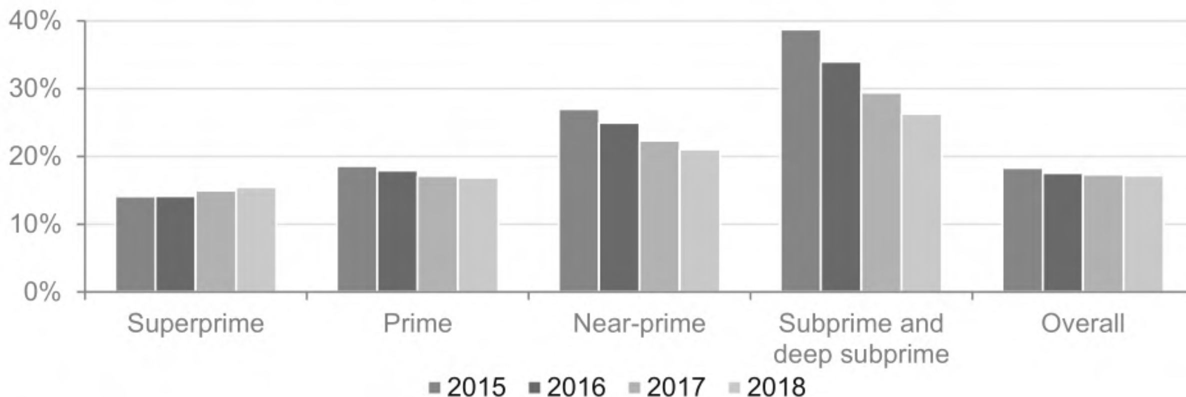
94 *See* 2017 Report, *supra* note 5, at 91-92.

95 Average annual fee is calculated as the total number of months in each year and credit tier that an account with an observed annual fee is open times the annual fee observed for those accounts divided by the total number of account months in each year and credit tier that those annual fee-paying accounts are open.

Figure 11: ANNUAL FEE PREVALENCE, GENERAL PURPOSE (Y-14)[96]



3.3.4 Late fees

Since 2015, total late fee volume has increased, as shown in Figure 12. Issuers in the sample assessed nearly $13 billion in late fees in 2018, compared to less than $10 billion in 2015. As discussed further below, this increase in late fee revenue is in part a function of the increase in the total number of accounts and in part a function of increases in the per incidence fee; there does not appear to have been a change in the incidence of late fees on a per account basis. Figure 13 shows that the share of card accounts held by consumers in each credit tier declines steeply with scores, but late fee volumes are relatively similar across these tiers. Superprime consumers hold 59 percent of card accounts but pay only 21 percent of late fee volumes; by contrast, consumers with deep subprime scores hold about 6 percent of card accounts but generate 24 percent of late fee volumes.

[96] Annual fee prevalence is calculated as the total number of months in each year that an account with an observed annual fee is open in a given credit tier divided by the total number of account months in each year that all accounts held by cardholders in that credit tier are open.

Figure 12: LATE FEE VOLUME (Y-14+)

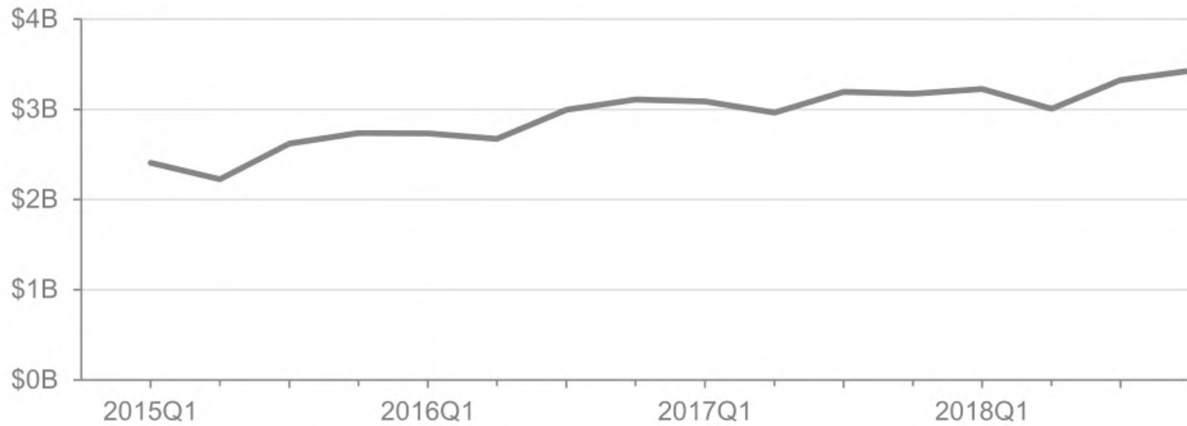
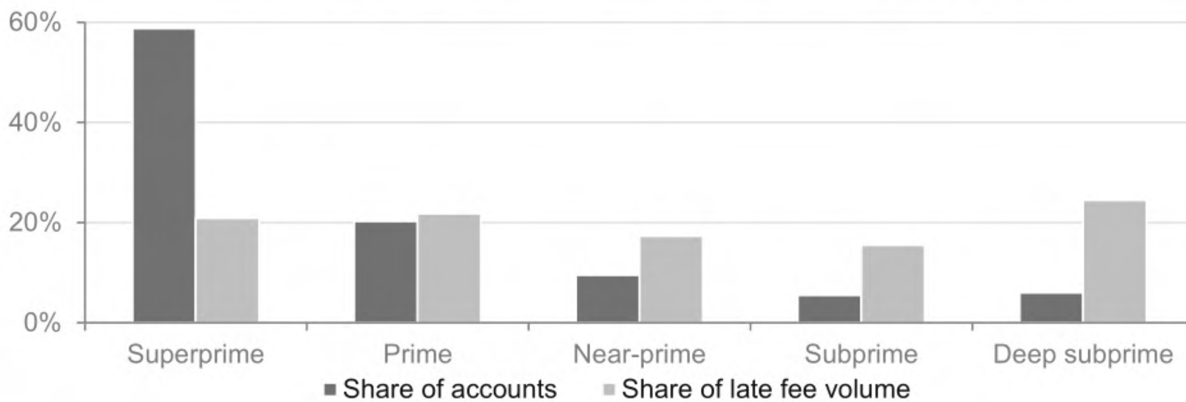


Figure 13: SHARE OF NUMBER OF ACCOUNTS AND SHARE OF LATE FEE VOLUME (Y-14+)



Issuers generally assess a late fee to consumers who do not make at least their minimum payment by the monthly due date. These and other "penalty" fees were targeted by specific CARD Act provisions, and the dollar amounts of such fees are now subject to CARD Act restrictions.[97] In general, these fees have to be "reasonable and proportional."[98] There is a

[97] 15 U.S.C. § 1665d(a) (2012). For more on this, see Section 6.

[98] *Id.*; 12 C.F.R. § 1026.52(b).

regulatory "safe harbor" for specific fee amounts, which the Bureau adjusts for inflation annually.[99] Initially, the safe harbor was set at $25 for an initial late fee and $35 for a second late fee within six billing cycles of a prior late fee. In 2019, the safe harbors are $28 and $39 respectively.[100]

Since 2015, average late fees have increased slightly, from about $26 to $28 in 2018, as shown in Figure 14. They nevertheless remain substantially below their pre-CARD Act level of $33 in 2008.[101] Since 2014, the first year in which a change from the original penalty fee safe harbors came into effect, most large issuers have taken advantage of the increased safe harbors by increasing their fee amounts. However, issuers appear to vary in the speed and consistency with which they implement increases across their products and portfolios. Additionally, issuers may as a courtesy offer to reverse late fee charges if the cardholder has a history of paying on time, particularly for superprime cardholders. In combination with the two-tier safe harbor (one amount for the first instance, and a different amount for subsequent instances within one of the next six billing cycles), these practices make it challenging to assess what drives changes in average late fee amounts overall.

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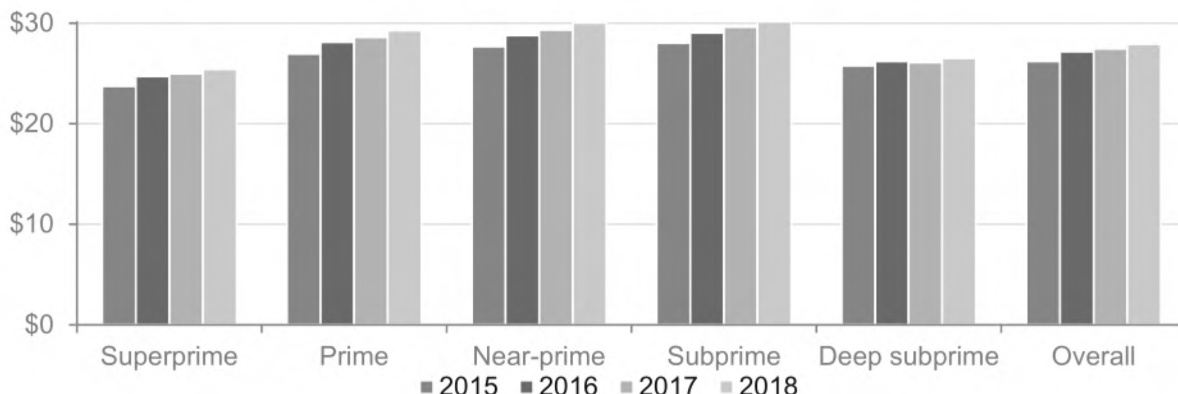
[99] Regulation Z requires the Bureau to annually adjust the safe harbors to reflect changes in the Consumer Price Index. 12 C.F.R. § 1026.52(b)(1)(ii)(D). The Bureau has also introduced a tool to promote transparency in this calculation. Bureau of Consumer Fin. Prot., Office of Compliance & Guidance, *Calculating Adjustments to the Safe Harbor Limits on Credit Card Issuer Fees*, https://www.consumerfinance.gov/policy-compliance/guidance/truth-lending-annual-threshold-adjustments/ (last visited July 15, 2019). The most recent safe harbor amounts went into effect in January 2019. 83 Fed. Reg. 43503 (Aug. 27, 2018).

[100] 12 C.F.R. § 1026.52(b)(1)(ii); Comment 52(b)(1)(ii)-2.i.

[101] *See* 2013 Report, *supra* note 5, at 23.

Figure 14: AVERAGE LATE FEE, NET OF REVERSALS (Y-14+)



To fill the picture out further, the Bureau analyzed the late fee terms of credit card agreements from banks included in the Y-14+ panel. A review of agreements available in 2018 indicates that almost all products (83 percent) contracted to price at the penalty fee cap. Only 16 percent of filed agreements contracted to price, in whole or in part, below that cap. Another 1 percent contracted not to charge late fees. None contracted to price above the safe harbor.

On average, consumers incur less than one late fee per year per general purpose account. This rate has remained steady since 2015. Accounts held by consumers in lower credit score tiers incur more late fees than those in higher tiers. For example, accounts held by consumers with deep subprime credit scores average more than three late fees a year. Accounts held by consumers with superprime or prime scores average less than one. Late fee incidence rates are higher for private label accounts, both overall and within every credit tier. For example, accounts held by consumers with deep subprime scores have an average of more than four late fees per year. But private label late fee incidence has also not changed materially over the last few years.

3.3.5 Other fees

The quarterly volume of other fees issuers collect on credit cards has not changed significantly in recent years. This fee category includes fees for payments returned for insufficient funds (NSF fees) or exceeding the credit limit (over-limit fees); debt suspension fees; balance transfer fees; and cash advance fees, among others. The 2015 Report showed that these fees, considered

collectively, have steadily declined in prevalence since 2008.[102] Over-limit fees that were common prior to the implementation of the CARD Act remained almost nonexistent in 2017 and 2018.[103]

[102] 2015 Report, *supra* note 5, at 71-72.

[103] Section 3.3.5 of the 2017 Report notes that many issuers appear to have simply ceased assessing over-limit fees altogether, rather than maintain an opt-in regime. *See* 2017 Report, *supra* note 5, at 96-97.

4. Availability of credit

As in prior reports, this section examines a number of metrics relating to the availability of card credit. It explores two broad areas: first, new account origination; second, credit limits and line changes after origination.[104] To do so, it tracks the credit card account life cycle. It starts with marketing and consumer applications across a range of channels. Next, it addresses issuer approvals as well as new account and line origination. Finally, this section ends with issuer line management of existing accounts.

4.1 New accounts

U.S. consumers submitted more than 165 million credit card applications in 2018, roughly one-half million per day. Issuers primarily solicit consumer demand for credit cards through broad-based advertising like television commercials, and through targeted marketing, which is increasingly shifting away from direct mail towards digital channels. The analysis below examines patterns of credit card marketing and consumer shopping; consumer applications; approval rates for new accounts; and the volume of new account and line origination. Where possible, the analysis reviews how these metrics vary by credit tier as well as by product and marketing channel.

4.1.1 Marketing and comparison shopping

As consumers spend more time on mobile and other internet-connected devices, issuers have adjusted their marketing and origination practices. The result is a digital ecosystem in which

[104] Issuers assign a credit line limit to each new account that determines how much a consumer generally is permitted to borrow on the account, at least initially. In subsequent periods issuers may adjust the credit line, as discussed in more detail in Section 4.2.3.

consumers encounter credit card marketing across digital platforms. In-person channels—like bank branches and retail locations—increasingly use digital technology.

Credit card issuers continue to send mail directly to consumers, but the trend away from direct mail solicitation has continued since the Bureau's last report. Issuers sent 341 million direct mail solicitations per month across 2017 and 2018, down 22 percent from 2016 levels. Monthly mail volume remains less than one-half of its pre-recession peak of 892 million pieces in 2005.[105] Pre-screened direct mail offers have declined even faster than direct mail generally. Their 2018 level was 20 percent below 2016 numbers. In 2018, the share of direct mail credit card solicitations that was pre-screened fell to 51.6 percent, its lowest mark since at least 2013, and down 3 percentage points since 2016.[106]

Card issuer spending on digital forms of marketing remains small compared to physical mail, but it has been growing significantly.[107] Credit card advertising on social media sites, such as Twitter, Facebook, and Instagram, is becoming more prominent. Issuers increasingly buy digital advertising targeted to specific demographics and pay social media influencers to make and distribute content.[108]

Once a consumer is actively looking for a new credit card, third-party comparison sites (TPC sites) offer information intended to make it easier for consumers to compare credit cards.[109]

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[105] Data made available to the Bureau by Mintel Comperemedia.

[106] *Id.*

[107] Several of the largest credit card issuers report more than doubling their paid Facebook advertising for acquisitions from 2017 to 2018, based on data provided to the Bureau by Mintel. *See also* AnnaMaria Andriotis, *Credit-Card Issuers Boost Spending on Social-Media Ads*, Wall St. J. (Apr. 23, 2019), *available at* https://www.wsj.com/articles/credit-card-issuers-boost-spending-on-social-media-ads-11556011801.

[108] *Id.*

[109] In response to the Bureau's Request for Information, a commentator responding on behalf of consumers argued that these websites vary in the independence of their advice. This commenter suggested that regulators can require conspicuous disclosure of arrangements between websites and card issuers. *See* National Consumer Law Center (NCLC) Comment Letter, at 12.

Some sites let consumers personalize the card offerings shown by using data provided by the consumer or third-party information authorized by the consumer. While that information helps personalize recommendations, some consumers may ultimately find their application does not get approved for a site-listed card for which they apply. To address this issue, one TPC site now offers to check if a consumer shopping for a specific card would be pre-qualified for that card based on internal underwriting criteria that certain credit card issuers have agreed to share with the site.[110] TPC sites are not owned or operated by issuers, but many are funded primarily by issuer payments for sourcing new card accounts.[111]

4.1.2 Applications

To apply for a card, consumers submit an application through one of several channels, such as going online, using a mobile app, calling the issuer, or by walking into a bank branch or retail store to fill out a paper or digital application in-person. The issuer then decides whether or not to issue a credit card based on its internal underwriting process.[112] Issuers may choose to loosen or tighten underwriting standards to be more or less approving of new card applications. The Federal Reserve Board's quarterly Senior Loan Officer Survey shows that credit card underwriting standards have generally tightened over 2017 and 2018, after easing from 2012 through 2016.[113]

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[110] Peter Rudegeair & AnnaMaria Andriotis, *Lenders Share Their Underwriting Secrets with Credit Karma,* Wall St. J. (Oct. 22, 2018), *available at* https://www.wsj.com/articles/lenders-share-their-underwriting-secrets-with-credit-karma-1540206000.

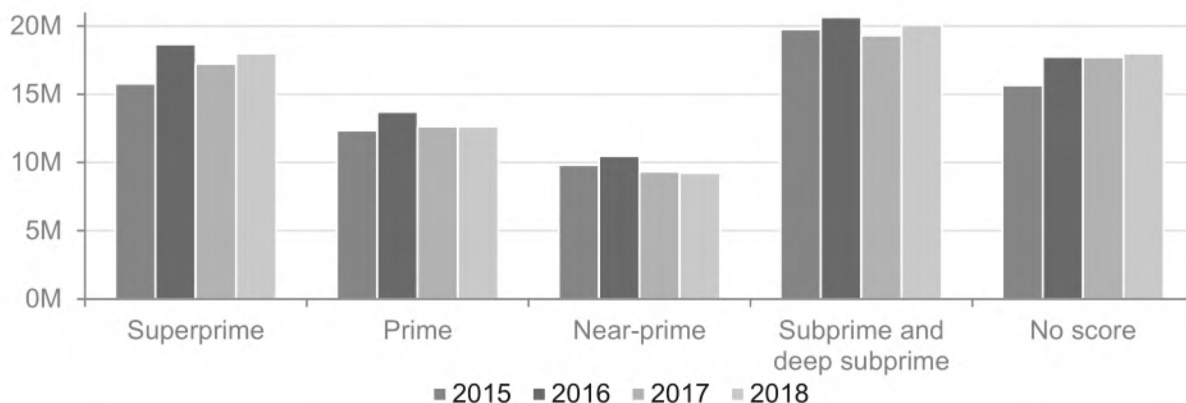
[111] For more on third-party comparison sites, see 2017 Report at page 265.

[112] In addition to an issuer's internal processes, issuers are required to consider an applicant's ability to pay the minimum monthly payment on an account prior to opening a credit card account under an open-end (not home-secured) consumer credit plan or increasing a credit line on such an account. 12 C.F.R. § 1026.51(a)(1)(i) (2019).

[113] Bd. of Govs. of the Fed. Reserve Board, *Senior Loan Officer Opinion Survey on Bank Lending Practices* (Feb. 4, 2019), *available at* https://www.federalreserve.gov/data/sloos/sloos-201901-chart-data.htm. *See also* Bureau of Consumer Fin. Prot., *Credit Tightness Index*, https://www.consumerfinance.gov/data-research/consumer-credit-trends/credit-cards/inquiry-activity/ (last visited June 13, 2019).

Figure 1 shows that general purpose application volume increased noticeably in 2016 for mass market issuers.[114] Since then, however, applications from consumers in prime, near-prime, and subprime and deep subprime tiers have more or less returned to lower 2015 levels.[115] Only application volume from consumers with no score remained higher than its 2016 level in 2018.

Figure 1: APPLICATION VOLUME FOR MASS MARKET ISSUERS, GENERAL PURPOSE (MMI)



Retail cards show a similar pattern, with applications over 2017 and 2018 dropping from their 2016 peak back to 2015 levels, as shown in Figure 2.[116] A slight majority of credit card applications in 2018 were for retail accounts both overall and in every credit score tier. Only consumers with no score submitted more general purpose than retail applications.

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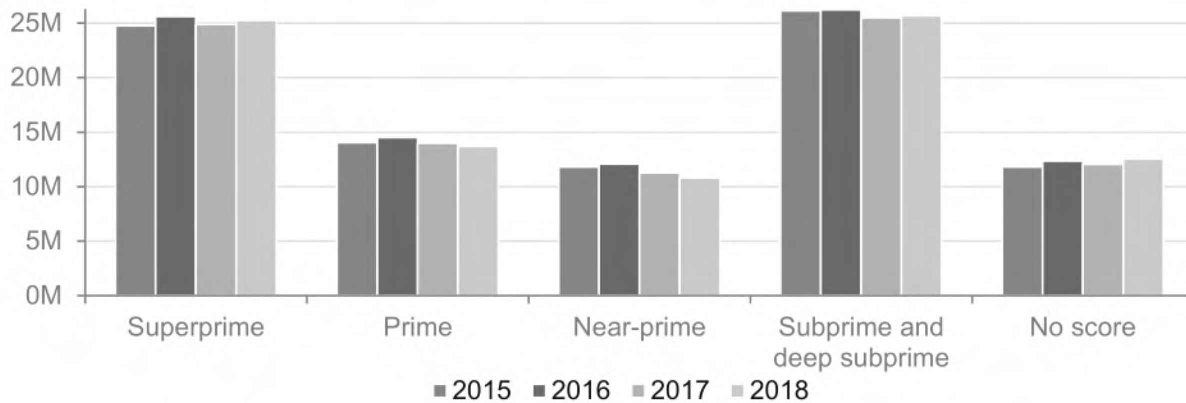
[114] "MMI" data is provided by a set of larger issuers that make up the substantial majority of the credit card market. Even so, these issuers may not be representative of other issuers.

[115] MMI data account for a smaller share of the overall market as they reach deeper into the credit spectrum. Accordingly, we have combined approval rate data in the two lowest score tiers.

[116] Sections 4.1.2 and 4.1.3 divide the market into "general purpose" and "retail," which is slightly different from the "general purpose" and "private label" categorization used elsewhere in the report. See Section 1.3 for more information on these differences.

Figure 2: APPLICATION VOLUME FOR MASS MARKET ISSUERS, RETAIL (MMI)

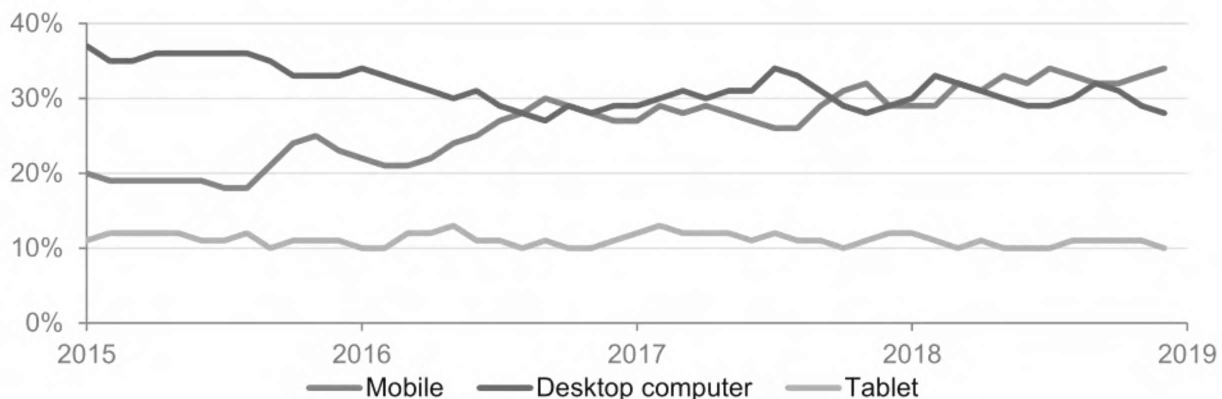


Applications can be submitted via a number of channels, though importantly there is some overlap (for example, a consumer may apply for a card digitally in response to a pre-screened offer received in the mail). In 2018, 78 percent of general purpose card applications were submitted digitally, with one-half of those coming via mobile device. In-person, mail, and pre-screen accounted, respectively, for 11 percent, 7 percent, and 8 percent of 2018 general purpose applications. In stark contrast, 62 percent of 2018 retail card applications were submitted in-person, with digital channels accounting for another 36 percent. However, digital channel volume grew 17 percent year-over-year for retail applications, driven entirely by the increase in mobile channel application volume, which was up 39 percent. Over the same period, in-person retail applications actually fell 7 percent.

DIGITAL APPLICATIONS

Digital channels account for roughly three-fourths of all applications. Although that share has not changed significantly over the last few years, Figure 3 reflects that the channel composition of digital applications has changed markedly over that period. Mintel reports that since 2014, mobile's share of all applications has grown by 14 percentage points to 34 percent, while online applications submitted via desktop computer have declined 8 percentage points to account for 28 percent of applications. Meanwhile, consumer use of tablets to apply for cards has stayed the same at around 10 percent of all applications.

Figure 3: APPLICATIONS SUBMITTED VIA DIGITAL DEVICES AS A SHARE OF APPLICATIONS (MINTEL)



MOBILE APPLICATIONS

For general purpose cards, the share of applications submitted via mobile devices has risen steadily in the last few years and in 2018 surpasses that of online applications. As shown in Figure 4, 43 percent of all general purpose mass market issuer applications are submitted by consumers using mobile devices, up from under 20 percent in 2015.[117] That overall number conceals significant variation across credit tiers, as the mobile share of superprime applications is less than one-half of those for the lowest credit tiers. In fact, the majority of general purpose card applications by consumers with subprime and deep subprime scores now come from mobile devices. The most significant growth in mobile penetration was in 2017, especially for applicants with subprime and deep subprime scores and applicants with no credit score. That year coincided with an increased emphasis on mobile applications by several of the large bank issuers in the sample.[118]

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[117] Figures 4 through 13 rely on MMI data. The Bureau's MMI survey grouped mobile phones and tablets as "mobile devices."

[118] For more information on digital servicing, see Section 2.4.

Figure 4: APPLICATIONS SUBMITTED VIA MOBILE DEVICES AS A SHARE OF APPLICATIONS, GENERAL PURPOSE (MMI)

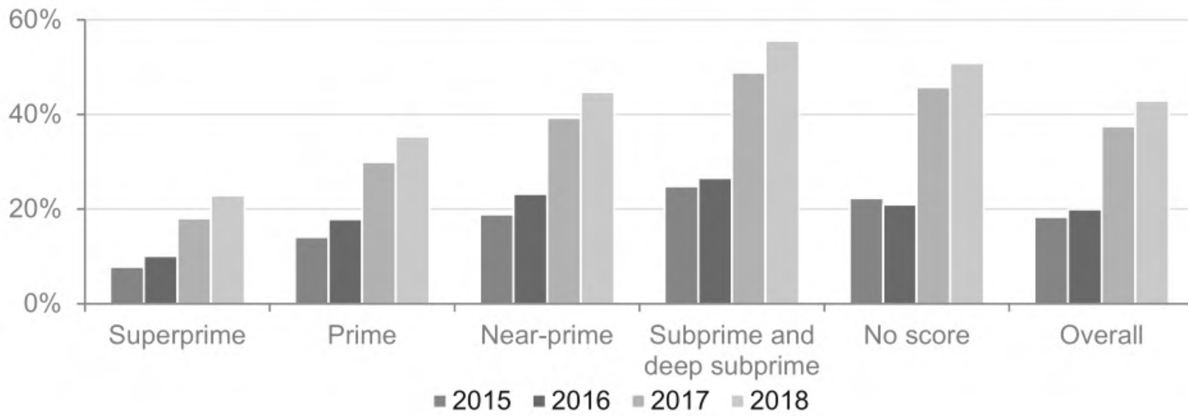
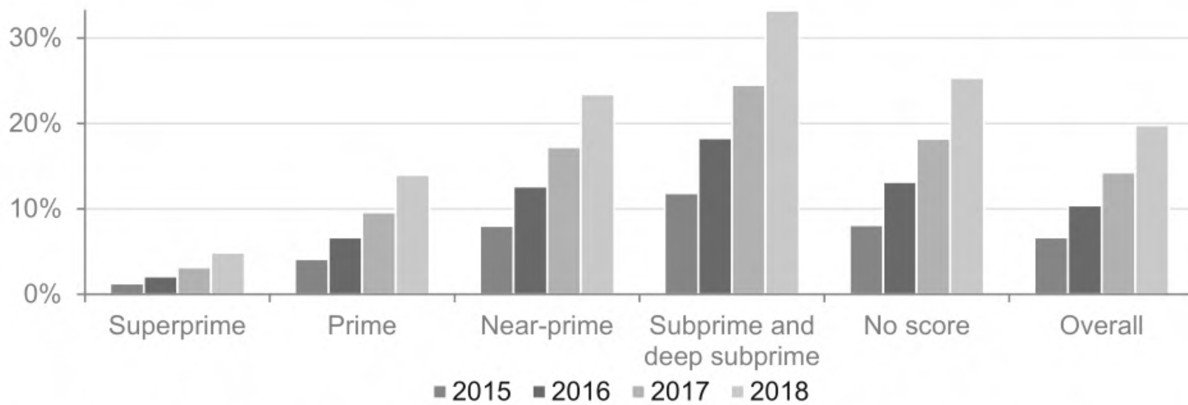


Figure 5: APPLICATIONS SUBMITTED VIA MOBILE DEVICES AS A SHARE OF APPLICATIONS, RETAIL (MMI)



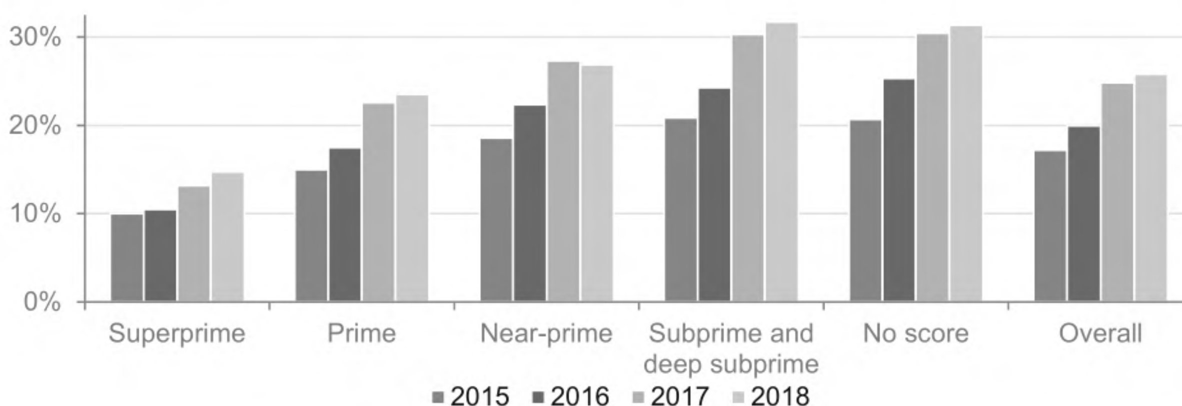
For retail cards, the trend toward mobile channels has been as significant as it has for general purpose cards. However, growth in the share of retail mobile applications has been smoother and levels of mobile penetration remain lower than for general purpose cards. As with general purpose cards, growth in mobile penetration has been most significant for consumers in lower score tiers, though no tier has yet surpassed 50 percent of applications submitted via the mobile channel. The lower penetration for retail may reflect the continued importance of the point-of-

sale channel for retail cards and the fact that some retailers may not have card application functionality for their mobile app or offer a mobile app at all.[119]

TPC SITE APPLICATIONS

TPC sites continue to account for an increasing share of general purpose applications. Figure 6 reflects that by 2018, more than one in four consumer applications for mass market general purpose cards were routed from TPC sites.[120] Consumers with lower scores were more likely to apply via a TPC site than consumers with higher scores. One explanation may be that higher score consumers receive more card offers directly, whereas consumers with lower scores are forced to seek out credit when they need it. It is also possible that consumers with lower scores are more actively seeking, via TPC sites, information that would help them find a card for which they would have a better chance of approval.

Figure 6: SHARE OF CREDIT CARD APPLICATIONS SUBMITTED VIA TPC SITES, GENERAL PURPOSE (MMI)



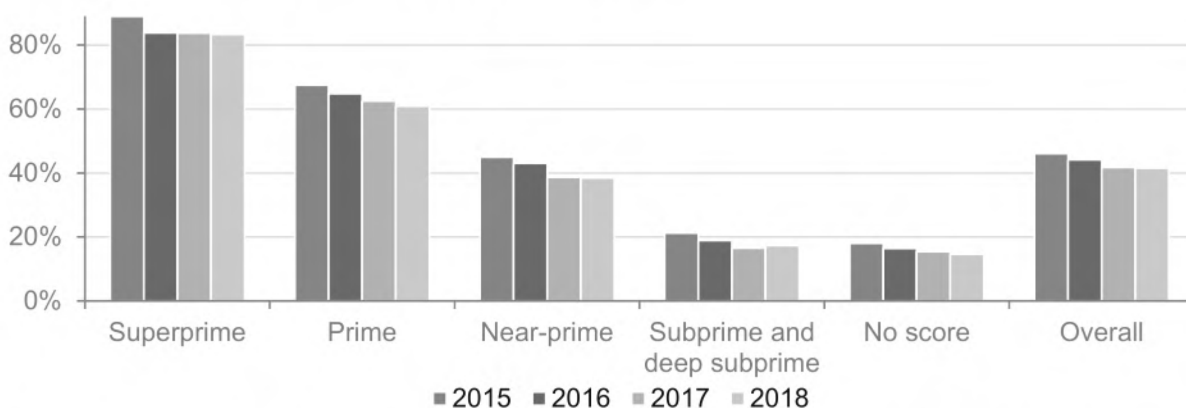
[119] Some merchants do have apps that allow for card applications from within the app, but this remains relatively rare at this point.

[120] An additional number of consumers review TPC sites before applying directly with the issuer. Those applications are not reflected in the TPC data above.

4.1.3 Approvals

Since 2015, approval rates on general purpose cards have declined.[121] As shown in Figure 7, this is true both overall and within every credit tier. For consumers with near-prime or higher credit scores, Figure 8 shows that approval rates are higher for retail cards than general purpose cards. For the lower credit tiers, however, general purpose applications have significantly higher approval rates. The same is true for applications from consumers without scores.

Figure 7: APPROVAL RATE, GENERAL PURPOSE (MMI)



For retail card applications submitted by consumers with superprime and prime scores, approval rates remained steady in 2017 and 2018. For consumers with superprime scores, for example, the approval rate for retail card applications was more than 90 percent, unchanged since 2015. For consumers with lower scores, however, retail approval rates declined slightly. Consumers with near-prime scores experienced the largest decline, dropping from 64 percent in 2016 to 58 percent in 2018.[122]

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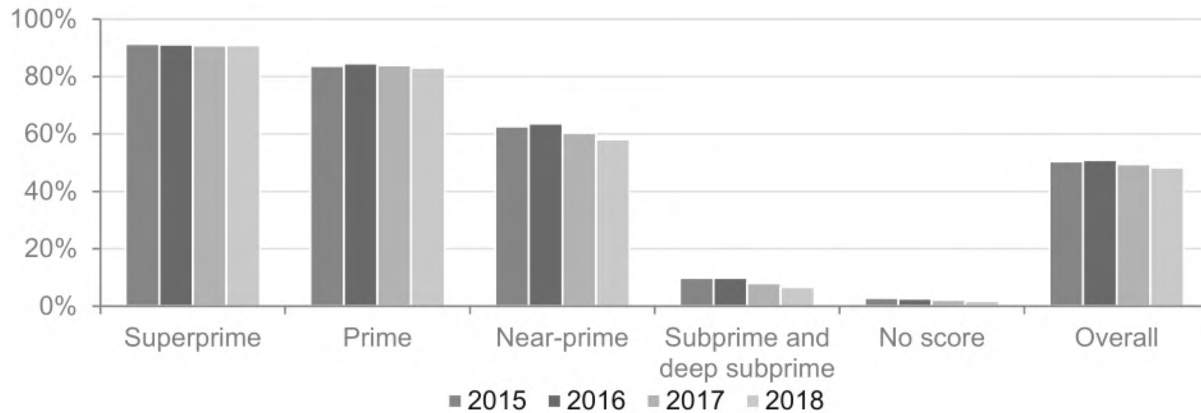
[121] This decline is consistent with the credit tightening reported by the Board. *See infra* footnote 113.

[122] This was in part the result of select retail card issuers tightening credit terms in the wake of elevated credit losses. The Wall Street Journal reported in late 2017 on surprising increases in delinquency at three issuers, including two "specializing in store-branded, private label cards." Aaron Beck, *A Surprise Bump in Bad Card Loans*, Wall St. J. (Sept. 20, 2017), *available at* https://www.wsj.com/articles/a-surprise-bump-in-bad-card-loans-1505899800?mod=article_inline.

Figure 8: APPROVAL RATE, RETAIL (MMI)



As shown in Figures 9 and 10, approval rates vary substantially by application channel. For general purpose card applicants in the higher credit tiers, the highest approval rates are for applications based on pre-screened solicitations. Mail and in-person channels also have high approval rates in these higher tiers, perhaps due to the prevalence of pre-screen offers in these channels. In the lower score tiers, mail becomes the highest approval rate channel for general purpose cards, while pre-screen becomes the highest approval rate channel for retail cards.

Interestingly, TPC site approval rates are the second highest for consumers with the lowest scores; even for near-prime applications, they have the highest approval rates of any digital channel. Applications from consumers with no score fare best when submitted in person, perhaps because of the risk of synthetic fraud in other channels.[123]

[123] Synthetic fraud is where someone illegally applies for a credit card using a "synthetic" identity constructed from pieces of legitimate consumer data, then uses that card to extract monetary value from credit card issuers. For more information, see Section 8.3.2.

Figure 9: APPROVAL RATE BY CHANNEL, GENERAL PURPOSE, 2018 (MMI)

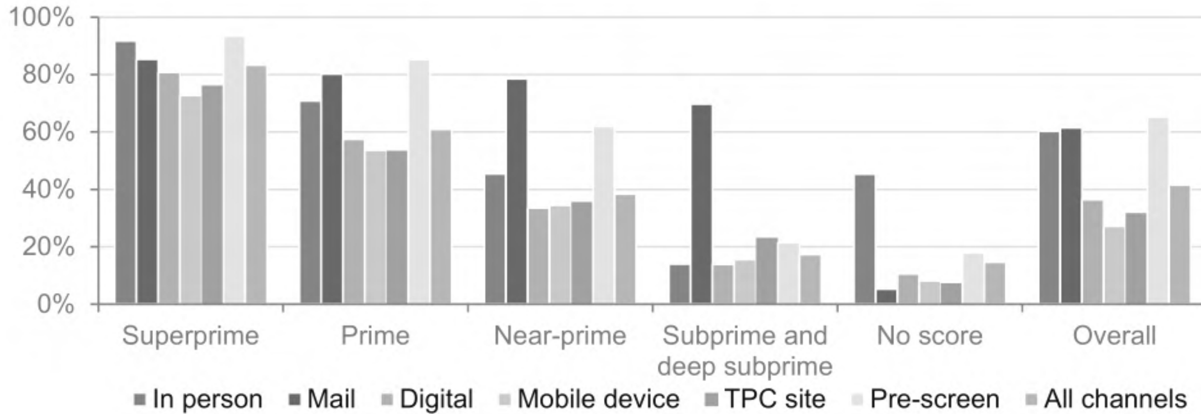
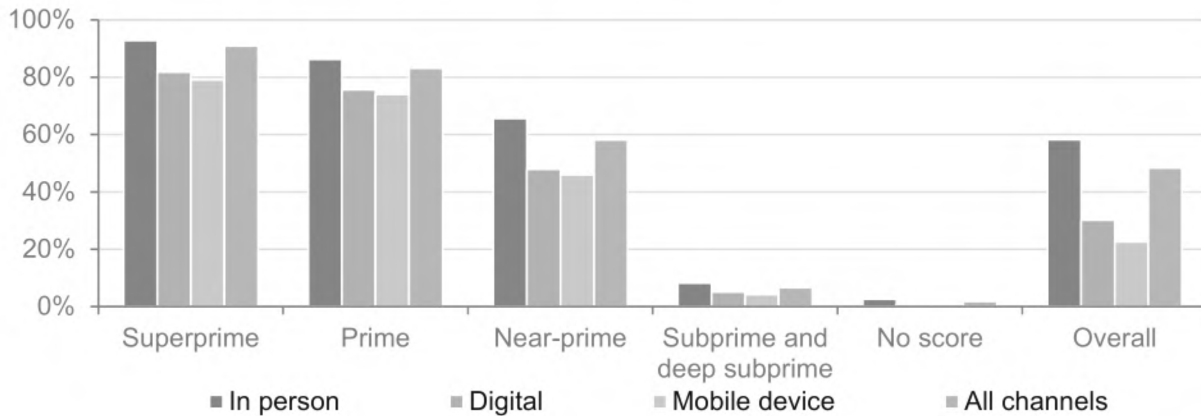


Figure 10: APPROVAL RATE BY CHANNEL, RETAIL, 2018 (MMI)[124]



MOBILE APPROVALS

As discussed above, mobile applications grew significantly for both general purpose and retail cards across all credit score tiers between 2015 and 2018. Approval rate trends associated with those applications are less uniform. As a comparison of Figures 11 and 12 shows, mobile approval rates for general purpose card applications submitted by consumers with superprime, prime and near-prime scores all decreased from 2015 to 2018. In the lower credit tiers, they

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[124] Retail card applications submitted in response to direct mail or pre-screened offers did not show sufficient volume to depict in this figure.

were steadier, and consumers with no score even saw marginal increases in each year from 2015 through 2018. On the retail side, by contrast, approval rates for applications submitted from a mobile device increased across this period for consumers in higher credit tiers and decreased for consumers in lower tiers. Overall, as Figures 9 and 10 reflect, mobile has the lowest approval rate of any channel for both card types, although it runs close to digital and sometimes TPC site approval rates for most credit tiers. Except in the subprime and deep subprime and no score tiers, mobile approval rates remain higher for retail than for general purpose card applications.

Figure 11: APPROVAL RATE FOR APPLICATIONS SUBMITTED VIA MOBILE DEVICES, GENERAL PURPOSE, 2018 (MMI)

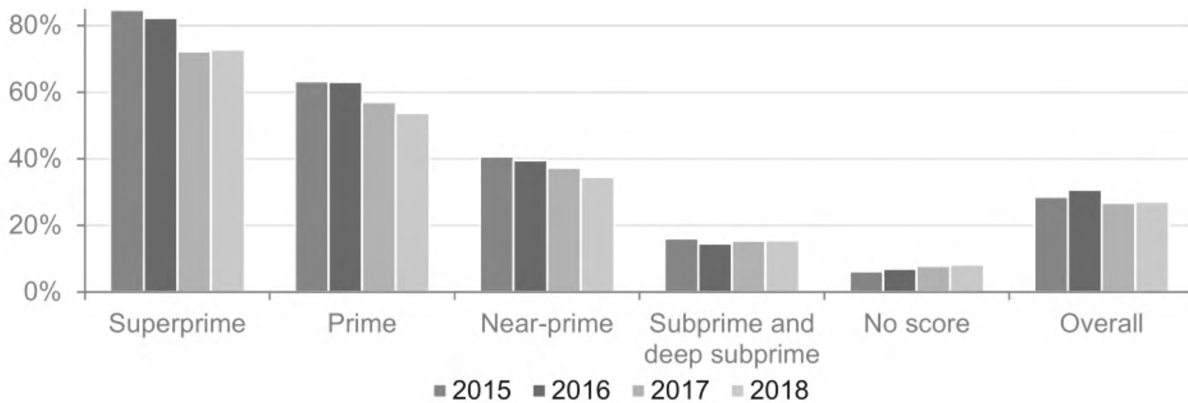
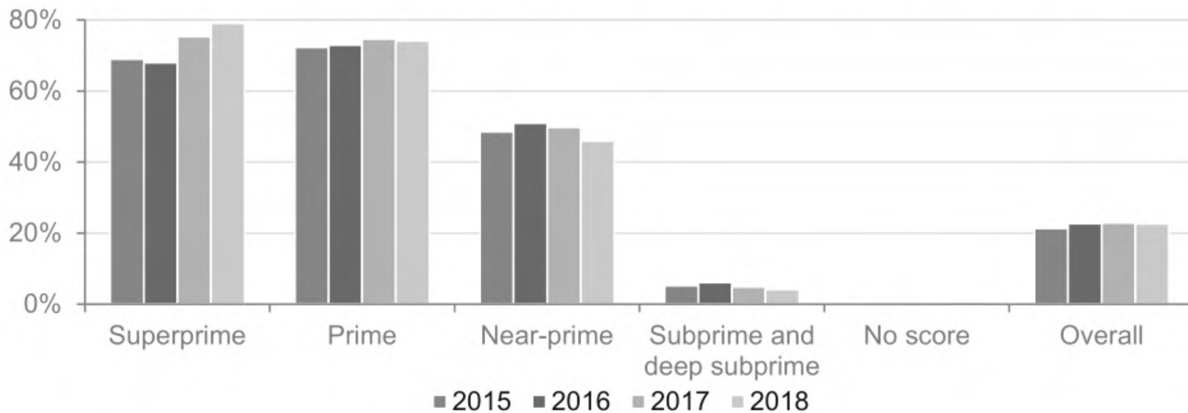


Figure 12: APPROVAL RATE FOR APPLICATIONS SUBMITTED VIA MOBILE DEVICES, RETAIL, 2018 (MMI)



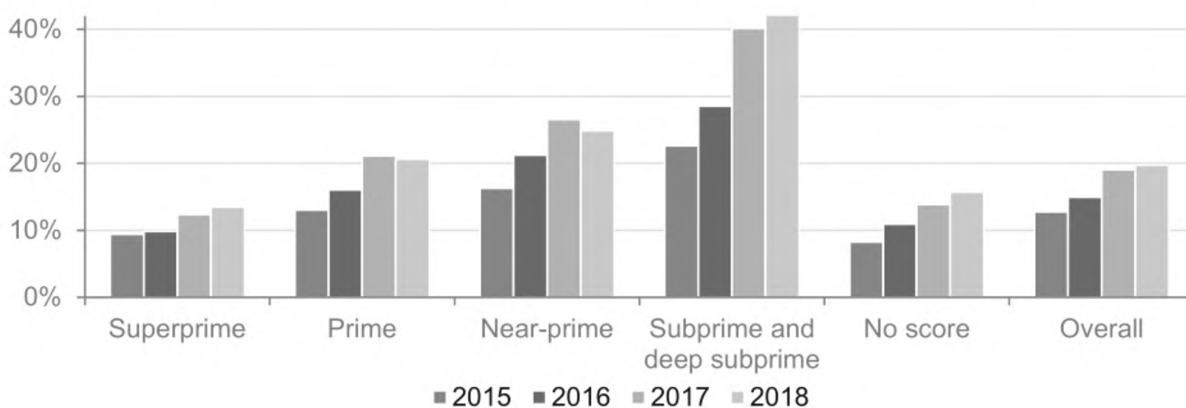
TPC SITE APPROVALS

Despite the relatively high level of TPC site channel approvals in lower tiers, the approval rate for TPC site channel approvals overall is 32 percent, which lags the general approval rate for all

applications by about 10 percent. One possible explanation may be the credit-seeking nature of the consumers who visit those sites. If TPC site innovations help consumers align more closely with cards for which they will qualify the approval rates for this channel may increase.

TPC sites directly facilitated more than 6 million mass market approvals in 2018, up 48 percent since 2015. In 2015, TPC sites were responsible for one in every eight approved applications for general purpose cards, but by 2018 that reached one in five. That approval share growth was particularly strong for the subprime and deep subprime combined credit tier; TPC sites facilitated over 40 percent of approved applications in that tier in 2017 and 2018.

Figure 13: SHARE OF CREDIT CARD APPROVALS FACILITATED BY TPC SITES, GENERAL PURPOSE (MMI)



4.1.4 Account origination

In 2018, consumers opened roughly 106 million new credit card accounts.[125] As Figure 14 shows, that is significantly lower for every credit tier than the highs seen before the recession. It is also somewhat lower than the post-recession high reached overall and by every credit tier in 2016. Only near-prime consumers have re-attained pre-recession levels of account origination, and then only in 2016. Originations remain well above levels seen during the recession for all credit

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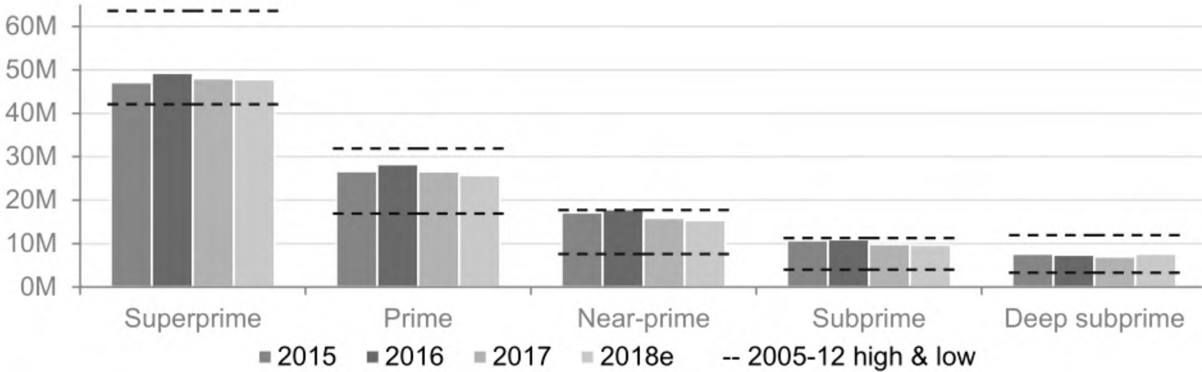
[125] The data source used in this subsection is the CCP, which offers a broader view of the market but does not allow the Bureau to identify all "retail" cards. As a result, this subsection uses "private label" as it does in other sections that reference the CCP. See Section 1.3 for more on the data sources used in this report.

tiers, however, consumers with superprime scores have stayed closer to their recession-era low than consumers in any other tier.

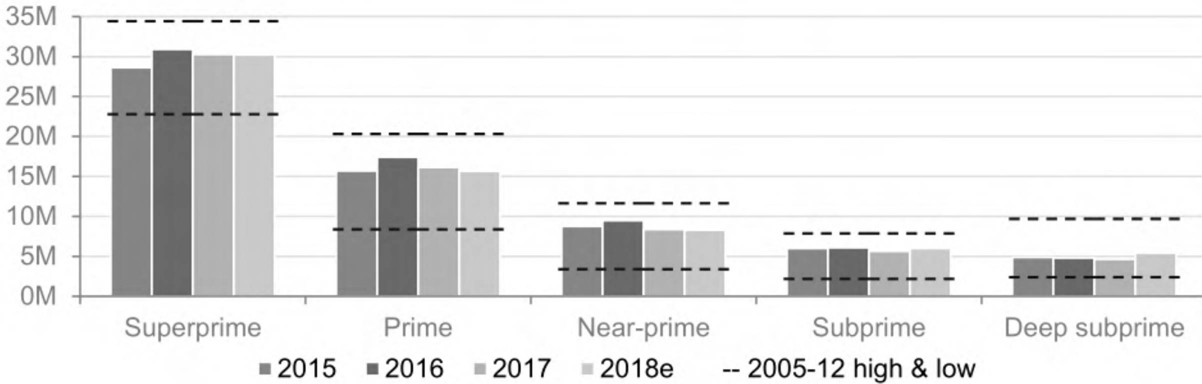
Figure 14: ANNUAL NEW ACCOUNT VOLUME (CCP)[126]



General purpose origination trends are very similar. Figure 15 shows the same slight decline in account growth since 2016 highs and most tiers show origination levels well above levels seen during the recession. Superprime consumers have moved closer to their pre-recession high level of general purpose origination than they have for originations overall. Conversely, consumers in the lower credit tiers have stayed closer to their recession low levels of general purpose origination than they have for originations overall. Roughly 65 million general purpose cards were opened in 2018. About 30 million were issued to consumers with superprime credit scores, 16 million to prime, eight million to near-prime, six million to subprime, and five million to consumers with deep subprime scores.

[126] The CCP, the data source used in this subsection, consists of credit records. Because new accounts may be reported to NCRAs with some delay, the data may not immediately reflect new accounts. As a result, an estimate is used for the final months of 2018, as denoted by the legend entry "2018e" where appropriate.

Figure 15: ANNUAL NEW ACCOUNT VOLUME, GENERAL PURPOSE (CCP)



Private label origination trends are quite different from the trends for general purpose cards and overall for all but prime cardholders. Figure 16 shows that, in lower credit tiers, originations exceed pre-recession levels, despite some fall-off since 2016. Originations to consumers with superprime scores remain below their recession levels.

Figure 16: ANNUAL NEW ACCOUNT VOLUME, PRIVATE LABEL (CCP)

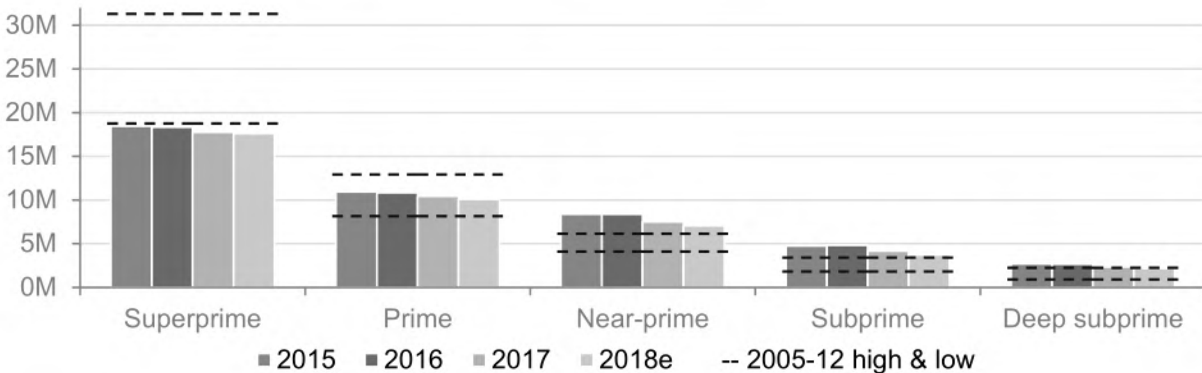
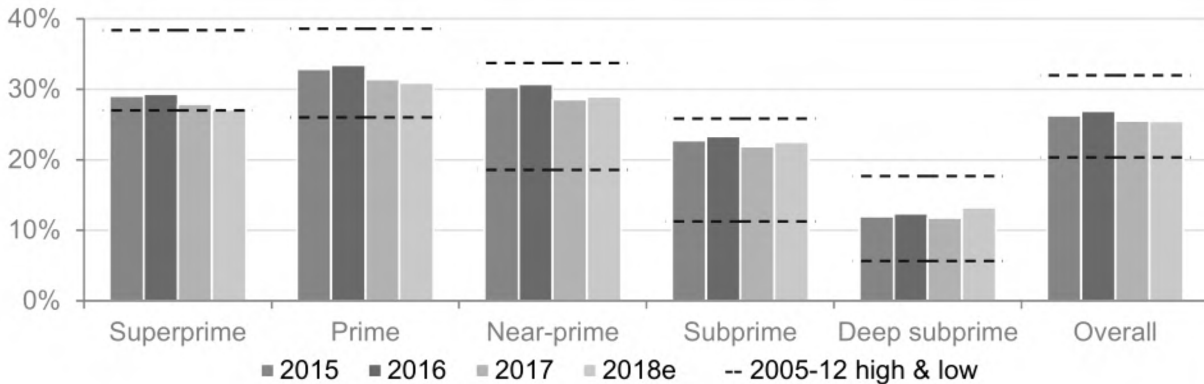


Figure 17 shows that the overall share of consumers originating cards annually has declined since 2016. In 2018, 25 percent of consumers in the CCP originated a credit card, compared to 27 percent in 2016. For superprime, this share is as low as recession levels. The share is highest for consumers with prime scores, followed by those with near-prime scores. Consumers with deep subprime scores originated at a substantially lower rate than other consumers with scores, but deep subprime is the only tier to see growth since 2016 in the share of consumers opening a new card in a given year.

Figure 17: ANNUAL SHARE OF CONSUMERS WITH A CREDIT RECORD ORIGINATING A CREDIT CARD (CCP)[127]

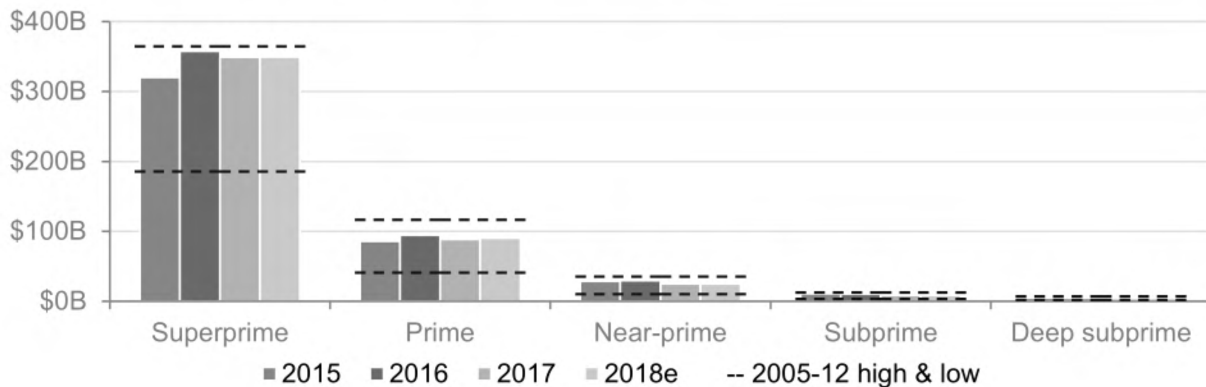


4.1.5 New account credit line

Total credit line on new accounts, both overall and within every credit tier, is down from its 2016 high point. After five years of growth from its recession low in 2010, total new line neared $500 billion in 2016, which was still below its 2007 high of $536 billion. It has since leveled off at roughly $475 billion in 2017 and 2018. Although all credit tiers have seen growth in new line since 2010, Figure 18 reflects that the total remains below pre-recession highs in all tiers.

[127] Methodology has been refined in this Report to better account for cardholders with a record but no score and become scored or cardholders that move between score tiers during the year. Results from the Bureau's 2017 Report stated that the share of subprime consumers originating a card exceeded superprime from 2014 to 2016, in a reversal of historic trends. Under the new methodology, the Bureau notes no such reversal.

Figure 18: ANNUAL INITIAL CREDIT LINE ORIGINATED (CCP)

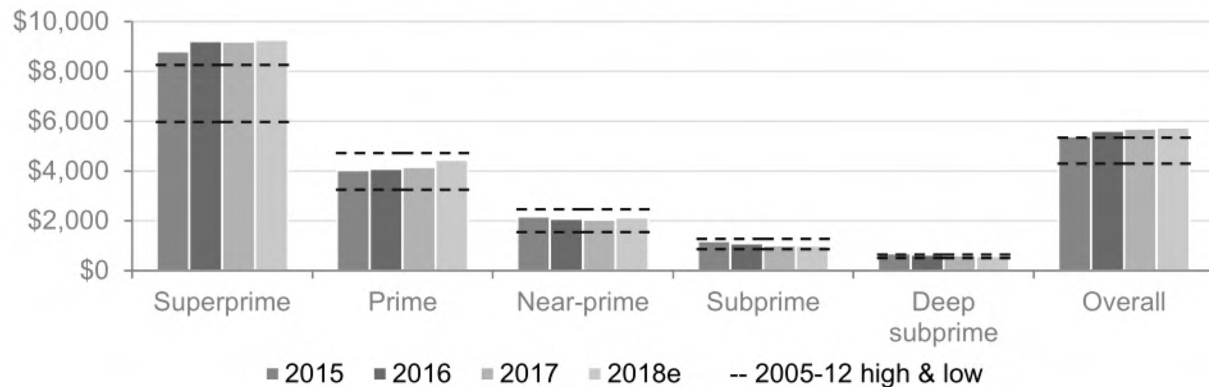


GENERAL PURPOSE

New general purpose account line represented just under four-fifths of all new line in 2018. Unsurprisingly, therefore, it shows similar trends to overall new line, hitting a post-recession high in 2016, then falling back marginally, both overall and across every credit tier. The majority of the growth in initial general purpose line since its low point during the recession has been in superprime accounts. Total new general purpose credit account line reached its highest level in 2016, surpassing its pre-recession high, but has since slipped back below that level. So far, superprime is the only tier to reach pre-recession levels of new line.

In overall terms, *average* credit line on new general purpose accounts has remained relatively steady over the last few years. That overall trend, however, masks a number of differences across credit tiers, as reflected in Figure 19. Consumers with subprime and deep subprime scores have seen average new line per general purpose account decline every year since 2015. The average new general purpose card issued to a deep subprime consumer had an initial line of $576 in 2018, down 17 percent since 2015. Consumers with prime and superprime scores have experienced the opposite trend. Initial line for prime cardholders, for example, was $4,440 in 2018, up 10 percent since 2015. Superprime consumers in 2018 had average initial general purpose lines above pre-recession levels. That has driven the overall average above pre-recession levels as well. Deep subprime is the only other tier to have reached pre-recession levels of average new general purpose line, a result that has not been sustained over the last two years.

Figure 19: AVERAGE CREDIT LINE ON NEW ACCOUNTS, GENERAL PURPOSE (CCP)

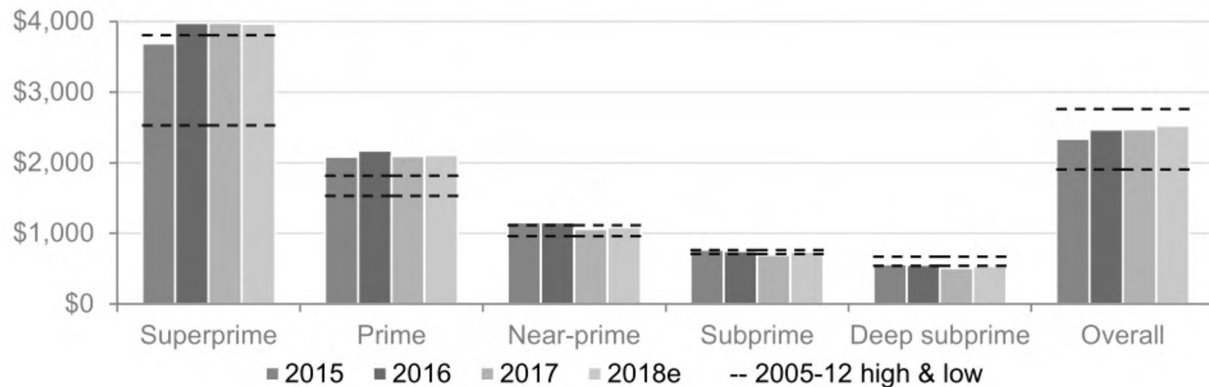


PRIVATE LABEL

Once again, private label accounts show a different picture. Their highest annual level of new line came in 2005, well before the recession. Their post-recession high came in 2016, but at a level significantly below that 2005 high. That difference was mostly the result of a decline in aggregate line issued to superprime cardholders. The prime, near-prime, and subprime tiers recovered pre-recession levels of aggregate line relatively rapidly after the recession, and remain above their pre-recession levels even after some fall-off in total line levels since 2016.

As Figure 20 shows, average new line on private label cards has continued to increase slightly and reached $2,525 in 2018. This increase reflects compositional change because average line in each credit tier has been flat or declining since 2016. In contrast to general purpose line averages, overall average for new private label line remained below pre-recession levels. Average line has been above pre-recession levels in both the subprime and prime tiers in 2017 and 2018.

Figure 20: AVERAGE CREDIT LINE ON NEW ACCOUNTS, PRIVATE LABEL (CCP)



4.2 Existing accounts

Total credit line across all consumer credit cards surpassed $4 trillion in 2017 for the first time since the onset of the recession. In 2018, it reached $4.3 trillion, which was almost equal to its pre-recession high. Despite this overall picture of increasing credit availability, most of that is accounted for by *unused* line on accounts held by consumers with superprime scores. There are indications that issuers are becoming more active in altering line allocations to control risk in lower credit tiers.[128] The present subsection examines this issue in more detail by looking at a range of account-level and cardholder-level metrics on existing accounts for each score tier and card type.

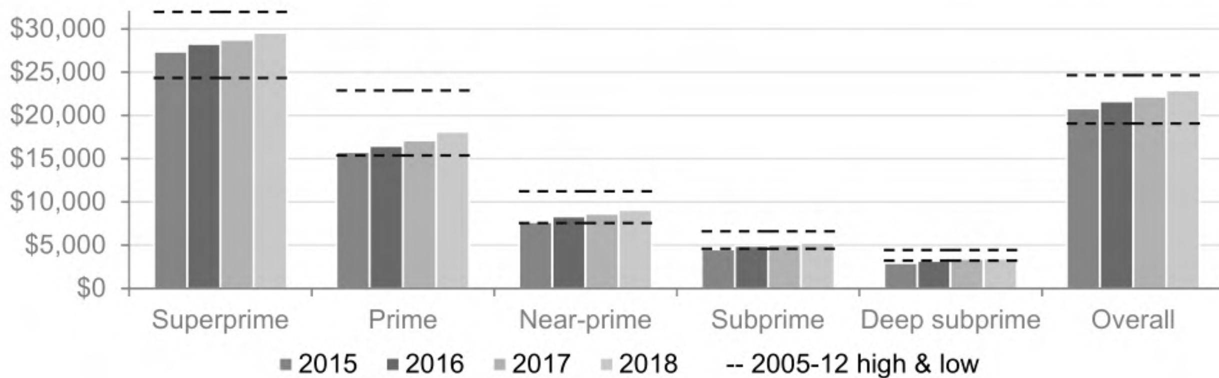
4.2.1 Average credit line

In 2018, after a series of steady increases, average general purpose credit line *per account* exceeded its pre-recession high to reach more than $8,200. These increases were almost entirely driven by increases on superprime accounts. Despite recent growth across all tiers, no other credit tier has an average line exceeding its pre-recession level. In fact, other credit tiers recorded average line lows in 2014 and 2015, and have only recently exceeded the levels reached

[128] Unused line on superprime accounts totaled more than $3 trillion in 2018. Almost all of that was on general purpose cards.

in the immediate aftermath of the recession. Average general purpose line *per cardholder* tells a broadly similar story of recent growth, but as Figure 21 shows, this metric remains below pre-recession high levels, both overall and for every credit tier.

Figure 21: AVERAGE CREDIT LINE PER CARDHOLDER, GENERAL PURPOSE (CCP)



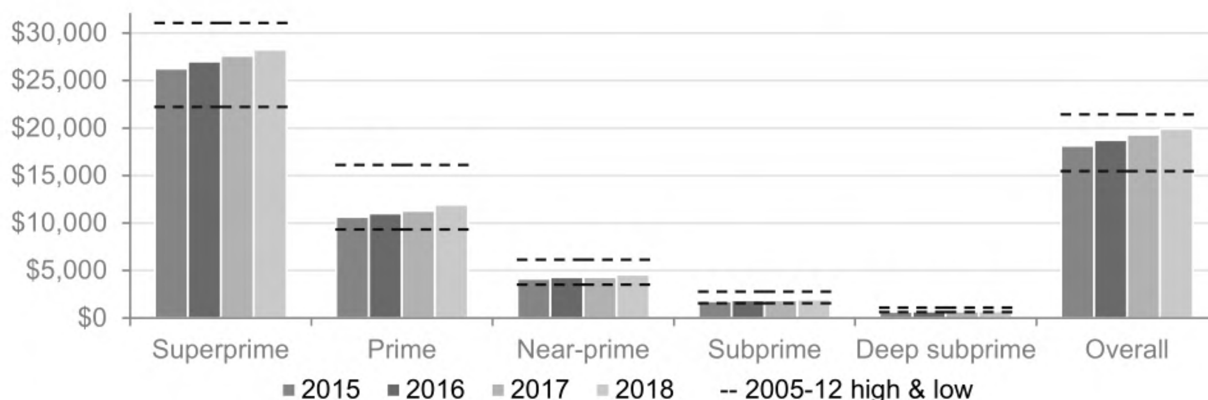
The private label picture is very different. At the account level, average line rebounded very quickly post-recession and as of 2018 significantly exceeds pre-recession levels both overall and for most credit tiers. The average private label card has one-third more line now than in 2008. Accounts held by consumers in lower credit tiers show slower growth over the same period, but no tier remains below its pre-recession high. At the cardholder level, growth has been more marked. Average private label line hit a post-recession low in 2011, but has since rebounded in every tier, and overall, by 59 percent or more.

4.2.2 Utilization

As average line per cardholder has increased, so has average *unused* line per cardholder. That is true for the market overall, as well as for general purpose and private label viewed separately. Superprime consumers account for almost all unused line. In 2018, the average cardholder with a superprime score had over $32,000 in credit line across both card types, but more than

$28,000 of that was unused.[129] Average unused line is significantly lower for other credit tiers, as Figure 22 reflects, but has been increasing in recent years. Since 2015, average unused line per cardholder has risen between 8 percent and 12 percent for cardholders in score tiers below superprime. Even so, it remains significantly below pre-recession high levels in every credit tier, and in the lowest two tiers it remains relatively close to post-recession lows.

Figure 22: AVERAGE UNUSED CREDIT LINE PER CARDHOLDER (CCP)



Despite recent increases in average cardholder line and unused line, 2018 general purpose card utilization still looks very different from pre-recession utilization. Figure 23 shows the distribution of general purpose card utilization rates for cardholders in each credit tier in 2007 and in 2018. Utilization at the *cardholder* level is on the y-axis, and the share of cardholders in a given tier is shown on the x-axis. In every credit tier, utilization rates have increased. For example, median utilization was 47 percent for prime cardholders in 2018 but only 35 percent in 2007. In fact, 2018's near-prime utilization distribution is quite close to the distribution for subprime consumers in 2007. In terms of utilization alone, therefore, today's near-prime cardholders look more like pre-recession subprime cardholders.

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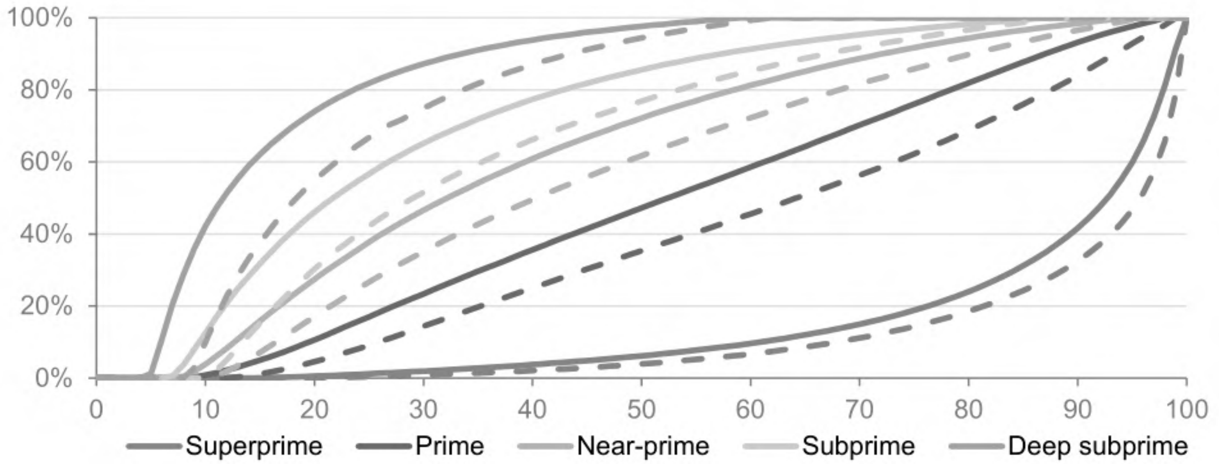
[129] That low rate of usage is part of what contributes to a superprime score. The same balance held on lower line accounts issued to consumers with lower scores would result in a different utilization rate—and different credit score implications.

Figure 23: DISTRIBUTION OF UTILIZATION RATE BY CREDIT SCORE TIER IN 2007 (DASHED) AND 2018 (SOLID), GENERAL PURPOSE (CCP)



To explore utilization further, Figure 24 compares median general purpose cardholder utilization across all of their general purpose credit cards for the various credit tiers for 2007, 2010, and 2018, and Figure 24 shows increases in median cardholder utilization across tiers over time, especially for consumers in lower tiers. Median utilization rates are noticeably higher in 2018 than in 2010, immediately following the recession for consumers in all credit tiers except prime.

Figure 24: MEDIAN CARDHOLDER UTILIZATION BY CREDIT SCORE TIER, GENERAL PURPOSE (CCP)

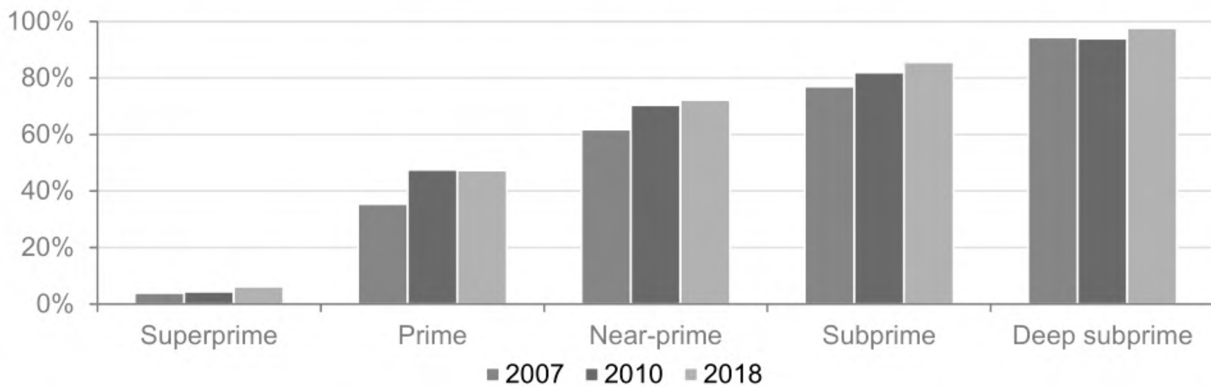
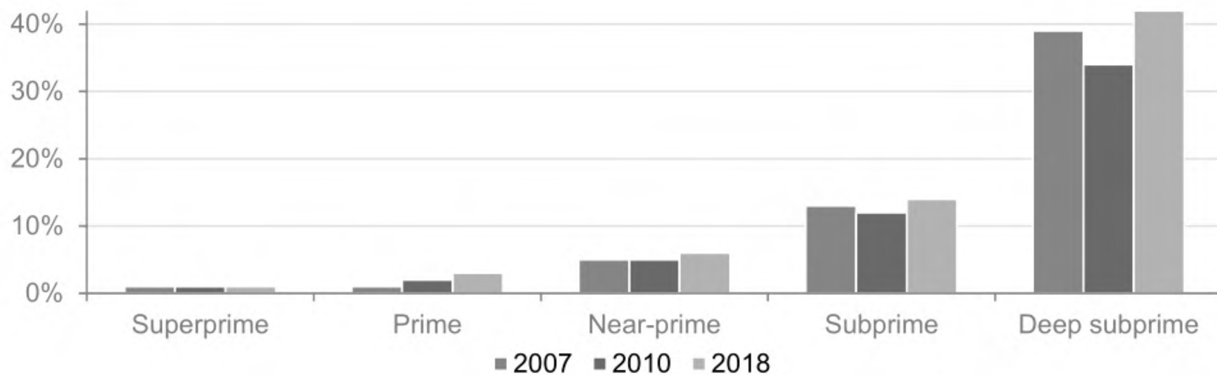


Figure 25 shows the share of consumers with 100 percent utilization across all general purpose credit cards for these same years. As shown, a higher proportion of cardholders were "maxed out" in the different credit tiers in 2018 than before or during the recession. About 42 percent of

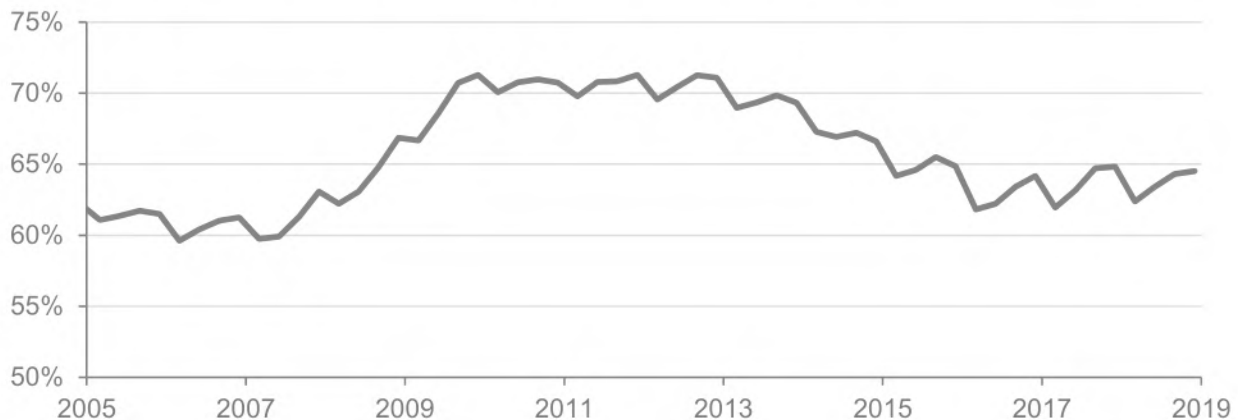
deep subprime consumers have reached 100 percent utilization. Cardholders in this situation will find it difficult to make credit card transactions.

Figure 25: SHARE OF CARDHOLDERS WITH 100 PERCENT UTILIZATION BY CREDIT SCORE TIER, GENERAL PURPOSE (CCP)



Finally, Figure 26 tracks the share of consumers with below-prime scores that have used 90 percent or more of their general purpose credit line. It shows a slight increase since 2016, reaching around 65 percent by the end of 2018. Even so, that remains below the levels in the wake of the recession. In fact, the share exceeded 70 percent from late 2009 through the end of 2012. Before the recession, however, this metric fell to as low as 60 percent in 2006. Rising balances suggest that the improvement in this metric from 2012 is the result of increases in credit line offered to cardholders with below-prime scores.

Figure 26: QUARTERLY SHARE OF BELOW-PRIME CARDHOLDERS WITH AT LEAST 90 PERCENT UTILIZATION ACROSS ALL CARDS, GENERAL PURPOSE (CCP)



4.2.3 Credit line changes

Credit lines on existing accounts are not static. Issuers can increase or decrease them without consumer consent. Credit line increases are somewhat restricted by the CARD Act's ability-to-pay requirements, but issuers confront a range of more substantial regulatory restrictions on repricing existing balances.[130] As a result, the Bureau's 2017 Report reviewed evidence that suggested that issuers might be using line management, in place of repricing balances, as a means of responding to revealed risk post-origination.[131] In that respect, the 2017 Report looked at metrics to assess whether issuers were extending smaller credit lines to borrowers at origination and then increasing those lines over time as borrowers demonstrated good payment behavior.[132]

As shown in Figure 27 and 28, quarterly CLI incidence in 2018 was around 4 percent for both card types. That is closer to a historic norm for private label but represents a significant drop from pre-recession levels for general purpose. CLDs spiked in the recession—very significantly for private label cards—but are now stable at under 1 percent for general purpose and around 2 percent for private label.[133]

For both general purpose and private label, average quarterly CLI incidence remains relatively high for consumers with prime, near-prime, and subprime scores. Recent declines in CLI incidence for these tiers are notable for private label, in particular, although for general purpose cards near-prime and subprime tiers have also seen some fall-off since 2016. With those recent

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[130] The ability-to-pay rules require that issuers consider an applicant's ability to pay the minimum monthly payment on an account prior to opening a credit card account under an open-end (not home-secured) consumer credit plan or increasing a credit line on such an account. 12 C.F.R. § 1026.51(a)(1)(i). *See also* 15 U.S.C. § 1665e (2012). Repricing of existing balance is only allowed under a set of relatively narrow circumstances. *See* 12 C.F.R. § 1026.55(b).

[131] In response to the Bureau's Request for Information, a commentator claimed that issuers have adopted a strategy of extending smaller initial credit lines which can rise over time as the borrower demonstrates good payment behavior. The comment noted that this practice allowed issuers to expand access to credit while managing risk. *See* American Bankers Association (ABA) Comment Letter, at 4.

[132] 2017 Report, *supra* note 5, at 158-162.

[133] *See id*. at 154.

changes, only subprime private label cardholders showed a CLI incidence that exceeds pre-recession levels in 2018.

Figure 27: AVERAGE QUARTERLY CREDIT LINE INCREASE INCIDENCE, GENERAL PURPOSE (CCP)

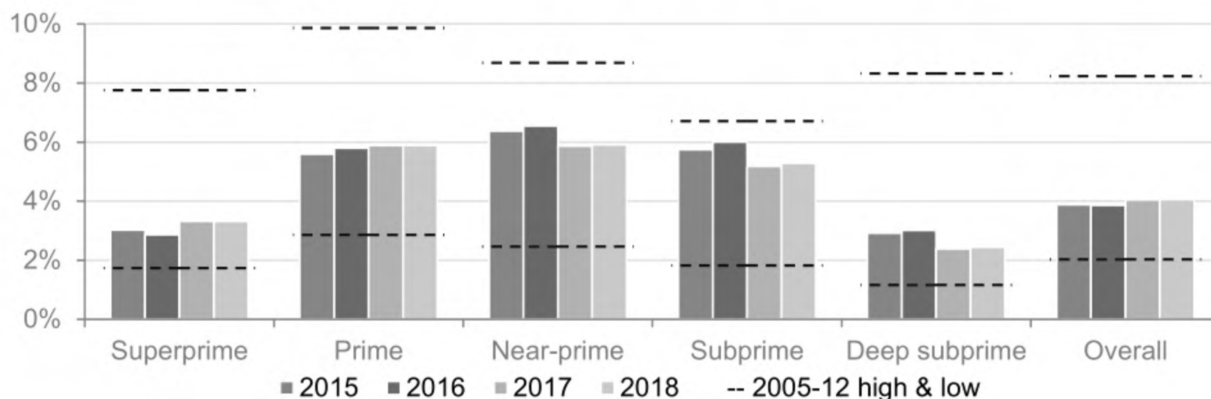
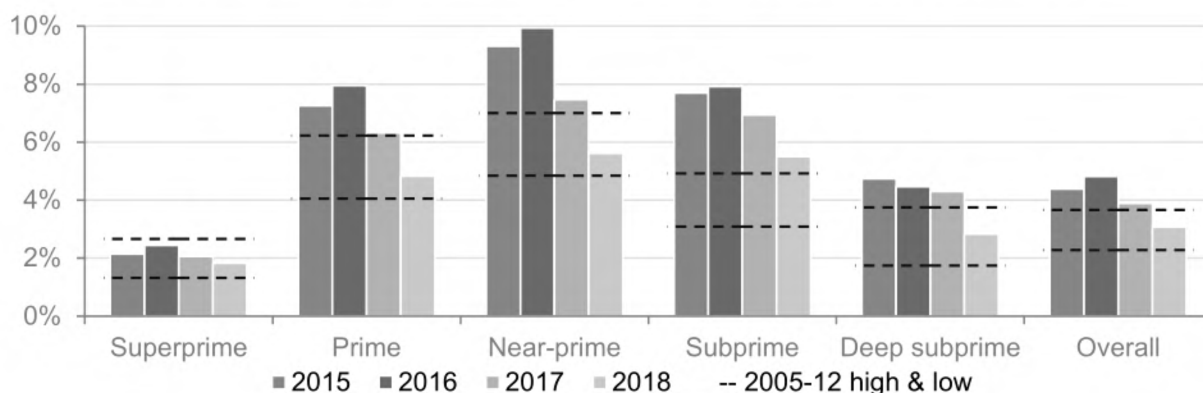


Figure 28: AVERAGE QUARTERLY CREDIT LINE INCREASE INCIDENCE, PRIVATE LABEL (CCP)



Recent trends in median credit line change amounts suggest that even as issuers may be using line changes more sparingly than in the pre-CARD Act era, the size of median CLIs have been increasing in recent years and in 2018 exceeded pre-recession highs overall and for the superprime tier. Figure 29 shows that for general purpose accounts, this increase resulted from greater median increases for cardholders with higher scores, although median CLIs for prime cardholders are now at $1,500, the same median size achieved before the recession. Consumers with lower scores actually saw a drop in median CLI over the last few years. In fact, in the lowest-score tiers, the median fell to the lows reached in 2010. This suggests general purpose

card issuers may be reluctant to extend additional credit line to cardholders with lower scores in the current economic environment.

Figure 29: MEDIAN CREDIT LINE INCREASE AMOUNT, GENERAL PURPOSE (CCP)

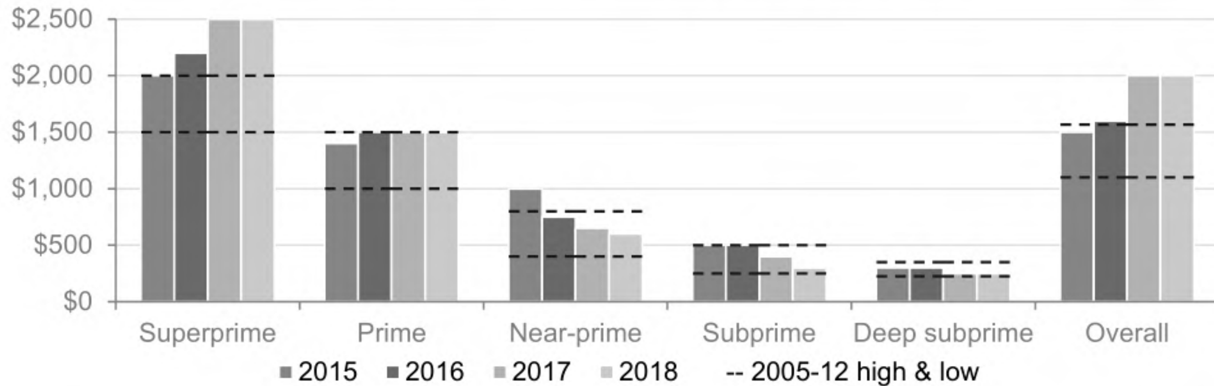
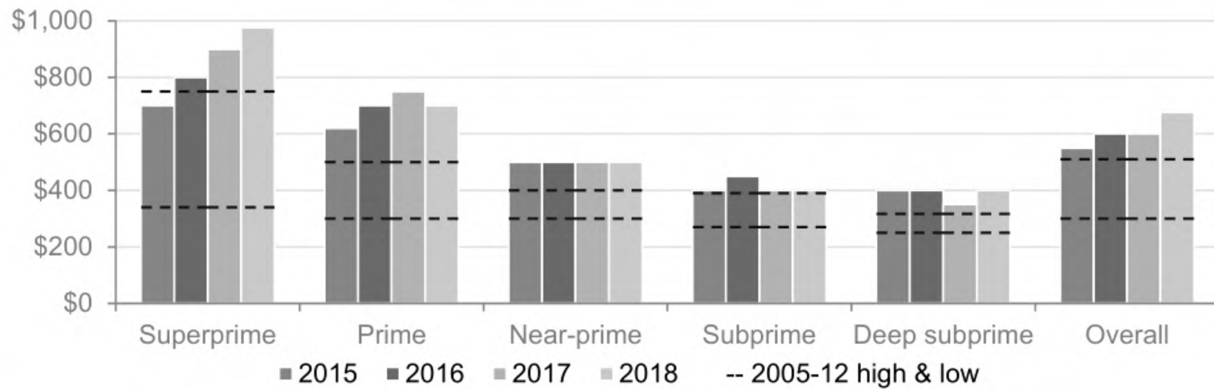


Figure 30 shows median CLI amounts have increased for private label cards, despite the lower incidence of CLIs in this period. Again, this masks tier differences. Superprime consumers were the only tier to show any significant increase in median CLI between 2017 and 2018. Median CLI amounts remained flat or fell slightly in other tiers. In every tier, however, the median CLI amount remains at or above pre-recession highs. Along with higher lines on new private label accounts, larger CLIs have contributed to the strong rebound in credit availability for private label cardholders of all credit score tiers.[134]

[134] *See* Section 4.2.1.

Figure 30: MEDIAN CREDIT LINE INCREASE AMOUNT, PRIVATE LABEL (CCP)



The CLD record is more uniform and stable, with the notable exception that CLD incidence has increased markedly for lower credit tiers in private label.[135] By 2018, CLD incidence for deep subprime private label accounts was more than 9 percent, the highest level recorded since the 2005 start of the data period used in this report, and significantly higher than the less than 2 percent recorded for deep subprime general purpose accounts. Subprime private label accounts have also seen run-ups in CLD incidence in the last few years and in 2018 had an incidence rate of around 5 percent, as compared to less than 2 percent for general purpose accounts. Similarly, CLI incidence for private label accounts has fallen for cardholders in all tiers, but particularly for cardholders in below-superprime tiers. This evidence suggests that private label card issuers may be reacting to heightened risk in those portfolios by limiting their exposure.

[135] Graphical depictions of CLD trends by tier are in Appendix A at Figures 4 through 7.

5. Practices of credit card issuers

This section describes trends and developments in issuer practices related to three common credit card features: credit card rewards, balance transfers, and cash advances. For each feature, it discusses its take-up or prevalence in the market, costs associated with providing or utilizing the feature, and any changes issuers or third parties have made in provisioning or supporting consumers who choose to use them.

5.1 Rewards

Credit cards offering points, miles, cash back, or exclusive experiences remain popular with cardholders. This section reviews recent rewards trends.

5.1.1 Prevalence

The share of credit card spending accounted for by rewards cards has continued to increase over the last few years. That is true both overall and for each of the main credit tiers, with growth particularly notable for consumers with lower credit scores. By the end of 2018, even consumers with deep subprime scores put more than one-half of their credit card purchase volume on rewards cards, and consumers with near-prime scores put more than two-thirds of their spending on rewards cards.[136] Trends in reward-card purchase volume as a share of total spending are shown in Figure 1.

[136] In an interesting survey result, J.D. Power reported in 2018 that consumers who self-report as "fully understanding how to earn and redeem points" have an average spend that is nearly one-third higher than the average spend of consumers who self-report as not fully understanding their rewards programs. *See* J.D. Power Satisfaction Study, *supra* note 1 (reporting that overall about 64 percent of credit cardholders say that they fully understand the rewards available to them).

While rewards cards continue to account for a larger share of spending, their share of originations is falling. Figure 2 shows the share of originations accounted for by rewards cards over the last few years. For all credit score tiers and overall, that share declined in 2018. In fact, by the end of 2018, rewards originations for every credit tier were below their share of total originations at the end of 2015, in some cases quite markedly so. As explored in the next subsection, the popularity of rewards and other factors have driven rewards costs higher. The resulting cost pressure, rather than any loss of demand, may account for the results in Figure 2.

Figure 1: SHARE OF PURCHASE VOLUME ON A REWARDS CARD, GENERAL PURPOSE (Y-14+)

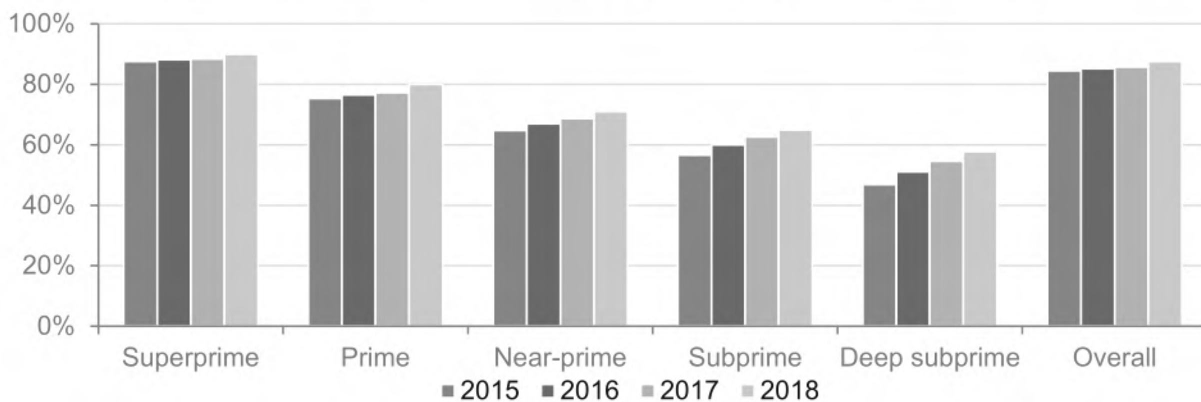
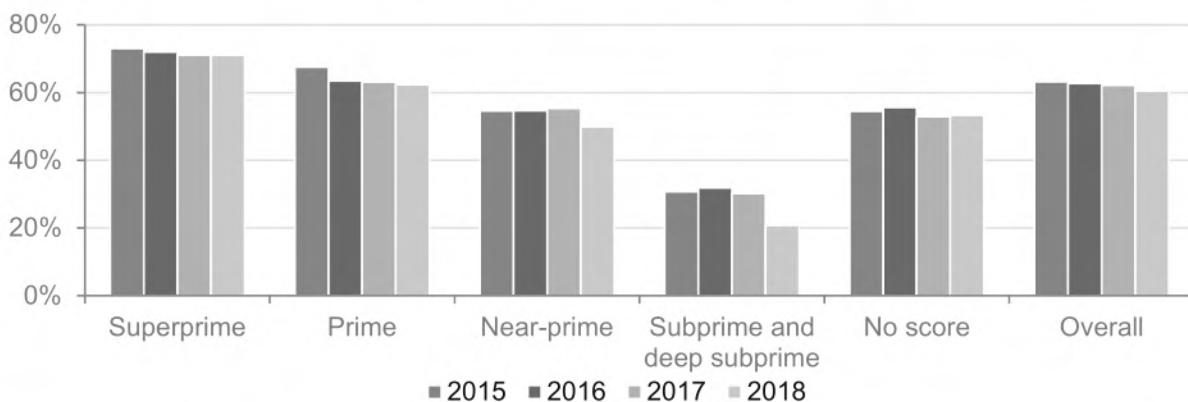


Figure 2: SHARE OF NEW ACCOUNTS WITH REWARDS, GENERAL PURPOSE (Y-14)



Given the predominance of cards at the higher end of the credit spectrum, rewards cards still account for over 60 percent of all originations. That result roughly aligns with survey findings

that show rewards as the predominant factor in choosing a card.[137] Despite a relatively low share of new accounts with rewards for general purpose cardholders with subprime and deep subprime scores, these cardholders still put more than one-half of their credit card spending on rewards cards, as shown in Figure 1.

Cardholders continue to prefer cash rewards, despite the sometimes-higher redemption value of other types of rewards like points or miles, possibly due to the simplicity and flexibility of cash rewards programs.[138] More than one-quarter of all originations in the Y-14 sample for 2018 were for cashback rewards cards. Although the share of originations accounted for by these cards has declined slightly over the last few years, no other rewards category accounted for a larger share of originations. Cards that earned miles continued to account for less than 10 percent of all originations in 2018.

5.1.2 Cost

The cost of offering rewards has risen over the past several years as issuers compete for cardholders with richer rewards offers—and cardholders take greater advantage of the rewards that are offered. Since the first quarter of 2015, the data available to the Bureau show a roughly 84 percent increase in overall rewards expense.[139] Given the increase in the overall number of

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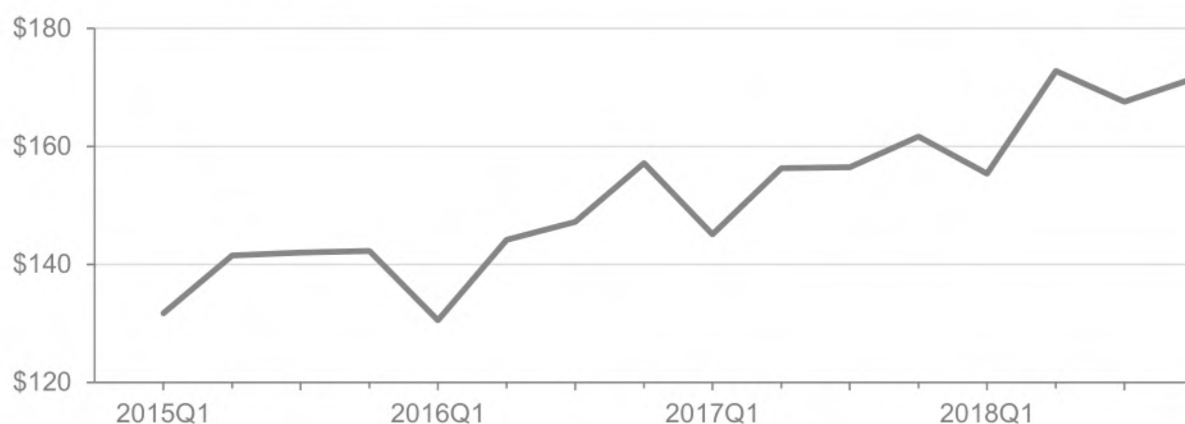
[137] One recent survey reported that "[r]ewards continue to be the number one factor for why consumers use one credit card over another. This was true again this year, with 79 percent claiming it influenced their choice…" TSYS, *2018 TSYS U.S. Consumer Payment Study*, at 23 (Apr. 2019), http://tsys.com/Assets/TSYS/downloads/rs_2018-us-consumer-payment-study.pdf. Similarly, J.D. Power's 2018 survey found that 47 percent of credit card customers who switched to a new card within the past 12 months did so for a better rewards program. *See* J.D. Power Satisfaction Study, *supra* note 1. In its 2013 Report, the Bureau references a 2011 Mercator Customer Monitor Survey showing rewards were the number one reason to apply for a selected card at that time as well. 2013 Report, *supra* note 5, at 82 n.94.

[138] *See* Claire Tsosie, *Cash Back vs. Travel: How to Choose Credit Card Rewards*, Nerdwallet: Blog (Nov. 3, 2017), *available at* https://www.nerdwallet.com/blog/credit-cards/cash-back-vs-travel-how-to-choose-your-credit-card-rewards/.

[139] "Rewards expense" refers to "Total Non-Interest Expense – Rewards/Rebates Expense," defined as "rewards/rebates expenses associated with reward and rebate programs for credit cards." Fed. Reserve System,

rewards accounts across the same period, the average rewards expense per account has not risen as fast, but it has still seen significant increase. In 2018, each rewards card cost issuers an average of $167 in rewards-related expense, up from $139 in 2015. This increase has been driven, in part, by an increased prevalence of high-cost high-rewards cards—with high sign-on bonuses—in the affluent market segment.[140] Intense rewards cards competition has pushed up not only expenses but issuers' reserved liabilities for rewards benefits accrued but not redeemed by cardholders.[141]

Figure 3: AVERAGE ISSUER REWARDS EXPENSE PER REWARDS ACCOUNT PER YEAR, GENERAL PURPOSE (Y-14,Y-14P)



One way issuers have sought to reduce costs on rewards products is by reducing the redemption value, placing restrictions on rewards earning, or eliminating ancillary benefits. Issuers have also sought to restructure rewards programs in ways that may reduce the value of the cards to some users, such as lowering sign-on bonuses or limiting eligibility for bonuses to some

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Instructions for the Capital Assessments and Stress Testing Information Collection, at 201-02, https://www.federalreserve.gov/reportforms/forms/FR_Y-14M20180331_f.zip (last modified Mar. 20, 2018).

[140] *See, e.g.*, Andriotis & Glazer, *supra* note 92.

[141] "As of the third quarter, JPMorgan's credit-card holders had accrued $5.8 billion in rewards they had not yet redeemed, up 53% from the end of 2016, according to securities filings." *Id*. The Bureau is unable to assess whether this trend is similar for other issuers because most issuers do not specifically report credit card rewards liability and instead include the figure in accounts payable and other liabilities on the balance sheet.

customers.[142] Some issuers are increasing the number of points or miles required to purchase items since there are currently no regulations specifically governing the devaluation or annulment of non-cash rewards such as points or miles.[143] In fact, credit card agreements may include a clause that explicitly allows them to do so.[144] Issuers with higher rewards earn rates often limit their exposure by placing restrictions on rewards earning in some categories, such as limiting high rewards rates to the first $1,500 of spend in a specific merchant category in a given quarter or requiring the cardholder take the extra step of going online to "activate" the higher rate every quarter.[145] While an indirect cost to issuers, it is also notable that some non-rewards benefits are also being reduced.[146] Some examples of the sorts of benefits that select card issuers

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[142] *See* Andriotis & Glazer, *supra* note 92. *See also* Nick Ewen, *The Ultimate Guide to Credit Card Application Restrictions*, thepointsguy.com (June 26, 2018), *available at* https://thepointsguy.com/guide/credit-card-application-restrictions/.

[143] *See, e.g.*, Jacob Passy, *Capital One Quietly Changed Some of its Credit-Card Rewards — Why You Should Care*, MarketWatch (Apr. 13, 2019), *available at* https://www.marketwatch.com/story/capital-one-quietly-changed-the-rewards-program-for-some-of-its-popular-credit-cards-why-all-consumers-should-pay-attention-2019-04-09. For rewards programs with a merchant partner (such as an airline), the merchant partner often controls the redemption value. *See, e.g.*, Spencer Howard, *Chase Hit Hard by United Devaluation, Needs to Step Up Its Game*, godsavethepoints.com (Apr. 8, 2019), *available at* https://www.godsavethepoints.com/2019/04/08/chase-hurt-by-united-devaluation/.

[144] Several agreements reviewed had such clauses. *See, e.g.*, Citigroup Inc., *Card Agreement Guide*, https://www.citicards.com/cards/wv/pdf/CMA_PID410.pdf; American Express Nat'l Bank, *Blue Cash Everyday Card Cardmember Agreement*, https://www.americanexpress.com/content/dam/amex/us/staticassets/pdf/cardmember-agreements/blue-cash-everyday/Blue_Cash_Everyday_03-31-2019.pdf; Wells Fargo, *Summary of the Go Far Rewards Program Terms and Conditions and Addendum*, and https://www.wellsfargo.com/credit-cards/rewards/terms#rewardssummary.

[145] *See, e.g.*, Chase Bank, *Here's Your 5% Cash Back Calendar*, https://creditcards.chase.com/freedom-credit-cards/calendar (last visited July 15, 2019); Discover Bank, *The New 5% Calendar is Here*, https://www.discover.com/credit-cards/cashback-bonus/cashback-calendar.html (last visited July 15, 2019).

[146] "Profitability and managing costs remain top of mind, with some issuers considering changes in card benefits. For example, Chase and Citi, among others, are removing or decreasing price protection, while Discover will no longer offer extended product warranty, return guarantee, purchase protection, auto rental insurance, and flight accident insurance." J.D. Power Studies, *U.S. Credit Card Satisfaction Study—Executive Briefing*, J.D. Power (Aug. 14, 2018).

or card networks have stopped providing include: purchase protection, return protection, auto rental insurance, or lost baggage protection.[147]

There are also signs that issuers are working to increase their fee revenue from rewards products. Since 2015, nearly one in four new rewards cards has carried an annual fee, compared to 16 percent on existing rewards cards in 2015. As new cards have been issued, the share of rewards cards with an annual fee has grown to 18 percent in 2018. Rewards cards typically carry significantly higher annual fees than non-rewards cards. In part, increased demand from cardholders for high-annual-fee rewards cards with high benefits is driving the increased fee revenues for rewards cards. However, at least two issuers did increase the annual fee on some cards for both new and existing cardholders.[148] The Bureau has not detected an analogous effort to raise interest rate revenue from rewards products.

5.1.3 Digital developments

The easy availability of digital tools to consumers is affecting rewards use, just as it has affected other aspects of the card market.[149] Issuers are offering digital tools to make the use of rewards easier and to make the process of earning and redeeming rewards more transparent. For example, some online tools offer potential cardholders the ability to determine whether they

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[147] *See, e.g.*, Herb Weisbaum, *Major Credit Card Companies are Cutting Their Perks. Here's What You Need to Know*, NBC News (June 18, 2018), *available at* https://www.nbcnews.com/better/business/major-credit-card-companies-are-cutting-their-perks-here-s-ncna884406. In most cases, an issuer reducing card benefits sends cardholders an updated "Guide to Benefits" that indicates what changes are being made to their card. Under current Regulation Z, cardholders do not have the right to reject changes in ancillary benefits in the same way they are able for changes to other credit card terms. For more information on circumstances in which the consumer does have the right to reject changes, see 12 C.F.R. 1026.9(c)(2)(iv)(B).

[148] *See, e.g.*, Sara Rathner, *Citi Prestige Updates to Include Elevated Rewards, Higher Fee*, Nerdwallet: Blog (Mar. 8, 2019), *available at* https://www.nerdwallet.com/blog/credit-cards/citi-prestige-elevated-rewards-higher-annual-fee/; Maria Lamagna, *Yielding to Critics, American Express Boosts its Sign-Up Bonus for the Platinum Card*, Marketwatch (Apr. 1, 2017), *available at* https://www.marketwatch.com/story/is-the-new-american-express-platinum-card-worth-it-2017-03-03.

[149] For other impacts from digital developments, see Section 8 and Section 4.1.

would qualify for a sign-up bonus *before* applying.[150] Other new digital tools let cardholders monitor their progress toward meeting minimum spending thresholds to receive the sign-up bonus.[151] Additional online tools let cardholders track how much they are earning in rewards across various accounts.[152]

Third parties are also working to deliver digital information about efficient reward use to consumers. For example, one TPC site offers a mobile app that guides cardholders to pay with the credit card in the user's digital wallet that offers the most rewards points, minimizes interest charges, or maximizes cash flow.[153] Another mobile app operates similarly, while also offering a summary of card rewards and benefits.[154] The same dynamic applies for ancillary benefits as well. In fact, one reason some issuers are reducing benefits may be the emergence of apps that enable consumers to take more advantage of such benefits, causing a spike in usage and

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[150] *See, e.g.*, JT Genter, *American Express Launches New Welcome Bonus Qualification Tool*, The Points Guy, (June 13, 2018), *available at* https://thepointsguy.com/news/amex-new-welcome-bonus-qualification-tool/. Many new cardholders apply for cards on the basis of a sign-up incentive that offers a bonus amount of points for meeting some minimum spending threshold in the first few months of use. In recent years, as the costs associated with introductory reward offers have increased, issuers have also restricted eligibility requirements for these offers. For example, an issuer may only permit a consumer to earn one intro bonus per card for the life of the consumer.

[151] *See, e.g.*, Katherine Fan, *New Chase Tool Shows Your Sign-Up Bonus Spending Progress*, The Points Guy (Mar. 20, 2019), *available at* https://thepointsguy.com/news/chase-sign-up-bonus-spend-tracker/.

[152] *See, e.g.*, Press Release, Bank of America, *Bank of America Introduces My Rewards* (Sept. 27, 2018), *available at* https://newsroom.bankofamerica.com/press-releases/consumer-banking/bank-america-introduces-my-rewards.

[153] *See* creditcards.com, *Wallet—Pay with the Right Card Every Time. Maximize Your Rewards When You Shop*, https://www.creditcards.com/mobile/wallet/ (last visited July 15, 2019).

[154] Abhinav Dubey, *How We Unlock Automatic Rebates from Price Drops and Other Hidden Credit Card Benefits*, (May 31, 2017), Sift: Blog Sift, https://www.siftwallet.com/blog/2017/03/12/this-is-sift/.

therefore also the cost to issuers of providing them.[155] At least one mobile app lets cardholders take greater advantage of price protection benefits without requiring action by the cardholder.[156]

Digital technology also holds the potential of improving cardholder understanding of rewards programs. J.D. Power has tracked rewards understanding over its last few surveys, and reports that 36 percent of consumers self-report as not fully understanding their rewards products.[157] Another study by TPC site NerdWallet found that almost one-half of U.S. consumers overestimate how much their points, miles and sign-up bonuses are worth.[158] However, in its 2017 Report, J.D. Power noted that "customers who embrace technology and use both their issuer's website and mobile offerings have a greater understanding of their card terms, benefits, and rewards."[159]

5.2 Balance transfers

Balance transfers enable the consumer, in return for an upfront fee, to pay off debt at a lower interest rate for a fixed period. Some credit cards offer introductory rate balance transfers to incentivize consumers to apply for the card and, if successful, shift existing balances from other cards onto the new one in exchange for potentially lower costs. In addition to transfers of debt from another credit card, most balance transfer offers allow consumers to pay off debt related to

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155 *See* Jessica Puckett, *Explosion in Claims Force Changes to Credit Card Price Protection Policies*, The Points Guy (May 25, 2018), *available at* https://thepointsguy.com/news/higher-claims-force-price-protection-changes/.

156 Earny, *Get Money Back After Your Purchases Drop in Price*, https://www.earny.co/home (last visited May 31, 2019).

157 J.D. Power Studies, *U.S. Credit Card Satisfaction Study—Executive Briefing*, J.D. Power (Aug. 14, 2018).

158 Erin El Issa, *NerdWallet's 2019 Travel Credit Card Study*, Nerdwallet: Blog (Apr. 10, 2019), *available at* https://www.nerdwallet.com/blog/credit-card-data/travel-credit-cards-study/.

159 Jim Miller, *Analyst Briefing – 2017 Credit Card Satisfaction Study*, J.D. Power (Aug. 2017).

other loans and bills.[160] Upon conclusion of the promotional period, if the consumer does not execute another balance transfer or take steps to repay the balance at the lower rate, the remainder of the balance becomes subject to the higher credit card "go to" interest rates.

5.2.1 Prevalence

In 2018, total balance transfer volume of $54 billion accounted for around 9 percent of credit card balances in the Y-14+ data. It rose roughly 38 percent from 2015 to 2018, significantly outpacing 21 percent growth in balances overall and modestly outpacing 34 percent growth in purchase volume.

Balance transfer volume and its growth remain almost entirely concentrated in the superprime and prime segments. As a percentage of total balance transfer volume in 2018, superprime and prime cardholders made up 72 percent and 25 percent respectively. Their collective share has not changed significantly over the past four years, with consumers in lower credit tiers receiving very few balance transfer offers. But 2018 was the first year since at least 2015 that saw a decline in total balance transfer volume for either superprime or prime segments, with prime consumers seeing a 1.7 percent drop in balance transfer volume from 2017.

That same drop shows up in the average incidence of balance transfers, with prime accounts' decline in incidence from 2017 to 2018 the largest change in incidence for any tier over the last few years. In fact, incidence has remained flat for most tiers in this period. Overall, for each quarter of 2018, an average of 1.6 percent of open accounts held by consumers with prime scores, and 1 percent of accounts held by consumers with superprime scores, took out a balance transfer. Balance transfer incidence across credit tiers is shown in Figure 4.

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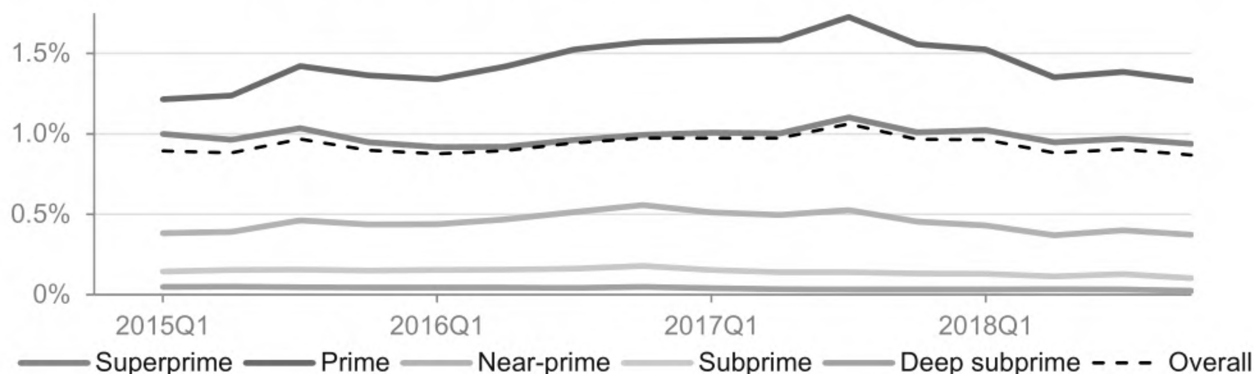
[160] Many transactions effectuated using a "convenience check" may also be treated as balance transfers by issuers. However, not all such transactions are so treated; depending on how it is used, some may be treated similarly to cash advances. The Bureau therefore excludes convenience check transactions from this analysis (and from its analysis of cash advances in Section 5.3), acknowledging that this likely excludes at least some volume that may be identical or near-identical from the consumer perspective.

Figure 4: QUARTERLY BALANCE TRANSFER INCIDENCE, GENERAL PURPOSE (Y-14+)



In contrast to average balance transfer incidence, the average size of balance transfers has risen markedly. Balance transfers for prime cardholders rose from an average $3,656 in 2015 to $4,136, a 13 percent increase. Near-prime cardholder balance transfers increased about 23 percent to $2,845 over the same period. Superprime consumers had the largest average balance transfer size in 2018 at $5,453, representing 8 percent growth since 2015.

5.2.2 Cost

Balance transfers generally charge an initial fee, followed by a low interest rate on the transferred balance for a set period of time or until the balance is repaid. There may also be a cost associated with the loss of a grace period, which can cause an increase in interest charges on other purchases.[161] Measured as a percentage of the amount that cardholders transfer, the average fee for balance transfers has been declining in recent years. Since 2015, the average balance transfer fee has fallen from 3.2 to 2.8 percent in 2018. Some issuers offer introductory no fee balance transfers for new cards, but this does not appear to be a common practice in the industry.[162] With respect to grace period impacts on interest charges, some issuers now permit

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[161] Issuers are required to provide certain disclosures to consumers which include information regarding the potential loss of a grace period when balances are not paid in full. 12 C.F.R. § 1026.6(b)(2)(v).

[162] *See, e.g.*, Chase Bank Credit Cards, *Chase Slate Credit Card*, https://creditcards.chase.com/balance-transfer-credit-cards/chase-slate (last visited July 15, 2019). *See also* Edward Jones, *Two Valuable Card Options. Exclusively for Edward Jones Clients*, https://www.edwardjones.com/investments-services/cash-credit/credit-cards/credit-cards.html (last visited July 15, 2019).

consumers to continue to enjoy a grace period on new purchases even while revolving a transferred balance during the promotional period. The prevailing practice, however, appears to be that revolving balance transfers does eliminate the grace period on regular purchases, thereby driving up the cost of those other purchases to consumers.

5.3 Cash advances

The cash advance feature, offered on many general purpose credit cards, allows consumers to obtain cash or cash equivalents using a portion of their card's credit line (20 percent of the line is common), sometimes called the "cash line."[163] Consumers can effect cash advances through a variety of means; ATM withdrawals may be the most well-known form of cash advance, but they are not the only one. Issuers may treat certain credit card usage, such as chips at a casino or gold at a bank, as cash advances. The purchase of foreign currency, traveler's checks, gift cards, prepaid cards, convenience checks, and virtual currencies may also be treated as cash advances.[164] Cash advances can be incurred, too, if the credit line is used to cover shortfalls on a linked deposit account.

5.3.1 Prevalence

Cash advance volume has only increased 2 percent since 2015, far behind the growth in balances and purchase volume over the same period. As of 2018, cash advance balances accounted for about 2 percent of balances overall. Cash advance volume is a bit seasonal, typically showing slightly higher volumes in the third quarter of each year, but averages over $3 billion per quarter.

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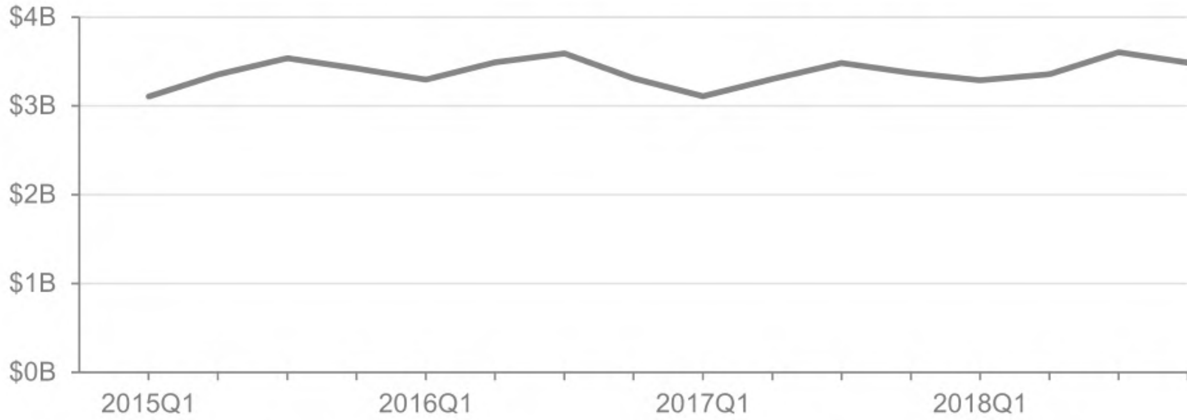
[163] To the Bureau's knowledge, some private label cards provide a cash advance feature at the point of sale, but the practice is not common and does not fall within the scope of this section.

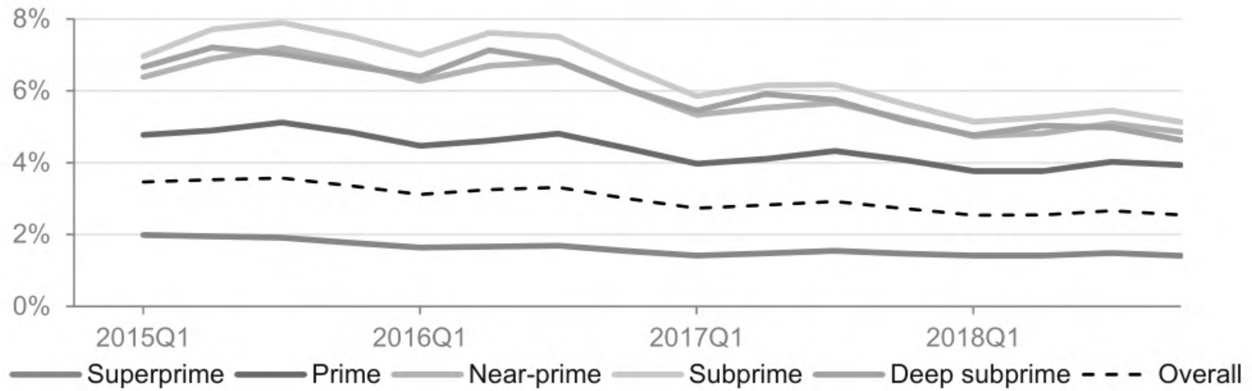
[164] Many transactions effectuated using a "convenience check" may also be treated as cash advances by issuers. However, not all such transactions are so treated; depending on how it is used, some may be treated similarly to balance transfers. The Bureau therefore excludes convenience check transactions from this analysis (and from its analysis of balance transfers in Section 5.2), acknowledging that this likely excludes at least some volume that may be identical or near-identical from the consumer perspective.

Figure 5: QUARTERLY CASH ADVANCE VOLUME, GENERAL PURPOSE (Y-14+)



Unlike balance transfers, cash advances are available to any cardholder with sufficient available cash credit line on a card that has the feature. Cash advance incidence is relatively uniform across credit score tiers, with the exception of superprime consumers who use cash advances markedly less than all other cardholders. Cash advance incidence has declined over the last few years, particularly in the below-prime market segment.

Figure 6: QUARTERLY CASH ADVANCE INCIDENCE, GENERAL PURPOSE (Y-14+)



5.3.2 Cost

Cash advances typically have two cost components: upfront fees and interest.[165] Fee structures can be relatively complex, with some card agreements stipulating different cash advance fee percentages and minimum fee amounts for different cash advance transactions, such as lower fees for ATM transactions and higher fees for cash equivalents like casino chips.[166] Cash advance APRs are typically higher than purchase APRs, and these transactions are not usually subject to any kind of grace period, meaning they begin accruing interest at that higher APR at the point that the cash advance is taken, even if the cardholder pays their balance in full every month.[167]

Cash advance fees have been stable in recent years, totaling just under $1.5 billion for each of the last three years for issuers in the Y-14+ data. As a share of volume, cash advance fees averaged 5.3 percent in 2018, roughly the same ratio as in 2016 and 2017. Cash advance fee ratios are noticeably higher for cardholders in lower score tiers, as shown in Figure 7. Minimum fixed fee amounts for cash advances in a two-way pricing structure, such as "$10 or 5%", can translate to high cash advance fee ratios for cardholders in need of a cash advance, which may be unavoidable for cardholders with little remaining available credit on their cards as is common for cardholders with lower credit scores.

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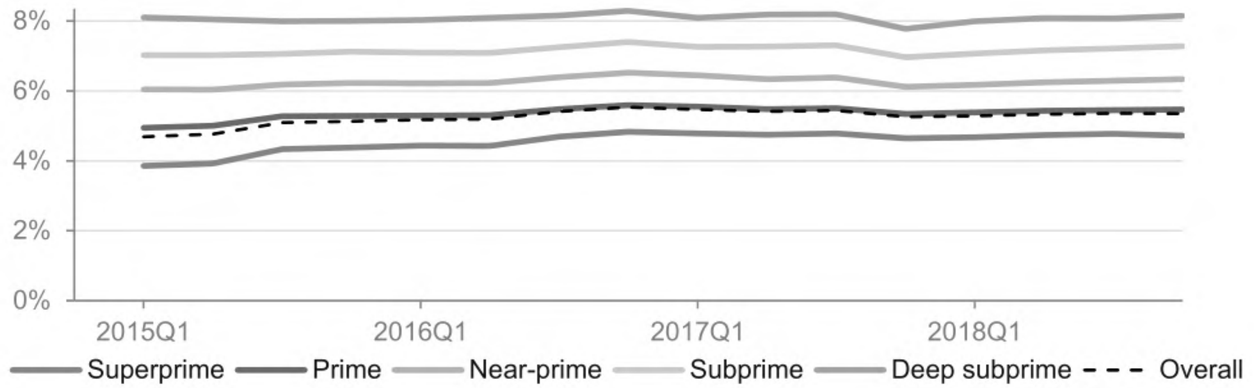
[165] Some credit cards do not charge an upfront fee for cash advances. *See, e.g.*, Brynne Conroy, *20 Credit Cards with No Cash Advance Fees*, magnifymoney.com (July 1, 2019), *available at* https://www.magnifymoney.com/blog/best-of/20-credit-cards-no-cash-advance-fees189115277/.

[166] *See, e.g.*, U.S.Bank, *Cardmember Agreement for U.S. Bank National Association Visa Signature and World MasterCard Accounts*, https://applications.usbank.com/oad/teamsite/usbank/docs/FR006213482_04_USBSIG.pdf.

[167] Indirect costs to cardholders such as interest on balances from purchases that would otherwise be treated as interest free due to a grace period are not included in calculations of cash advance fee costs, but remain an important consideration.

Figure 7: QUARTERLY CASH ADVANCE FEES RELATIVE TO CASH ADVANCE VOLUME, GENERAL PURPOSE ACCOUNTS (Y-14+)



6. Scholarship on CARD Act effects

Previous biennial card market reports examined the extent to which trends in the price and availability of card credit might be attributable to the CARD Act or to other factors, such as the onset of the Great Recession.[168] In some cases, the effect of the CARD Act was relatively easily discerned. The CARD Act's late payment fee regulations, for instance, had an obvious direct effect on consumer late fee costs.[169]

In other contexts, however, the Bureau consistently noted the difficulty of separating regulatory effects from other effects. This difficulty was apparent for specific regulatory provisions, such as the effect of the CARD Act's minimum payment disclosures on payment behavior, or the effect of the Act's card issuance and marketing restrictions for young consumers on cardholding by that population.[170] But this difficulty was even more apparent with respect to the *overall* effect of the Act on the credit card market, including aspects of the market indirectly affected by the Act, such as credit line assignments or purchase APRs.[171] As a result, the Bureau's first comprehensive report, which it released in 2013, called for more research into the causal effects

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[168] Over time, this biennial report has focused less on quantifying these direct effects and more on changes in the market since the report's last iteration.

[169] *See* 2013 Report, *supra* note 5, at 23.

[170] *See id.* at 43-44, 60-61. *See also* 2015 Report, *supra* note 5, at 49-52.

[171] *See* 2013 Report, *supra* note 5, at 69-71. *See also* 2017 Report, *supra* note 5, at 158-162.

of the Act—including the effects of specific provisions as well as the overall effect of the Act on price and availability.[172]

In the intervening period, social science researchers in economics, psychology, and other disciplines have conducted a number of studies of the CARD Act. Such research comes from universities as well as the Bureau and other federal agencies. This section reviews that work. The review focuses on social science research that has either begun or completed the peer-review process at leading academic journals and research that presents novel theoretical or empirical analyses of the CARD Act. Legal scholarship on the CARD Act is beyond the scope of this review, as are policy-oriented papers that largely summarize others' research in defense of particular policy changes.[173] This review necessarily is illustrative rather than exhaustive of the available literature, though it aims to be as representative as possible, especially among the most actively cited research papers in this area.[174] Additionally, the views in these research papers do not necessarily represent the views of the Bureau, and inclusion of a research paper in this section is not meant to imply that the Bureau has validated that research paper's findings.

Subsection 6.1 considers evidence on the direct effects of the CARD Act, including effects on certain aspects of credit card pricing, on the prevalence of credit card-holding among young consumers and on consumers' credit card repayment behavior. That section includes research

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[172] *See* 2013 Report, *supra* note 5, at 37 ("There clearly was an increase in interest rates and in the TCC during the year leading up to the date that most of the CARD Act provisions became effective (February 2010) and a decline since then, with a net reduction in the Total Cost of Credit of approximately 190 basis points. Further research is required to assess how much of that decrease can be attributable to the Act.").

[173] This iteration of the Bureau's biennial card market report covers social science research. The Bureau may consider a review of legal scholarship in the future.

[174] For example, a Google Scholar search for "CARD Act" recovers several thousand possible articles to include in this review. Bureau staff reviewed these search results with an aim to include all studies, regardless of their findings, that were at some stage of the peer review process, that made a novel theoretical or empirical contribution to social science research on the CARD Act, and that were actively cited by other research in the social sciences.

papers by Sumit Agarwal et al. (Agarwal et al. (2015))[175], Scott Nelson (2018)[176], Thomas Durkin et al. (Durkin et al. (2014))[177], Lauren Jones et al. (Jones et al. (2015))[178], Hal Hershfield & Neal Roese (Hershfield & Roese (2014))[179], Linda Salisbury & Min Zhao (2018) (Salisbury & Zhao (2018))[180], Linda Court Salisbury (Salisbury (2014))[181], Daniel Navarro-Martinez et al. (Navarro-Martinez et al. (2011))[182], Jack Soll et al. (Soll et al. (2013))[183], and Peter Debbaut et al. (Debbaut et al. (2016)).[184]

Subsection 6.2 reviews research on the overall effect of the Act, including potentially unintended consequences that take account of parts of the credit card market not as directly regulated by the Act, such as the Act's impact on credit line assignments or purchase APRs. That section includes

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[175] Sumit Agarwal et al., *Regulating Consumer Financial Products: Evidence from Credit Cards*, 130 Q. J. of Econ. 1, at 111-164, (2015).

[176] Scott Nelson, *Private Information and Price Regulation in the US Credit Card Market*, (MIT Working Paper, 2018)).

[177] Thomas Durkin et al., *An Assessment of Behavioral Law and Economics Contentions and What we Know Empirically about Credit card use by Consumers*, 22 S. Ct. Econ. Rev. 1 (2014).

[178] Lauren Jones et al., *Effects of informational nudges on consumer debt repayment behaviors*, 51 J. of Econ. Psychol. 1, at 16-33 (2015).

[179] Hal Hershfield & Neal Roese, *Dual Payoff Scenario Warnings on Credit Card Statements Elicit Suboptimal Payoff Decisions*, 25 J. of Consumer Psychol. 1, at 15-27 (2014).

[180] Linda Court Salisbury & Min Zhao, *Active Choice Format and Minimum Payment Warnings in Credit Card Repayment Decisions*, (forthcoming J. of Pub. Pol'y & Mktg. (2018).

[181] Linda Court Salisbury, *Minimum Payment Warnings and Information Disclosure Effects on Consumer Debt Repayment Decisions*, 33 J. of Pub. Pol'y & Mktg 1, at 49-64 (2014).

[182] Daniel Navarro-Martinez et al., *Minimum Required Payment and Supplemental Information Disclosure Effects on Consumer Debt Repayment Decisions*, 48 J. of Mktg. Res. S1, at S60-S77 (2011).

[183] Jack Soll et al., *Consumer Misunderstanding of Credit Card Use, Payments, and Debt: Causes and Solutions*, 32 J. of Pub. Pol'y & Mktg. 1, at 66-81 (2013).

[184] Peter Debbaut at al., *The CARD Act and Young Borrowers: The Effects and the Affected*, 48 J. of Money, Credit and Banking 1, at 1495-1513 (2016).

research papers by Tiago Pinheiro & Joshua Ronen (Pinheiro & Ronen (2016))[185], Sutling Hong (Hong et al. (2018))[186], Agarwal et al. (2015), Nelson (2018), Song Han et al. (Han et al. (2018))[187], Vikram Jambulapati & Joanna Stavins (Jambulapati & Stavins (2014))[188], Gregory Elliehausen & Simona Hannon (Elliehausen & Hannon (2018))[189], Larry Santucci (Santucci (2015))[190], and Yiwei Dou et al. (Dou et al. (2019)).[191]

This review of overall effects is in two parts. First, it covers research that uses theoretical analyses or economic models to predict and explain the potential overall effects of the Act. Second, this review identifies empirical analyses that evaluate which of these theoretical effects appear to have transpired, and how large these overall effects have been.

6.1 Direct effects

Studies that examine direct effects of the CARD Act have focused on three areas: penalty fee pricing and incidence; repayment behavior; and cardholding among young consumers. These

[185] Tiago Pinheiro & Joshua Ronen, *Unintended Consequences of the Credit Card Act*, 1 J. of L., Fin. and Acct., 1, at 93-138 (2016).

[186] Sutling Hong et al., *Dynamic Pricing of Credit Cards and the Effects of Regulation* (Fed. Res. Bank of Philadelphia Working Paper No. 18-23 (2018)).

[187] Song Han et al., *Unsecured Credit Supply, Credit Cycles, and Regulation*, 31 The Rev. of Fin. Stud. 3, at 1184-1217 (2018).

[188] Vikram Jambulapati et al., *The Credit CARD Act of 2009: What Did Banks Do?*, (Fed. Res. Bank of Boston, Public Policy Discussion Paper Series 2015-103, (2014)).

[189] Gregory Elliehausen & Simona M. Hannon, *The Credit Card Act and consumer finance company lending*, 34 J. of Fin. Intermediation, 1, 109-119, (2018).

[190] Larry Santucci, *A Tale of Two Vintages: Credit Limit Management Before and After the CARD Act and Great Recession*, (Fed Res. Board of Philadelphia, Payment Cards Center Discussion Paper No. 15-01, (2015)).

[191] Yiwei Dou et al., *Does Price Regulation Affect Competition? Evidence from Credit Card Solicitations*, (Fed. Res. Board, FEDS Working Paper No. 2019-018 (2019)).

areas do not exhaust direct effects of CARD Act regulation, so there is room for future research to shed light on other important areas affected by the Act. These might include, for example, direct effects of the ability to pay (ATP) requirements on application approvals and credit limit increases, and direct effects of the "fee-harvester" restrictions for first-year account fees on the terms of affected accounts.[192] Nevertheless, the available research considers several important areas in which the Act has had a measureable direct effect.

6.1.1 Credit card pricing

The CARD Act restricted multiple dimensions of credit card pricing, including requirements that: (1) consumers not pay a fee for incurring balances in excess of their credit limit unless they opt in to have such fees charged; (2) penalty fees, such as late payment fees, be "reasonable and proportional," which can be satisfied by charging fees at or below a specified safe harbor threshold; and (3) interest rates not be increased on outstanding balances except in limited circumstances.[193] In its 2013 Report, the Bureau called for further academic research to connect these restrictions to changes in the market.[194] In the years since that report, a number of academic studies have attempted to do just that.

OVER-LIMIT FEES

First, several studies have worked to quantify the CARD Act's direct effects on over-limit fees. Agarwal et al. (2015) estimate that the CARD Act led to a 3.3 percentage point reduction in over-limit fees as a share of balances for consumers with below-prime credit scores. These 3.3 percentage points are approximately 20 percent of total pre-CARD Act fee costs that the authors estimate such consumers paid, or roughly $36 in over-limit fee savings for each subprime

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[192] *See, e.g.*, 12 C.F.R. 1026.51(a)(1)(i), 52(a)(1).

[193] 15 U.S.C. §§ 1637(i)(1), 1637(k), 1665d, 1666i-1, 1666i-2 (2012); *see* 2013 Report, *supra* note 5, at 10-13 (for further discussion of these and other particular provisions in the CARD Act).

[194] *See supra* note 172.

account on average per year.[195] For consumers with higher credit scores, the reduction in over-limit fees as a share of outstanding balances was a more modest 0.3 percentage points. This difference reflects both the lower prevalence of over-limit transactions among consumers with higher credit scores and the higher average balances on these consumers' accounts.

To estimate these effects, the Agarwal et al. (2015) study compares changes over time for general purpose consumer credit cards, which are subject to the CARD Act rules, to changes for small business credit cards, which are not. This comparison uses small business cards to help identify the market changes that would have been seen for consumer credit cards in the absence of the CARD Act rules. While a similar analysis appeared in the Bureau's first biennial credit card market report,[196] the Agarwal et al. (2015) study additionally shows the robustness of its results in the framework of a difference-in-differences regression analysis. Furthermore, that analysis controls statistically for differences across cardholder credit scores and differences across credit card issuers, which could otherwise potentially confound such an analysis. This regression analysis also verifies that small business cards are likely to provide a statistically valid comparison group for general purpose consumer cards after the CARD Act, by illustrating that the two groups of cards broadly exhibited similar—in particular, parallel—trends in the period *prior* to the CARD Act.[197]

Nevertheless, there are also important caveats to any such comparison of pre- and post-CARD Act outcomes. For one, the comparison relies on pre-CARD Act data that may have been influenced in one way or another by other important factors for which the studies potentially could not fully control. One of these factors could be the credit card industry's anticipation of CARD Act implementation, and also the industry's anticipation of changes to credit card

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[195] This 20 percent is estimated using the statistics in Agarwal et al., (2015) at Table III.

[196] 2013 Report, *supra* note 5, at 35-36.

[197] The effects of over-limit fee restrictions are studied in other analyses as well. Nelson (2018) finds that the share of consumer accounts that incurred an over-limit fee each month dropped from roughly 7 percent of accounts per month on average before the CARD Act to nearly zero after the Act. Similar results on the share of accounts incurring over-limit fees appeared in the Bureau's first biennial credit card market report. *See* 2013 Report, *supra* note 5, at 20-23.

regulations that, while superseded by the CARD Act, were proposed and finalized by the Federal Reserve Board over the course of 2007 through 2009.[198] Indeed, commentators on the Agarwal et al. (2015) study have emphasized the importance of such effects (*e.g.,* Durkin et al. (2014)).[199] A second potentially confounding factor is the Great Recession. In difference-in-differences analyses it is difficult to know with certainty whether small business cards and consumer cards would have evolved differently in the absence of the CARD Act because of recession-related changes.

LATE PAYMENT FEES

The Agarwal et al. (2015) and Nelson (2018) research examines other prominent dimensions of credit card pricing. Agarwal et al. (2015) estimate that the CARD Act's restrictions on late payment fees led to a 1.4 percentage point reduction in late fees as a share of balances for consumers with below-prime credit scores. The restrictions once again had a more modest effect, roughly 0.3 percentage points as a share of outstanding balances, for consumers with higher scores.

As before, the Agarwal et al. (2015) study uses regression analysis to show the robustness of its results while controlling for differences across cardholder credit scores and across credit card issuers. After accounting for these factors, the study's results are derived from a comparison between general purpose consumer credit cards and small business credit cards. As in the case of over-limit fees, the study illustrates that late payment fees on consumer and small business cards exhibited similar trends prior to the CARD Act, supporting the validity of small business cards as a comparison group for consumer cards. However, also as before, the study relies on

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[198] In February 2010, the Board withdrew the final rule amending Regulation Z adopted in January 2009 and amended Regulation AA to remove the substantive requirements adopted in January 2009 before these final rules became effective. 75 Fed. Reg. 7925 (Feb. 22, 2010). At the same time, the Board issued a new final rule amending Regulation Z in order to implement the provisions of the CARD Act. 75 Fed. Reg. 7658 (Feb. 22, 2010). The requirements of the January 2009 Regulation Z final rule were revised for consistency with the CARD Act and incorporated into the new final rule. The provisions in the January 2009 Regulation AA final rule never took effect; they were superseded by provisions of the CARD Act.

[199] These features of the pre-CARD Act period have also been consistently noted in the Bureau's previous biennial credit card market reports. *See, e.g.*, 2013 Report, *supra* note 5, at 73.

data from a pre-CARD Act period that may have been influenced by anticipation of regulatory changes or by the onset of the Great Recession.

These decreases in late payment fees largely reflect the lower average dollar amount of late fees following implementation of the CARD Act's "reasonable and proportional" standard in August 2010.[200] Nelson (2018) also finds that the share of revolving accounts incurring late fees on a monthly basis dropped by roughly 3 percentage points, from 14 to 11 percent, at an earlier date in February 2010, immediately following the implementation of other CARD Act restrictions. This earlier drop could reflect other provisions that took effect in February, including the CARD Act's standardization of the days and times of day at which payments could be due,[201] or the CARD Act's mandated new minimum payment warning, or other changes in the market following the financial crisis.[202]

INTEREST RATE INCREASES

The Agarwal et al. (2015) and Nelson (2018) research also examines the CARD Act's restrictions on a third dimension of credit card pricing, the upward repricing of interest rates on outstanding balances.[203] Nelson (2018) documents that, in the pre-CARD Act period, roughly 50 percent of accounts experienced such an upward repricing at least once a year. After the CARD Act repricing restrictions took effect, the annual incidence of such repricing dropped immediately to less than 10 percent. To focus on types of APR repricing that were restricted by the Act, these estimates exclude APR changes associated with the expiration of a promotional rate, with a delinquency of 60 days or more, or with an increase in an index rate that may determine some credit cards' variable APRs. Estimates of the share of accounts experiencing repricing also appear in Agarwal et al. (2015)[204] although without an emphasis on the share of accounts experiencing such a repricing at an annual frequency; the Nelson (2018) analysis indicates that,

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[200] 15 U.S.C. § 1665d (2012); 12 C.F.R. § 1026.52(b)(1); Comment 52(b)(1)(ii)-2.

[201] 15 U.S.C. §§ 1637(b)(12)(c), 1637(o), 1666c(a) (2012); 12 C.F.R. §§ 1026.7(b)(11)(i)(A); *see generally* 1026.10(b), (d).

[202] 15 U.S.C. § 1637 (b)(11) (2012); 12 C.F.R. § 1026.7(b)(12).

[203] 15 U.S.C. § 1666i-1, 1666i-2 (2012); 12 C.F.R. § 1026.55.

[204] *See also* 2013 Report, *supra* note 5, at 29.

when accounts are viewed over the course of an entire year, such repricing affected roughly one-half of revolving accounts. However, as already emphasized above, the pre-CARD Act period studied in both the Nelson (2018) and the Agarwal et al. (2015) analyses may have exhibited above-average rates of repricing relative to earlier time periods, *e.g.*, due to the onset of the Great Recession or issuers' anticipation of regulatory changes that were proposed prior to the CARD Act.

The Nelson (2018) analysis also examines how the CARD Act's repricing restrictions may have affected the responsiveness of interest rates to credit risk. With issuers now generally restricted from increasing the interest rate on outstanding balances on accounts with worsening default risk over time, the study examines how that change has affected the degree to which price changes reflect changes in underlying default risk. It finds that whereas APRs in the pre-CARD Act period increased on average by 26 basis points for every 10 points decrease in credit score after origination, this gradient of pricing with respect to changes in risk declined post-CARD Act to an average of 7 basis points increase in APR for every 10 points decrease in credit score. The CARD Act's restrictions on interest rate increases on outstanding balances, therefore, affected not just changes in interest rates on average, but also the degree to which interest rates responded to changes in particular account characteristics such as credit score.

6.1.2 Credit card payments

Separate from the CARD Act's restrictions on credit card pricing, the Act and its implementing regulation also introduced new disclosure requirements. Some academic research has focused on one of these disclosures in particular: mandated monthly statement information about the total cost of paying only the minimum payment and about the amount of time required to repay the entire current balance when making only minimum payments. This disclosure also includes information about the size of the monthly payment necessary to pay the outstanding balance in 36 months, referred to below as the "36-month payment amount," and how the total interest cost of repaying the outstanding balance by paying the 36-month payment amount would

compare to the cost of repaying the outstanding balance by paying only the minimum payment.[205]

The available research provides somewhat conflicting evidence on how these disclosures affect repayment behavior. Differences across studies also indicate there may be variation in how different consumers respond to these disclosures. There is evidence that these disclosures may encourage faster debt repayment for some consumers while leading some other consumers, who would otherwise choose to repay their balance more quickly, to reduce their rate of repayment.

Jones et al. (2015) compare changes in credit card payment over time for two groups that plausibly were differentially affected by the CARD Act's disclosure requirements. The first group, consumers who pay their bills online, is presumed to be less likely to see the new CARD Act-mandated disclosures because these disclosures are not required to appear in an online bill-pay interface. The second group, consumers who do not use electronic bill payment, may be more likely to see the new disclosures because the disclosures are included on billing statements sent by mail.[206]

Jones et al. (2015) estimate that the second group—those plausibly more exposed to the new disclosures by virtue of paper bill pay—became 6.5 percentage points more likely to pay their credit card bill in full relative to those who use online bill pay.[207] This effect is estimated in a difference-in-differences regression analysis that also controls for demographic, geographic, and seasonal differences that could otherwise confound the results. Reinforcing the validity of online bill pay users as a comparison group for paper bill pay users, the study also notes that these

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[205] 15 U.S.C. § 1637(b)(11)(B) (2012). In cases where the 36-month payment amount is less than the minimum monthly payment, no information about 36-month repayment is shown. 12 C.F.R. § 1026.7(b)(12)(F)(2)(ii).

[206] The disclosures are also included in electronic copies of billing statements, and these electronic statements indeed may be seen by consumers who use online bill pay. Furthermore, consumers who *pay* their bills online may nevertheless receive paper copies of their bills by mail. However, past Bureau work has indicated that at least one-half of consumers who use online bill pay also view their statement document at any point in a given quarter. *See* 2015 Report, *supra* note 5, at 134. This finding at least in part supports the premise that the two groups studied in Jones et al. (2015) could be differentially affected by the CARD Act's disclosure requirements.

[207] This increase in the prevalence of payment in full may reflect decreases in either the prevalence of late payments, or the prevalence of timely payments of less than the total balance on the card, and the authors do not distinguish between these two possible mechanisms.

groups exhibited similar trends in repayment behavior in the pre-CARD Act period, while the divergence in these two groups' behavior occurred tightly around the month when the new disclosure requirements took effect.

One important caveat to this study's results is that the survey is asked of new respondents each month, so changes over time in average responses could potentially be the result of changes in the *composition* of consumers who choose to respond to the survey, rather than changes to consumer behavior; techniques to correct for non-response over time may be unable to completely correct for such issues. Additionally, to interpret the February 2010 divergence between online bill-pay users and paper bill-pay users as the effect of the CARD Act *disclosures* per se, the authors rely on there being no other substantial differences between these two groups' responses to other CARD-Act provisions implemented at the same time. Such an assumption is difficult to test in practice.

Several other studies have examined the effects of the CARD Act's minimum payment disclosure requirements by experimentally showing different disclosure formats to survey respondents and then asking respondents how much they would choose to repay under a hypothetical scenario for credit card usage. For example, respondents could be asked to imagine that they have a certain credit card balance at a certain interest rate, then be shown one of several minimum payment disclosures, and be asked to choose a hypothetical repayment amount.

In one such study, Hershfield & Roese (2014) reach different conclusions about the CARD Act's minimum payment disclosures relative to Jones et al. (2015) and highlight the potential for these disclosures to induce slower debt repayment by "anchoring" consumers to smaller payment amounts than they otherwise would have chosen. Based on survey respondents' answers to such hypothetical scenarios and disclosures, the authors conclude that one feature of the CARD Act's new disclosures—in particular the disclosure of the 36-month payment amount—leads some consumers to repay more slowly than they otherwise would. Consistent with this effect appearing only for some consumers and not for others, the authors find in their series of surveys that this effect is statistically significant only when the payment suggested by the 36-month disclosure is small relative to the payment amount consumers would have otherwise chosen.

Other studies by Salisbury and co-authors (Salisbury & Zhao (2018); Salisbury (2014); Navarro-Martinez et al. (2011) and by Soll et al. (2013)) also provide survey respondents with hypothetical scenarios for credit card usage and experimentally vary the disclosures shown to

respondents. The earliest of these studies, by Navarro-Martinez et al. (2011) finds that providing any minimum payment requirement tends to lower the amount that survey respondents choose. They attribute this to an "anchoring" effect whereby presenting the minimum payment amount causes consumers to focus on a lower number (*i.e.*, the minimum payment amount) than they otherwise do when shown only the hypothetical outstanding balance on the account. However, the study also finds that adding the 36-month payment amount to the disclosure, as required in the CARD Act, partially offsets this effect and raises repayment amounts.[208] Consistent with this effect, Soll et al. (2013) likewise find that adding the 36-month payment amount increases some consumers' ability to accurately predict how long it may take to repay a credit card balance. These findings are thus somewhat in tension with the results in Hershfield & Roese (2014), which had found that adding the 36-month payment amount decreases some consumers' repayment speed.

The most recent two of these studies, by Salisbury (2014) and Salisbury & Zhao (2018), find results that are intermediate between the Navarro-Martinez et al. (2011) results and the Hershfield & Roese (2014) results. Again using survey respondents' answers to hypothetical credit card repayment scenarios, Salisbury (2014) and Salisbury & Zhao (2018) generally find that disclosing the 36-month payment amount both increases *and* decreases consumers' payment rates: that is, some consumers pay less when faced with the 36-month payment amount than they otherwise would, and other consumers pay more than they otherwise would. Across the two studies, roughly an equal share of consumers increase their payment amount and decrease their payment amount.

An important caveat to many of these studies is that the use of hypothetical questions in survey research may capture different behaviors and responses than "real world" consumers exhibit when facing the CARD Act's actual disclosures. For example, the effect of anchoring to repayment amounts shown in hypothetical disclosure statements may be different when consumers face real-world financial incentives to choose the repayment amount that is best for their own actual circumstances. These hypothetical studies' methodologies are thus in contrast

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[208] One caveat to this latter result is that it is only marginally statistically significant, perhaps due to small sample sizes available in the study.

with the Jones et al. (2015) study discussed above, which did use such "real world" data to examine the CARD Act disclosures' effects.

The Agarwal et al. (2015) study also examined the effect of the CARD Act's 36-month disclosure in "real world" data, finding that the share of accounts paying exactly the 36-month payment amount increased by 0.4 percentage points for general-purpose consumer cards at the time the new disclosure requirement took effect; this estimate is markedly smaller than the corresponding share in many of the studies above that used hypothetical scenarios to examine consumer behavior. As in the analyses previously discussed from Agarwal et al. (2015), this effect is estimated in a difference-in-differences regression relative to small business credit cards, which were not covered by the CARD Act's new disclosure requirements. However, perhaps reflecting the divergence in results among other research studies in this area, Agarwal et al. (2015) note that it is difficult to discern statistically whether this 0.4 percentage-point difference is due to consumers who would have paid larger amounts then choosing to pay less, or due to consumers who would have paid smaller amounts then choosing to pay more, or perhaps both.

In sum, existing research appears split on the question of whether the CARD Act's minimum payment disclosures led to faster debt repayment, and for whom. Further research appears necessary to answer this question more definitively and to analyze other outcomes not examined in the studies available to date.

6.1.3 Credit card-holding among young consumers

Another focus of academic research has been the CARD Act's effects on credit card-holding among young consumers. This focus reflects the CARD Act's requirement, as implemented by Regulation Z, that in order for an issuer to open a credit card account for a young consumer—defined as being 20 years old or younger—the consumer must either demonstrate her independent ability to pay for the charges they could incur on the card, or have a co-signer who is at least 21 years old and either can demonstrate the independent ability to repay or can

demonstrate a reasonable expectation of access to the necessary income or assets to repay.[209] The CARD Act also has several other provisions that may affect credit card-holding among the young, such as restrictions on credit card marketing activities near college campuses.[210]

Debbaut et al. (2016) estimate the direct effects of these young-borrower restrictions by comparing consumers who were affected by the CARD Act's young-consumer rule at slightly different ages. By measuring how card-holding rates for these cohorts changed over time as the CARD Act restrictions took effect, the authors estimate that the CARD Act's young consumer-rule reduced rates of credit card-holding among individuals under 21 years old by 8 percentage points in the short term, representing a roughly 15 percent fall from pre-CARD Act levels. Their difference-in-differences analysis also controls for age-specific and year-specific differences in credit card holding rates, which helps address potential confounding factors in the analysis.

Evidence suggests the rule's allowance for co-signers in the young-consumer rule enabled some, but not all, young consumers who otherwise would have been precluded from opening a credit card account to do so through a co-signer. Debbaut et al. (2016) found that, while the overall share of young consumers holding credit cards fell, young consumers who did hold credit cards became more likely to have a co-signer on their credit card. As shown in Figure 1, among various age cohorts the share of co-signed cardholding among credit card holders was roughly constant at about 8 percent between 2000 and 2008. When the CARD Act's young-consumer rule took effect in 2010, the rate of co-signed cardholding increased for exactly the three age groups covered by the young-consumer rule—those aged 18, 19, and 20 years old.[211] This short-run effect is apparent in Figure 1 below. The decrease seen thereafter, however, suggests the need for further research on the longer-run effects of these restrictions.

Debbaut et al. (2016) acknowledge that their estimates may be sensitive to several confounding factors. These include recession-related labor market disruptions that may affect specific cohorts in specific years, changes in the population of consumers included in credit bureau data,

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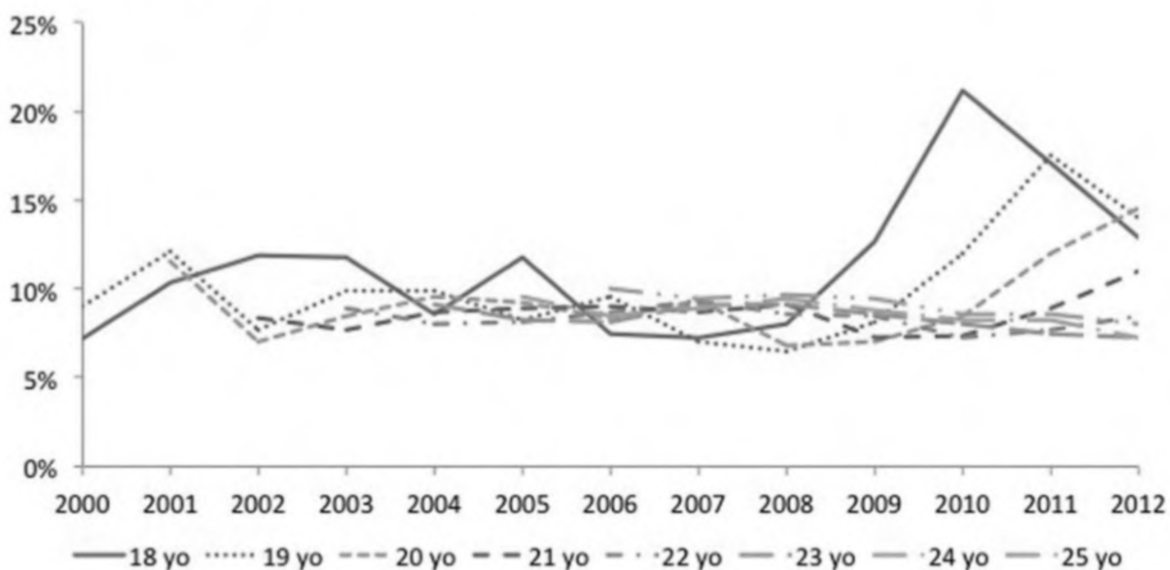
[209] 15 U.S.C. § 1637(c)(8) (2012); 12 C.F.R. § 1026.51(b)(1).

[210] 15 U.S.C. § 1650(f)(2) (2012).

[211] The increases appear sharpest for those aged 18, though this group also exhibited some increase in the period prior to the young-consumer rule taking effect, perhaps related to the onset of the Great Recession.

and the influence of potential anticipatory behavior by consumers or credit card issuers in 2009 in the period between the CARD Act's passage and its implementation. Closer examination of the role of authorized users in extending credit card access to young consumers—for example, an older person such as a parent may make a young consumer an authorized user of their card—may also help with interpreting Debbaut et al.'s results.

Figure 1: SHARE OF CONSUMERS WITH A CO-SIGNED CREDIT CARD BY AGE AND YEAR (REPRODUCED WITH PERMISSION)[212]



6.2 Overall effects

This section considers research on the overall effects of the CARD Act. As emphasized in academic research on the CARD Act, economic theory on pricing, and in the Bureau's previous biennial card market reports, the Act's effects may include unintended consequences beyond its direct effects, as market participants potentially respond to regulation in one part of the market by changing their behavior in another. To take one example, credit card issuers might adjust APRs offered at account origination in response to the Act's restrictions on increasing APRs on

[212] Figure reproduced with permission from Wiley, in Debbaut et al. (2016).

outstanding balances later; this is an example of an indirect and potentially unintended consequence of the Act because the Act and its implementing regulations do not directly govern the level of the APRs that may be offered at origination.

This review of research on such overall effects is organized into two subsections. The first reviews theoretical analyses and economic modeling that illustrate how and why such consequences may appear in other parts of the market in response to the Act. The second reviews empirical research that assesses, using a variety of data sources, which of these theoretical effects appear to have been realized and to what extent.

6.2.1 Theoretical analyses

A range of studies have used theoretical analyses and economic models to understand the CARD Act's potential overall effects. Reviewing these analyses helps illuminate how the Act's overall effects may emerge in a market like the credit card market, shedding light on the next subsection's review of more empirical, data-driven research.

In particular, these theoretical analyses highlight how the Act's overall effects depend on several underlying features in the credit card market. These features include whether the market is imperfectly competitive, whether credit card issuers have private information about their account holders (and, if so, what type of information), and whether credit card pricing is fully "salient" to consumers. This subsection first reviews research that examines the CARD Act's theoretical effects in a credit card market that is assumed to be perfectly competitive. Second, it reviews research on a market that is assumed to be imperfectly competitive.

PERFECT COMPETITION

In one theoretical analysis of the CARD Act in an assumed perfectly competitive credit card market, Pinheiro & Ronen (2016) emphasize how the CARD Act's overall effects may be influenced by the presence of information asymmetries such as adverse selection. In this setting, the authors show theoretically that the CARD Act's restrictions on increasing the interest rate applied to an outstanding balance can lead to a combination of higher initial interest rates for new cardholders and lower credit limits. The analysis highlights how the CARD Act's restrictions on raising interest rates for outstanding balances can make it more difficult to charge different pricing to consumers who are more or less risky from a lender's perspective, given how information asymmetries can make some of this risk unknown for a credit card issuer around

the time of account origination.[213] The "pooled" pricing that results from these restrictions then leads to market inefficiencies, as some borrowers face pricing that is not commensurate with their risk and then borrow more or less than the efficient amount; for some consumers this increase in pricing is effectively a reduction in credit supply. In Pinheiro & Ronen's (2016) perfectly competitive setting, therefore, the inefficiencies that result from the CARD Act's restrictions emerge in equilibrium as a result of the credit card market's information asymmetries.

Hong et al. (2018) analyze a similar setting with perfect competition, albeit with different information asymmetries. In particular, the authors consider the feature that credit card issuers may have private information about their borrowers that competing credit card issuers may not know, such as non-public indicators of default risk. This informational advantage allows an issuer to charge higher prices to its existing borrowers—in particular to its *low*-risk existing borrowers—than it otherwise could charge those borrowers if its competitors were able to identify which of its existing borrowers had low risk.[214] The prospect of being able to charge these higher prices after learning about borrower risk then entices issuers to offer low prices at account origination *before* learning such information. These low prices on new accounts, understood as promotional introductory interest rates, play a central role in the analysis. Their key finding is that the CARD Act's restrictions on interest rate increases for outstanding balances make it more difficult for credit card issuers to charge higher prices on existing accounts, which reduces issuers' incentives to offer low prices at the time of account origination. The CARD Act, then, has the potential in this setting to lead to higher interest rates for promotional APRs, even though the Act and its implementing regulations do not directly regulate the level of interest rates offered as promotional APRs.

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[213] Asymmetry implies that this information is known on one side of the market and not the other. To be precise, in Pinheiro & Ronen's (2016) model, the asymmetry actually arises shortly after origination: that is, differences in consumer risk become known to the consumer after origination but before the consumer begins borrowing on the card. Of course, in the actual credit card market, information asymmetries may also exist at the time of origination as well.

[214] The mechanism for this higher pricing arises in market equilibrium. Intuitively, while a lender's competitors are unable to set prices that are perfectly tailored to the risk on that lender's accounts, each lender is able to set such tailored prices on its own accounts. Pricing on outside offers then allows each issuer to charge a higher price than it otherwise could to its own lower-risk existing cards.

The results in Hong et al. (2018) echo the findings from Pinheiro & Ronen (2016). An important commonality between the analyses is that the credit card market is assumed to be perfectly competitive. That is, credit card lending is deemed sufficiently "commoditized" for issuer profits to be fully competed away through, for example, discounts on introductory interest rates that serve as a loss leader for later, higher pricing.

Several caveats are relevant in interpreting these analyses. Both analyses illustrate how the credit card market is likely to respond to the CARD Act *given* some premises, such as perfect competition. If the premises that the authors use for their analysis do not accurately describe the market, then the conclusions may change. As is common in theoretical economic work, these analyses also require simplifying assumptions to make the model tractable to analyze. For example, theoretical analyses of credit markets often assume, as these two studies do, that borrowers are of only two "types," each having a different risk of default but an identical demand for credit. In reality, credit markets may be more complex. Further research may be needed to understand the consequences of these complexities.

IMPERFECT COMPETITION

The alternative case of an imperfectly competitive credit card market is studied in Nelson (2018). This analysis considers credit cards as potentially differentiated products, so that credit card issuers have the potential to earn profits because of brand loyalty or because they offer features that competing cards do not. It also allows for credit card issuers to have private information about their existing customers, as in Hong et al. (2018), though this private information can comprise information not just about borrowers' riskiness, but also about their sensitivity to price. Nelson (2018) demonstrates that in such a setting, it is possible for restrictions such as those in the CARD Act to lead to lower prices overall for consumers. The key mechanism for this result is the feature that credit card issuers are considered to potentially have private information about borrowers' price sensitivities that is revealed after origination, which potentially generates market inefficiencies through markups on price-insensitive borrowers.[215] However, whether the CARD Act's restrictions do in fact lead to lower overall

[215] Such price discrimination per se is not necessarily inefficient. However when consumers choose both whether to borrow (extensive margin) and how much to borrow (intensive margin), price discrimination in marginal prices such as APRs can result in inefficient quantities—with outcomes analogous to a reduction in credit supply.

prices in the Nelson (2018) model depends on factors such as how close to perfectly competitive the market is and how much private information credit card issuers acquire over time about their customers' default risk and demand for credit.

Considering different potential features of the credit card market, Agarwal et al. (2015) also show theoretically that the CARD Act can lead to lower pricing in an imperfectly competitive market. Rather than focusing on credit card issuers' private information in such a setting, Agarwal et al. (2015) emphasize the role of pricing that may not be fully salient to consumers. One applied example, the case of over-limit fees, can illustrate this. The authors show theoretically that if over-limit fees are less salient to consumers than other price dimensions, and if the market is imperfectly competitive, then other price dimensions will adjust less than would fully offset the decrease in over-limit fees. In the context of imperfect competition and imperfectly salient fees, restrictions such as those in the CARD Act can indeed lower the all-in cost of credit, as the offsetting effect in other price dimensions such as interest rates would not fully overwhelm the direct effect of lower fees.[216]

Similar caveats apply to Nelson (2018) and Agarwal et al. (2015) as were noted above for Hong et al. (2018) and Pinheiro & Ronen (2016). These analyses only show what effects of the CARD Act are likely to emerge *if* the premises of the models, such as behavioral assumptions[217] or imperfect competition, accurately describe the credit card market. Furthermore, even if these premises are consistent with the reality of the market, economic models frequently need to make simplifying assumptions that may overlook important complexities in the market.

6.2.2 Empirical analyses

The theoretical research reviewed above prompts the empirical question of whether the Act's restrictions *in fact* resulted in unintended offsetting consequences elsewhere in the market, in

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[216] *See* Agarwal et al. (2015)'s online appendix, at 4. The presence of asymmetric information can also affect the amount of offset. If the credit card market is adversely selected with respect to its salient prices, such that consumers willing to borrow at higher salient prices also tend to have higher default risk, then the amount of offset from a restriction on a non-salient price would be greater than it would be without such adverse selection.

[217] *See* Durkin et al. (2014) (discussing salience and the lack of empirical evidence to support it and related behavioral assumptions). *See also* Jonathan Zinman, *Consumer Credit: Too Much or Too Little (or Just Right?)*, J. of Legal Stud. (2014).

particular some combination of increases to other dimensions of pricing or decreases in credit supply. Consequences such as price increases could take many forms, including higher initial APRs, less availability of promotional APRs, or increases in other fees such as annual fees. Similarly, reductions in credit supply could take the form of fewer or smaller credit limit increases, lower initial line assignments, fewer direct mail offers and offers through other marketing channels, and tighter approval criteria. This subsection reviews empirical research on these questions, organized by whether the research pertains to credit card pricing or credit availability.

CREDIT CARD PRICING

This subsection reviews empirical research on the CARD Act's overall effects on credit card pricing. Economic theory predicts that when market prices are prevented by law or regulation from adjusting to market conditions, such restrictions on price typically create unintended consequences such as shortages or surpluses. The central question in the CARD Act research has been whether or not the Act's direct effects on some dimensions of credit card pricing, such as over-limit fees, may have also led to unintended consequences on other price dimensions, e.g., introductory interest rates or annual fees. The extent of such consequences determines the CARD Act's overall effects on the cost of credit card borrowing and ultimately the CARD Act's effect on consumer welfare. Efforts to answer this question help identify the net effect of the Act for consumers and may also provide insight about what mechanisms, such as the competitiveness of the credit card market, led the effects of the Act to play out as they did.

The Agarwal et al. (2015) study focuses on such offsetting effects. In particular, the authors ask whether the CARD Act's direct effects on some price dimensions, such as late fees and over-limit fee restrictions, were offset by changes in other price dimensions, and whether the overall effect of the Act is therefore a net decrease or increase in the cost of card credit for consumers. Again using a difference-in-differences regression analysis that compares general-purpose consumer cards with small business cards, Agarwal et al. (2015) find that the amount of such offset in interest rates for borrowers is on average approximately zero. The authors reject, with a high degree of statistical confidence, the hypothesis that any such offset for subprime consumers was larger than 3.7 percentage points, relative to a total estimated direct effect that saw fees decrease by 5.3 percentage points for this population. The authors find that even smaller offsetting effects can be ruled out statistically for prime accounts, although prime accounts also saw lower estimates of the Act's direct effects on fee costs. However, as noted earlier, an extremely important caveat to this study's empirical findings is that the pre-CARD Act period used as a

baseline for comparison in the study's difference-in-differences strategy may already have shown some of the effects of regulations similar to those in the CARD Act, if credit card issuers changed pricing in anticipation of potential upcoming regulatory changes.[218] If, as some critics have argued, card issuers did change their behavior in anticipation of potential upcoming regulations, then Agarwal et al.'s findings would be less persuasive than otherwise presented.[219]

Nelson (2018) also examines the CARD Act's overall effect on credit card pricing. While the results are largely consistent with the results in Agarwal et al.'s (2015), they also suggest that the CARD Act had a range of different effects for consumers of different types. In particular, the study finds evidence of adverse consequences of the Act for some consumers—for example, some types of *relatively* low-risk subprime consumers may have faced higher pricing as a result of the Act, even as consumers at all credit scores faced, on average, lower prices.

To estimate these differential effects across consumer types, Nelson (2018) develops a quantitative model of the credit card market that includes many of the features discussed in the preceding section's review of theoretical research. After quantifying the importance of these features, such as imperfect competition and issuers' private information, in pre-CARD Act data, the analysis then simulates the CARD Act's pricing restrictions in the model and evaluates the restrictions' overall effects for different types of consumers. Nelson (2018) finds that even for a consumer who faces higher prices after the CARD Act, there is a reasonably high chance that the consumer becomes, at a later date, someone who benefits from lower prices under the Act—for example, a consumer with only modest demand for card credit may later have more intensive credit demand. These consumers benefit under the Act from insurance against higher pricing in the future, so that on net, Nelson's (2018) analysis finds these consumers' surplus in fact rises as a result of the Act. Other consumers who do not face higher prices after the Act have even larger surplus gains. On average across all consumers, the study finds that consumer surplus roughly doubles from the CARD Act pricing restrictions.

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[218] For further discussion of these proposed regulatory changes, see footnote 182.

[219] Agarwal et al. (2015) suggests that their empirical findings is consistent with a model in which fees are not salient to consumers. This behavioral model has been the focus of criticism by commentators, such as Durkin et al. (2014).

As before, it is important to caveat these conclusions. In particular, Nelson's (2018) analysis relies on a specific model of credit card demand and market competition in order to understand how the market has responded to the CARD Act's pricing restrictions. This model may not fully capture important aspects of how consumers value various credit card features. As noted earlier, both Nelson's (2018) and Agarwal et al.'s (2015) analyses may also be confounded by issuers' anticipatory behavior in the pre-CARD Act period, or, in Agarwal et al.'s (2015) case, by aspects of the Great Recession that may have affected consumer credit cards differently than small business credit cards during the period that the CARD Act took effect.

Other recent research by Dou et al. (2019) examines how credit card issuers changed their pricing behavior after the CARD Act. Rather than focusing on the *level* of pricing as other analyses have done, Dou et al. (2019) study how credit card issuers respond differently to changes in their competitors' pricing—for example, to what extent one issuer cuts its rates after another issuer does so. The study uses data on interest rates in direct mail offers for new credit card accounts, leveraging the same comparison of consumer credit cards and small business credit cards, before and after the CARD Act, as was used in the Agarwal et al. (2015) study. By examining "local" credit card markets at geographic levels such as the county, the authors conclude that card issuers' pricing has become less responsive to competitors' price changes in the post-CARD Act period. To interpret these results, it is valuable to note that this change in behavior could be consistent with credit card pricing becoming either higher or lower relative to cost; for example, such price responsiveness could fall in an environment where pricing has also fallen relative to cost. Nevertheless, these changes in pricing behavior may point to additional unintended consequences of the CARD Act that may shed light on the Act's overall effects.

CREDIT CARD AVAILABILITY

This subsection considers empirical research on the CARD Act's overall effects on credit card availability. While these effects are considered separately from the pricing effects studied in the preceding subsection, it should be noted that the distinction between pricing effects and availability effects can be difficult to draw. For example, firms may respond to the restrictions imposed by the CARD Act by raising prices for some consumers beyond the level some consumers would be willing to accept or by reducing the amount of credit they offer to some segments by issuing lower credit lines or approving fewer applications.

In work by Han et al. (2018), the authors suggest that the CARD Act may have led to less frequent direct mail offers for new credit cards, in particular for consumers with subprime credit scores. Using an approach similar to the difference-in-differences regression framework in

Agarwal et al. (2015), this study compares credit card offers with offers for similar loan products such as corporate cards, personal loans, and auto loans over time. On net, the authors estimate that the monthly probability of receiving a credit card direct mail offer fell by roughly 6.6 percentage points for consumers with subprime credit scores relative to the probability of receiving an offer for other products and relative to prime consumers, with a discernible and persistent drop in the estimated relative probability of offer receipt that begins around the time of the CARD Act's passage. This result is consistent with the evidence in Nelson (2018) that the Act may have had adverse consequences for some types of subprime consumers.

The Han et al. (2018) results are similar to what would be predicted by some of the theoretical arguments discussed in Section 6.2.1 above, especially theoretical arguments that assume a perfectly competitive credit card market. This study also has the advantage of using multiple comparison groups for subprime card credit and of having data from a longer pre-CARD Act period than has been available in many other studies, thereby mitigating the risk that anticipatory effects may impact the analysis. Nevertheless, similar to other studies reviewed in this section, some caveats also apply in interpreting the Han et al. (2018) results. As discussed in prior iterations of this card market report, direct mail offers for credit cards became less prevalent over the post-CARD Act period relative to other account acquisition channels, such as online marketing. If these trends were more pronounced for subprime than for prime accounts for reasons unrelated to the CARD Act, then such changes could affect the study's estimates; similar issues could arise if comparison groups such as auto loans exhibited divergent trends between subprime and prime direct mail volumes in the post-CARD Act period for reasons particular to these markets.

Other studies have found correlational evidence consistent with the cautionary results in Han et al. (2018). Jambulapati & Stavins (2014) document an increase in credit card account closures that coincided with both the CARD Act and the Great Recession. Santucci (2015) compares different vintages, or origination years, of credit card accounts from one period prior to the CARD Act and prior to the Great Recession, and one period subsequent to the CARD Act and subsequent to the Great Recession. Santucci (2015) finds that the latter vintage had lower initial credit lines and received smaller net increases in credit limits in dollar terms. Elliehausen & Hannon (2018) document that the decrease in the number of open credit card accounts during this time period was more pronounced for consumers with subprime credit scores. When discussing this correlation, Elliehausen & Hannon (2018) argue that a greater decrease in subprime credit in the period around the Great Recession can be interpreted as evidence of the CARD Act's adverse effects.

Agarwal et al. (2015) also examine the CARD Act's effects on measures of credit card availability. Their difference-in-differences regression analysis finds that the Act resulted in small to zero effects on credit limits, for existing accounts, in the short term. The estimates for new accounts are less conclusive. For new accounts issued to consumers with subprime credit scores, the estimates are too statistically imprecise to be conclusive. For consumers with prime credit scores, the available evidence suggests that general purpose consumer cards and small business cards may have exhibited different trends in initial credit lines in the period prior to the Act. These divergent trends make estimates from the difference-in-differences strategy of comparing these two groups over time more difficult to interpret.

Across the methodologies and analyses reviewed in this section, a consistent theme is the challenge of disentangling the *effects* of the CARD Act itself, rather than the effects of other market changes such as the Great Recession. Overall, the scholarship reviewed in this section suggests that the CARD Act's effect on consumer welfare is mixed.

7. Credit card debt collection

As part of its review of the practices of credit card issuers, the Bureau surveyed a number of large issuers in order to better understand practices and trends in credit card debt collection between 2017 and 2018. These same large credit card issuers were also surveyed for the Bureau's 2015 Report and 2017 Report. Findings from the Bureau's current survey (the MMI dataset) are reported throughout this section.

First, this section provides background information on the overall market for consumer debt collection. Second, this section reviews issuer policies and practices with respect to resolving delinquent debt prior to charge-off, including communication practices, use of first-party and third-party collectors, and loss mitigation programs. Third, this section reports on the recovery of debt following charge-off, including metrics on recovery of charged-off debt through various channels, such as third-party agency collections, debt sale, and litigation. Finally, this section highlights selected key topics in credit card debt collection such as the growing number of borrowers engaging with for-profit debt settlement companies.

7.1 Debt collection markets

Most large credit issuers use their own employees and resources to collect some portion of their delinquent debts. Many creditors also engage third parties to collect debts on their behalf or sell uncollected debts to debt buyers, who then collect the debts themselves or through a third party. Debt collection industry revenue has declined in recent years, decreasing from an estimated $13.5 billion in 2013 to $11.5 billion in 2018.[220] The third-party debt collection industry now employs roughly 118,000 workers, representing an overall reduction of nearly 10,000 jobs in the last three years.[221] The number of debt collection firms has also continued to decline as the result of industry consolidation, as can be seen in Figure 1.

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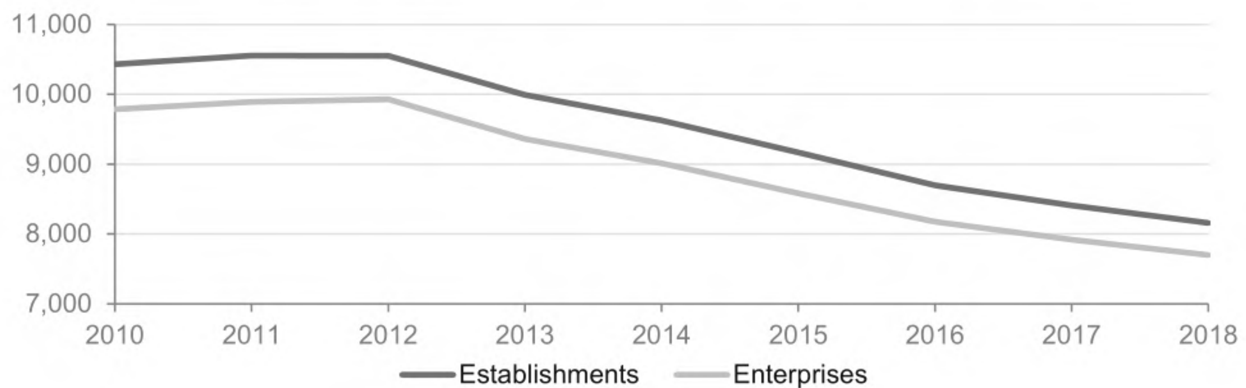
[220] Anna Amir, *Debt Collection Agencies in the US,* IBISWorld (Dec. 2018).

[221] *Id.*

Figure 1: DEBT COLLECTION INDUSTRY SHRINKAGE BY ENTERPRISES AND ESTABLISHMENTS, 2010-2018 (IBISWORLD)[222]



According to a nationally representative survey conducted by the Bureau between December 2014 and March 2015, one-in-three consumers with a credit report reported having been contacted by a debt collector or creditor about a past-due debt in the preceding year. Forty-four percent of these consumers reported being contacted about a credit card debt.[223]

More recent data drawn from the CCP[224] indicate that in 2018 roughly 28 percent of consumers with a credit file had a "collections tradeline" (*i.e.*, an account that appears on a consumer's credit report as a debt in collections) listed for a debt assigned to a third-party collector. Of these

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[222] "Enterprises" refers to the number of debt collection businesses in operation. Each enterprise may have multiple locations, which explains why "establishments" is a larger figure.

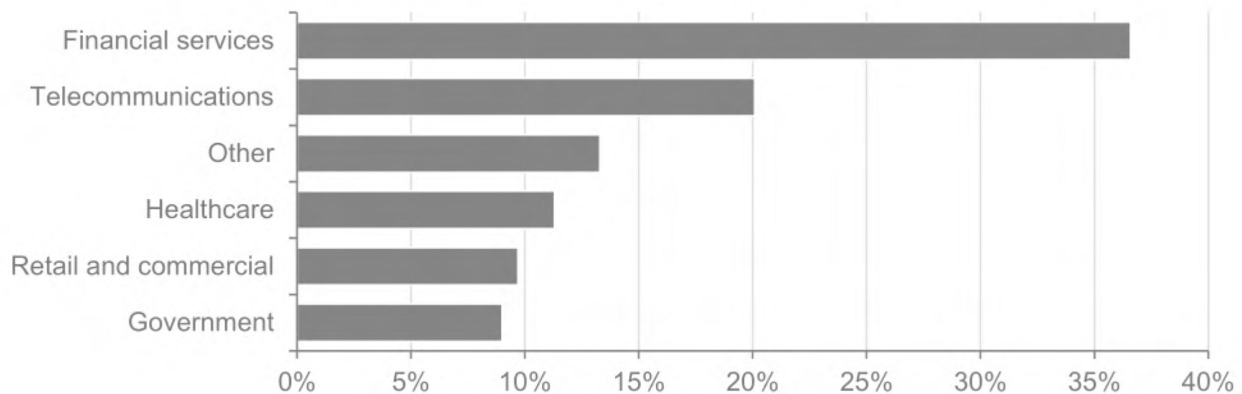
[223] Bureau of Consumer Fin. Prot., *Consumer Experiences with Debt Collection: Findings from the CFPB's Survey on Consumer Views on Debt*, (Jan. 12, 2017), https://www.consumerfinance.gov/documents/2251/201701_cfpb_Debt-Collection-Survey-Report.pdf. The total number of consumers with accounts in collection may be understated because it is based on consumer credit reports, which do not account for utilities, rent, retail, and other debts that are not reported to the three large credit reporting agencies. *See, e.g.*, Bureau of Consumer Fin. Prot., *Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation's Largest Credit Bureaus Manage Consumer Data*, (Dec. 2012), *available at* https://www.consumer finance.gov/ data-research/research-reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system.

[224] See Section 1.3.1 for more information on the CCP data source.

consumers, roughly 30 percent had at least one credit card tradeline assigned to a third-party debt collector. However, the actual share of consumers with credit card debt in collections may be much higher, as issuers may provide credit reporting data on delinquent consumers directly to credit bureaus rather than allowing their third-party collection agencies to furnish these tradelines.

Consistent with the Bureau's 2017 Report, debt from the financial services segment continues to constitute the largest share of third-party debt collection revenue—nearly 37 percent in 2018.[225] Figure 2 breaks down the $11.5 billion in third-party debt collection revenue by type of debt. Telecommunications, medical, retail, and government debt are also significant drivers of debt collection industry revenue.

Figure 2: DEBT COLLECTION MARKET SEGMENTS BY SHARE OF REVENUE, 2018 (IBISWORLD)



A large majority of debt collection industry revenue is generated by firms contracting with creditors to collect their debts on a contingency fee basis. In contingency fee collections, the creditor and the collector each receive a share of the amount collected. The Bureau's current survey on credit card issuers' debt collection practices found that, on average, respondents placed 28 percent of their overall charged-off inventory with third-party collectors in 2018, with almost all employing a contingency fee model.

[225] 2017 Report, *supra* note 5, at 305.

Another significant source of debt collection revenue is debt sales, where a debt buyer purchases accounts (or portfolios of accounts) from the original creditor or other debt buyers and then generally seeks to collect on the debt, either themselves or through third-party debt collectors. If debt buyers have used third-party debt collectors to recover for them, the debt buyers typically pay a share of the amount collected to the third-party debt collectors.

In May 2019, the Bureau published a Notice of Proposed Rulemaking (NPRM) proposing to amend Regulation F, 12 C.F.R. part 1006, which implements the Fair Debt Collection Practices Act (FDCPA), to prescribe Federal rules governing the activities of debt collectors covered by the FDCPA.[226] The proposal focuses on debt collection communications and disclosures and also addresses related practices by debt collectors.

7.2 Collections prior to charge-off

This section begins with a review of surveyed issuers' policies, procedures, and practices with respect to resolving delinquent debt prior to charge-off. All respondents conducted some collections activities in-house prior to charge-off. An issuer's internal collection efforts may include such methods as calling, texting, emailing, and sending letters to the consumer. Most issuers also supplemented the activities of their in-house agents with the resources of first-party collectors: outside collectors who collect on delinquent debt while working under the name and the direction of the creditor. As an alternative to internal collection and recovery, an issuer may also turn to a third-party agency to collect in the agency's own name. More than one-half of the surveyed issuers worked with third-party collectors prior to charge-off.

In response to the Bureau's current survey, issuers provided information regarding restrictions on contacting consumers, use of electronic communications (*e.g.*, email or SMS), technology and software used as part of their collection strategies, use of first-party collectors, loss

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[226] Debt Collection Practices (Regulation F), 84 Fed. Reg. 23274 (May 21, 2019) (a proposed rule to amend 12 C.F.R. part 1006).

mitigation practices, and the engagement of third-party collectors for collection activities prior to charge-off.[227]

7.2.1 Pre-charge-off communications

Issuers reported having policies in place that specify the frequency with which their collectors can call, leave voicemails, email, text, and otherwise contact a consumer with regard to a delinquent account.[228] Table 1 below provides greater specificity on the ranges of issuers' policy limits on consumer contact via various media and actual average attempts for each of those media. Issuers reported that their call intensity strategies depended on an account's stage of delinquency and risk level, among other factors.

TABLE 1: RANGES OF CONSUMER CONTACT POLICY LIMITS AND ACTUAL AVERAGE ATTEMPTS (MMI)

Policy limit or actual attempts	Phone call attempts per day	Phone calls after right party contact	Voicemails per day	Postal letters per month
Policy limit	2 to 9 per account	No additional calls on contact date	1 per phone number	1 to 8 per account
Actual average attempts[229]	1.42 to 3.50 per account	0 per account on contact date	0.06 to 0.77 per account	0.21 to 2.16 per account

[227] Most issuers use proprietary case management software for their internal collections. Issuers rely on a small number of vendors for their dialer software and hardware, mainly Avaya and Aspect dialers.

[228] In response to the Bureau's Request for Information (RFI) a commenter asserted that limiting consumer contacts via any channel will make it more challenging for creditors to work with delinquent consumers, raising the cost of credit overall, including for consumers who pay their debts in a timely manner. *See* ABA Comment Letter, at 7.

[229] Average attempts via the telephone and voicemail channels were defined as the number of calls made or voicemails left to all accounts that were called divided by the number of unique delinquent accounts that were called in a given period of time. For postal letters sent, average attempts by letter was defined as the number of letters sent to delinquent accounts divided by the number of unique delinquent accounts. The time frames were daily, weekly, or monthly, depending on common practices in that channel.

All surveyed issuers reported that their policies included daily caps per account on phone calls. Daily contact attempt policy limits ranged from two calls to nine calls per account. The high end of this range has decreased from the previous high of 15 calls per account reported in the Bureau's 2017 Report.[230] Some respondents also set a weekly cap on telephone call attempts at 30 calls per week per account, while other issuers set monthly caps, which ranged from 60 to 90 call attempts per month. All issuers surveyed restricted the number of voicemails that can be left for a consumer each day, allowing no more than one voicemail per phone number per day, a decrease from the policy range of one to two voicemails reported in the Bureau's 2017 Report.[231]

In general, issuers' actual average contact attempts remained below stated policy maximums. Issuers averaged between 1.42 and 3.50 contact attempts via telephone per account per day, similar to the range of 1.49 to 3.51 contact attempts reported in the Bureau's 2017 Report. However, no issuer allowed calls to continue within a given day once "right party contact" has been made. Right party contact occurs when the issuer or collector is able to reach and speak with the consumer whom the issuer believes is responsible for the debt via telephone. Right party contact rates typically averaged between 1 percent and 5 percent for in-house and first-party collections and between 0.6 percent and 1 percent for third-party collections over a three month period.[232] The majority of respondents reported that they did not track in-house and first-party contact attempts separately for pre-charge-off collections. Issuers who placed pre-charge-off accounts with third-party collection agencies stated that they often assign "high risk" accounts to third-party collectors, including accounts where no contact had been made with the primary account owner for an extended period of time, reducing right-party contact rates.

Nearly all of the issuers surveyed also reported using email as part of their credit card collection strategy, but the degree to which they used it varied widely. The reported percentage of email-

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[230] 2017 Report, *supra* note 5, at 314.

[231] *Id.*

[232] The survey defined "right party contact rate" as the number of times live contact with the primary or joint account holder or power of attorney of the debt was made during the quarter divided by the total number of outbound dialer attempts made to delinquent accounts in the quarter.

eligible accounts (defined as accounts for which the consumer provided a valid email address and agreed to be contacted at that address) ranged from 10.3 to 92.6 percent. Some issuers reported using email proactively for account servicing (*e.g.*, sending reminders about a pending withdrawal from a consumer's bank account for a recurring payment) as part of their pre-charge-off communication strategy. Other issuers stated that they used email only reactively, such as when a consumer initiated a conversation online or requested that documents be sent by email. Issuers who reported using email typically restricted the number of emails that could be sent to two or three emails per week.

TABLE 2: EMAIL, TEXT, AND WEBCHAT ELIGIBILITY AND ENGAGEMENT RATES, 2018 (MMI)

	Email	Text/SMS message	Web chat
Average percent of accounts eligible for channel[233]	68.3%	59.4%	Not applicable
Average percent of eligible accounts engaged via channel per month	67.0%	50.6%	2.5%

While nearly all issuers reported using email, less than two-thirds of those surveyed said they sent mobile text messages to communicate with delinquent consumers. However, the share of issuers using text as part of their credit card collection strategy has increased since the Bureau's 2017 Report as a number of issuers reported piloting pre-charge-off text message strategies to notify consumers of their delinquent credit cards and repayment options. Two-thirds of issuers surveyed also reported engaging with delinquent consumers via "web chat," where a consumer can click a chat button on the issuer's webpage to communicate about their debt with a collections agent. In fact, some issuers now allow credit card settlements to be negotiated via web chat.

[233] For email and text, the eligibility rate was defined as total number of unique delinquent accounts with a consented email address or a consented mobile phone number divided by the total number of unique delinquent accounts as of the end of each year. There is no eligibility rate for web chat, as the eligible population is all unique pre-charge-off delinquent accounts.

All surveyed credit card issuers had the capacity, within their collections function, to accommodate consumers with Limited English Proficiency or consumers who express the desire to communicate in a language other than English. Some issuers had a special unit of multilingual collectors to communicate with these consumers in their preferred language. Those without a special unit outsourced their translation services. For issuers that tracked consumer language preferences, the share of pre-charge-off delinquent balances owed by consumers who expressed a preference for a language other than English was 2.35 percent in 2018.

Some issuers reported having pre-delinquent collections strategies in place where they pursued collections on accounts that were current (*i.e.,* had not yet become delinquent.) These issuers focused on subsets of current accounts that were identified as high-risk, such as accounts that were chronically above the credit limit.

7.2.2 First-party collections

The majority of issuers supplemented the activities of their in-house agents with resources from first-party collectors, either by directly engaging an entire first-party collection agency or by supplementing their internal agent pool by hiring some collectors from first-party suppliers. Issuers reported that they generally do not track pre-charge-off account placements separately between in-house and first-party collections. Most issuers that used first-party collectors noted that they do not place any specific sub-segments of accounts with first-party agencies. Instead, issuers typically allocated work between in-house and first-party collectors based on availability, requiring that first-party collectors place, receive, and document calls to consumers using the issuers' own case management system and dialer technology.

First-party collection companies were typically paid on a full-time equivalent (FTE) basis, unlike the contingency fee model used to compensate third-party collectors. On average, issuers reported keeping 89 percent of pre-charge-off debt balances to be worked in-house and by first-party collectors, with the remaining 11 percent placed with third-party collectors.[234] The number of unique first-party agencies used across issuers remained relatively stable year-over-year

[234] These figures represent the percentage of pre-charge-off balances that each issuer retained for in-house and first-party collections and placed with third-party collectors, averaged across all issuers.

between 2017 and 2018, with 10 unique agencies in 2017 and 11 in 2018. The issuers that used first-party agencies used three different agencies on average.

7.2.3 Third-party contingency collections

More than half of the surveyed issuers worked with third-party contingency collectors prior to charge-off, which remained the same compared to the Bureau's 2017 Report.[235] The total number of unique third-party collection agencies used across issuers also remained steady from 2017 to 2018, with issuers who used third-party collectors employing an average of 13 third-party agencies in both years.[236] For issuers that used third-party collection agencies prior to charge-off, the average share of pre-charge-off debt placed with third-party collectors remained flat at 11 percent between 2017 and 2018. However, the share of pre-charge-off debt placed with third-party agencies varied widely among issuers, as some issuers placed a substantial portion (as high as 28 percent) of their pre-charge-off debt with third-party collectors, while some did not place any debt.

AGENCY COMPENSATION

Most issuers that contracted with third-party agencies for pre-charge-off collections paid a contingency fee that was a percentage of the amount collected. These fees ranged from 7.1 to 19.0 percent, with an average of 16.5 percent in 2017 and 15.3 percent in 2018. Survey respondents indicated that this variation is attributable to differences in the risk profile of the accounts being placed with third-party collectors. Generally, highly-collectible accounts command lower contingency fees compared to those perceived as being more difficult to collect. Among those issuers that used third-party agencies, a small number reported paying their third-party collectors on a FTE basis, rather than using contingency fees. Most issuers also provided additional incentives to third-party collectors based on their performance relative to a set financial target or to the performance of other collection agencies.

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[235] 2017 Report, *supra* note 5, at 315.

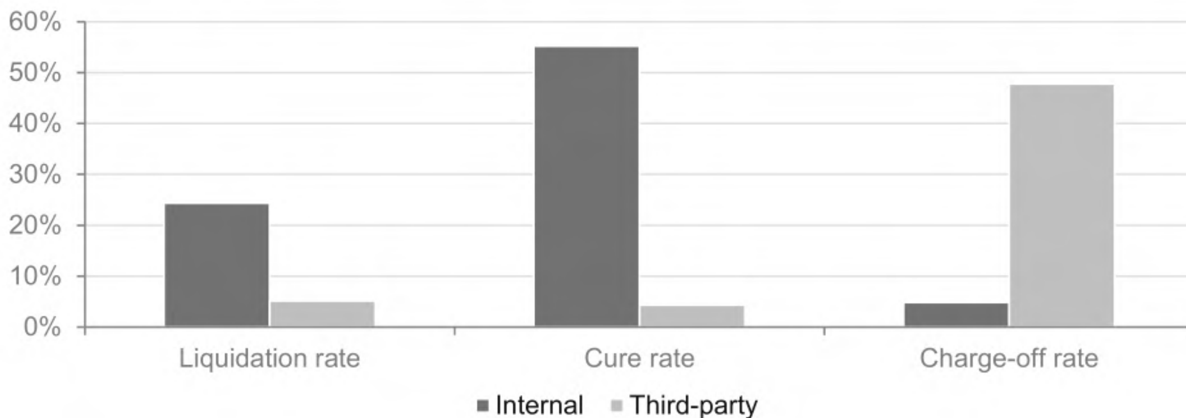
[236] These numbers were driven by one outlying issuer, who reported a significantly higher number of third-party collection agencies. Excluding this outlying issuer, the average number of third-party collection agencies used by each surveyed issuer was 10.

7.2.4 Performance

Prior to charge-off, issuers generally kept debts that were in an early stage of delinquency or were assessed as having a relatively high likelihood of recovery for in-house collections. Issuers that placed accounts with third-party collection agencies often assigned "high risk" accounts to third-party collectors, including accounts in the later stages of delinquency, closed accounts, and accounts where no contact had been made with the primary account owner for an extended period of time. Respondents also noted that they may assign accounts with special circumstances to third-party collection agencies with specialized collections expertise in the relevant area, such as those where the consumer was engaged with debt settlement companies, the accountholder was deceased, or bankruptcy applications were pending. As a result, in-house collections generally had higher liquidation rates and cure rates, and lower charge-off-rates, relative to third-party collections, as seen in Figure 3 below.[237] These performance metrics all remained relatively stable year-over-year from 2017 and 2018.

[237] The quarterly liquidation rate is defined as total pre-charge-off delinquent dollars collected in a given quarter as a percent of total pre-charge-off delinquent dollars in that same quarter. Cure rate is defined as the percent of pre-charge-off delinquent dollars in a given quarter that were repaid to current status by the end of the same quarter. Charge-off rate is defined as the percent of pre-charge-off delinquent dollars that charged off (representing contractual charge-offs as well as accounts charged off for bankruptcy, notice of decease, etc.) as of the end of the same quarter. These quarterly rates are averaged across all issuers and weighted by issuer's share of total pre-charge-off delinquent dollars. Finally, the 2018 quarterly average was calculated across all four quarters.

Figure 3: AVERAGE QUARTERLY PERFORMANCE FOR INTERNAL AND THIRD-PARTY COLLECTIONS, 2018 (MMI)



7.2.5 Loss mitigation and re-aging practices

Credit card issuers used various loss mitigation practices, including re-aging, short- and long-term forbearance programs, debt management plans offered by consumer credit counseling agencies, and debt settlement. Issuers reported that they generally structured their loss mitigation practices to conform to guidance issued by the Federal Financial Institutions Examination Council (FFIEC) and the federal banking agencies on the use of these collections tools.[238]

RE-AGING

Re-aging returns a delinquent, open-end credit card account to current status without collecting the total amount of principal, interest, and fees that are contractually due. Re-ages are often

[238] *See generally* Uniform Retail Credit Classification and Account Management Policy: Policy Implementation, 65 Fed. Reg. 36903 (June 12, 2000); Off. of the Comptroller of the Currency, Bd. of Govs. of the Fed. Reserve System, Fed. Deposit Ins. Corp., Off. of Thrift Supervision, *Credit Card Lending: Account Management and Loss Allowance Guidance*, *OCC Bulletin 2003-1*, (Jan. 8, 2003), *available at* https://occ.gov/news-issuances/bulletins/2003/bulletin-2003-1.html.

performed by collections departments to assist customers who are experiencing temporary financial difficulties.

Issuers' policies allow re-aging of open-end accounts when a borrower makes at least three consecutive minimum monthly payments or an equivalent amount in a lump-sum payment. Additionally, an account must be on the books for at least nine months to be eligible for re-aging. The number of re-ages on an account is limited to one in 12 months and two in five years. However an account that is enrolled in a long-term forbearance or debt management program, including internal and third-party debt management plans, may be eligible for a third re-age within the five year period. All surveyed issuers' re-aging policies aligned with the guidance offered by the FFIEC and federal banking agencies.[239]

According to the results of the current survey, re-aged balances as a percentage of total delinquent dollars remained below 2 percent for each quarter between 2017 and 2018. There was considerable variation among the card issuers in terms of the share of pre-charge-off balances that were re-aged: the quarterly average ranged from as low as 0.44 percent of total delinquent dollars to a maximum of 5.8 percent. This wide range may reflect variation in each issuer's underlying portfolio composition. Collectively, issuers re-aged nearly $1 billion in balances per quarter, well above the $660 million per quarter reported in the Bureau's 2017 Report. However, re-aged balances as a share of total delinquent dollars still remained close to the 2 percent reported in the Bureau's 2017 Report.[240] An uptick in re-aged balances in recent quarters in 2018 aligned with an increase in credit card delinquencies.

FORBEARANCE PROGRAMS

Forbearance programs are a form of workout program designed to assist borrowers experiencing financial hardship. These programs can be "temporary" or "short-term," aimed at assisting borrowers experiencing hardships expected to last 12 or fewer months, or "long-term," intended to aid borrowers experiencing continued hardships lasting longer than 12 months. Forbearance programs usually lower a customer's interest rate and monthly required payment amount. Issuers reported that their long-term programs generally require borrowers to repay

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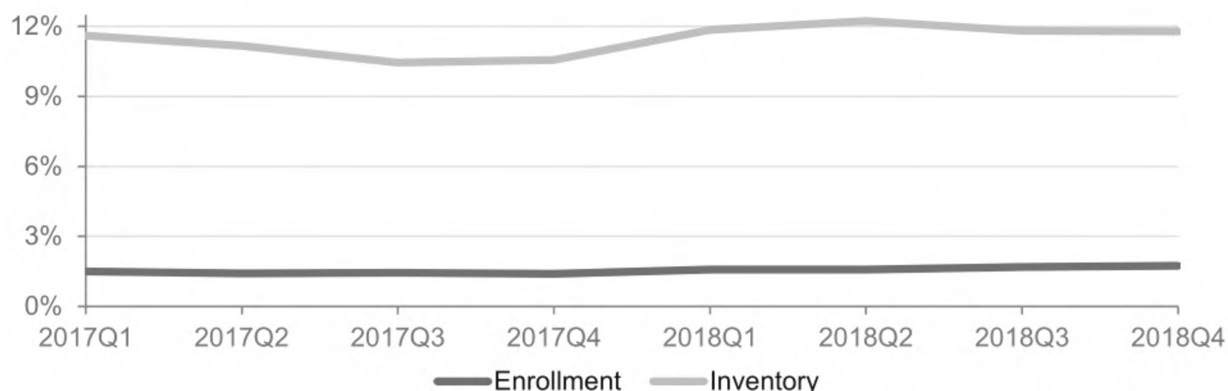
[239] 65 Fed. Reg. 36903 (June 12, 2000).

[240] 2017 Report, *supra* note 5, at 318.

their credit card debt within 60 months. In order to meet this amortization timeframe, creditors may need to substantially reduce interest rates and eliminate fees, so that a greater share of the borrower's monthly payment is applied to pay down the principal balance. All issuers surveyed generally reported assessing and documenting the reason, severity, and duration of the cardholder's financial difficulty when placing them in a forbearance program. All surveyed issuers' forbearance policies aligned with the guidance offered by the FFIEC and federal banking agencies.[241]

Figure 4: QUARTERLY FORBEARANCE NEW ENROLLMENT AND ACTIVE INVENTORY AS A SHARE OF DELINQUENT BALANCES (MMI)[242]



Review of issuers' loss mitigation policies indicates that most issuers have discontinued offering short-term forbearance programs over the last several years. Instead, issuers that did not offer short-term programs evaluated consumers with short-term financial hardships and offered them long-term programs as an alternative. Most issuers also reported that they do not allow their third-party collection agencies to offer and enroll borrowers in hardship programs, due to the complexity of managing these programs.

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[241] *Id.*

[242] "Inventory" refers to total balances for all accounts that are in active status in a forbearance program as of the end of the quarter.

CREDIT COUNSELING AGENCIES

Issuers work with consumer credit counseling agencies (CCAs) to help borrowers resolve their financial hardships, as an additional component of their loss mitigation efforts. CCAs work with borrowers to develop a budget and a debt management plan (DMP) for all of the consumer's enrolled debts, which may be owed to multiple creditors. These plans generally involve paying creditors a fixed payment amount at a reduced interest rate. Issuers typically categorize DMPs managed by CCAs as "long-term hardship programs."

All of the respondents reported that they work with CCAs in some capacity, although individual creditors' policies about how they work with and fund CCA services vary. Some respondents limited the number of CCAs they work with by requiring CCAs to meet certain selection criteria, such as whether CCAs are non-profits, belong to a trade group, or meet certain criteria for program outcomes. Some respondents reported referring consumers to specific CCAs. The majority of respondents reported funding CCAs through a "fair share" payment, which is a payment based on a percentage of the amount the consumer has paid back to the issuer. A few of the respondents stated that they do not pay fair share, but instead fund certain CCAs through grant funding. Several issuers reported exploring working with CCAs on debt relief programs that extend beyond the traditional DMP.

All issuers reported offering one or more types of forbearance or debt management programs with varying interest rates, monthly fixed payment amounts, and amortization periods. Total new enrollments in forbearance programs and DMPs offered by credit counselors remained below 2 percent of total pre-charge-off delinquent balances during the study period. However, total new enrollments increased by 16 percent from 2017 to 2018, representing a $500 million dollar increase in debt balances enrolled. Approximately $1.2 billion of debt was enrolled in various forbearance or debt management programs each quarter. The average quarterly new enrollment rate among individual issuers ranged from a low of 0.2 percent to a high of 5.2 percent of all pre-charge-off delinquent balances. While the Bureau's 2017 Report noted a steady decline in forbearance inventory between 2015 and 2016, issuers reported that total forbearance inventory shows a moderate upward trend due to an increasing number of new enrollments in 2018.

DEBT SETTLEMENT

Debt settlements occur when an issuer agrees to accept less than the full balance owed by the borrower as full satisfaction of the balance owed. This can happen when the creditor becomes persuaded that the consumer is unable to pay the full amount of the debt owed. Collectors may

also offer settlements to the consumer, as authorized by the creditor. Under current tax law, debt cancelled in this manner may have tax implications for the consumer.

Creditors' settlement policies outline the standards for settlement offers that the creditors will proactively make or reactively accept from consumers. Most issuers have policies in place to proactively offer settlements directly to consumers who meet the standardized risk criteria set by the creditor. These efforts may be conducted via in-house operations or through third parties. Issuers also set "floors" for settlements requested by the consumer, which specify the lowest amount the issuer is willing to accept as a settlement as a percent of the total balance. In addition to the size of the debt and the length of delinquency, issuers generally have procedures in place to assess the financial situation of the consumer when responding to a settlement request by the consumer. While there is some variation among issuers, the share of debt that each issuer settled for less than the full balance remained fairly steady throughout 2017 and 2018. Among surveyed issuers, the average share of pre-charge-off debt settled each quarter ranged from 0.07 percent to 0.79 percent, while the share of post-charge-off debt settled ranged from 0.26 percent to 3.04 percent.

Pre-charge-off balances are settled with a single lump-sum payment or multiple installments. Installment settlements typically consist of three payments, but pursuant to guidance from the Office of the Comptroller of the Currency for national banks and federal savings associations the total duration of the payments should not exceed three months.[243] The portion of the balance that is forgiven should generally be charged off when the settlement agreement is fulfilled.[244] Post-charge-off settlements can be structured over any length of time. Post-charge-off settlements can have lower floors relative to pre-charge-off settlements, though the degree to which lower rates are offered for charged-off debts varies across issuers. Average settlement rates—the balance paid as a ratio of the balance owed by the borrower for accounts that were settled—remained steady between 2017 and 2018 at about 53 percent pre-charge-off and 50

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[243] *See* Off. of the Comptroller of the Currency, *Comptroller's Handbook: Credit Card Lending, Version 1.2*, (Jan. 2017), *available at* https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/credit-card-lending/pub-ch-credit-card.pdf.

[244] *See* OCC et al. Guidance, *supra* note 238.

percent post-charge-off, though there was some variation in the rates among individual respondents.

If the forgiven debt exceeds $600, issuers may file a 1099-C for "Cancellation of Debt" with the Internal Revenue Service. Most issuers disclose the potential of tax implications for the settlement to the consumer, either as part of a telephone script or via letter.

7.3 Recovery following charge-off

Once an account charges off, it is placed into one of a variety of channels, including internal collections, third-party agency placement, litigation, and debt sale to facilitate further recovery of the balance owed. Issuers may place accounts multiple times in different channels depending upon recovery performance within each channel. Issuers may also warehouse certain accounts where balances are considered unlikely to be repaid.[245] In 2018, issuers in the sample charged off $39 billion in debt, a 10 percent increase from 2017, and 56 percent more than the $25 billion charged off in 2015.[246] In general, the current survey found that:

- All issuers warehoused a significant portion of their overall post-charge-off inventory;
- Most issuers used third-party agencies throughout the entire review period to collect at least a portion of their charged-off debt;
- Most issuers engaged in internal collections for at least a portion of their charged-off debt;
- Most issuers engaged in post-charge-off litigation to collect debt from consumers; and

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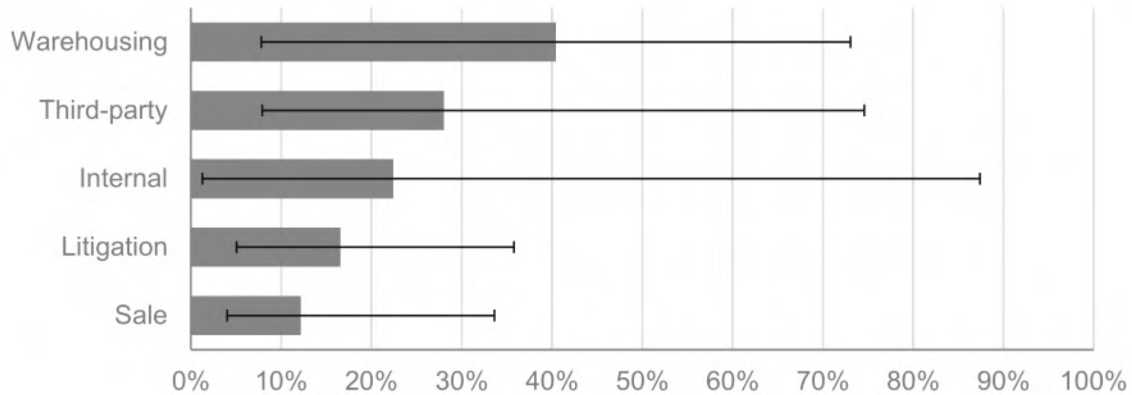
[245] Warehoused balances are generally those that issuers do not actively seek to collect and generally include accounts issuers considered to be uncollectible or unlikely to be repaid, including older accounts that may be past the statute of limitations. Some issuers also reported that they may place accounts in warehouse status when transitioning these accounts between placements.

[246] 2017 Report, *supra* note 5, at 320. The same group of issuers were surveyed for the Bureau's previous 2017 and 2015 Reports.

- A minority of issuers sold debt.

Figure 5: SHARE OF CHARGE-OFF BALANCE INVENTORY BY RECOVERY CHANNEL IN 2017 AND 2018 (MMI)[247]



Issuers reported a significant portion of their overall post-charge-off balance inventory was in warehouse status, as shown in Figure 5. The warehouse category includes accounts that are considered uncollectible for various reasons (*e.g.*, accounts lacking current contact information for the accountholder despite many attempts to locate them) or that are deemed unlikely to be repaid (*e.g.*, accounts where no payment has been received for an extended length of time).

Excluding warehoused accounts, issuers that used third-party collection agencies generally placed the largest share of their charged-off balance inventory with such agencies. Issuers that used third-party collection agencies reported placing nearly one-third of their post-charge-off inventory with third-party agencies in any given quarter between 2017 and 2018. While there was significant variation in third-party placements among issuers, the percentage of debt that each issuer placed with third-party agencies remained fairly consistent between 2017 and 2018. Among issuers, third-party placement share ranged from nearly 8 percent to 73 percent of an issuer's total post-charge-off inventory in 2017 or 2018. The range of placement into internal

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[247] Green bars represent the average share of charged-off balances in each of the five recovery channels. The issuers provided the status of post-charge-off balance inventory as of the end of each quarter in 2017 and 2018. The distributions for 2017 and 2018 were averaged by issuer, and then averaged across issuers. Black lines running through each bar represent the range of the share of charged-off balances only for issuers that used that channel. In other words, the ranges do not include zero values, even though some issuers did not use that particular channel.

recovery was similarly varied, as a few issuers reported that they relied primarily on internal recovery for post-charge-off collections.

Most issuers sued some consumers to recover unpaid balances after charge-off. On average, issuers litigated almost 20 percent of their post-charge-off balance inventory. Finally, similar to the results of the Bureau's 2015 and 2017 Reports, few issuers leveraged debt sales as part of their post-charge-off recovery strategy. Issuers who sold debt reported selling an average of 12 percent of their post-charge-off balance inventory.

7.3.1 Internal recovery

Internal recovery is not a significant piece of most issuers' overall recovery strategy for post-charge-off debt. Similar to in-house collections prior to charge-off, issuers may pursue internal recovery efforts directly after charge-off, or they may first place accounts with third-party contingency agencies. A minority of the issuers used internal recovery as a significant piece of their overall recovery strategy, while the majority generally retained accounts that were ineligible for third-party placement or awaiting placement in another channel. There was a significant degree of variation in issuers' policies designating certain accounts ineligible for third-party placement. Some issuers use models that score accounts based on the likelihood of payment to subset accounts to place in internal recovery, while some do not allow accounts with certain statuses (*i.e.*, accounts of consumers who are currently on active military duty) to be placed with third-party agencies. While on average about 22 percent of an issuer's post-charge-off inventory was pursued through internal recovery in 2017 and 2018, one issuer chose to retain and internally recover more than 80 percent of its post-charge-off inventory during the review period.

7.3.2 Third-party recovery

Most issuers employed third-party agencies to recover post-charge-off debt, all on a contingency-fee basis. While most surveyed issuers placed between 20 percent and 40 percent of their charged-off balances with third-party collectors, one issuer did not place any charged-off debt with third-party contingency agencies for most of 2017 and 2018. Issuers described a number of reasons for placing charged-off debt with third-party agencies, including improved recoverability for certain "high-risk" accounts, internal resource constraints, and the need for specialized expertise in recovering certain "special segments" of debt (*e.g.*, debt owed by deceased consumers).

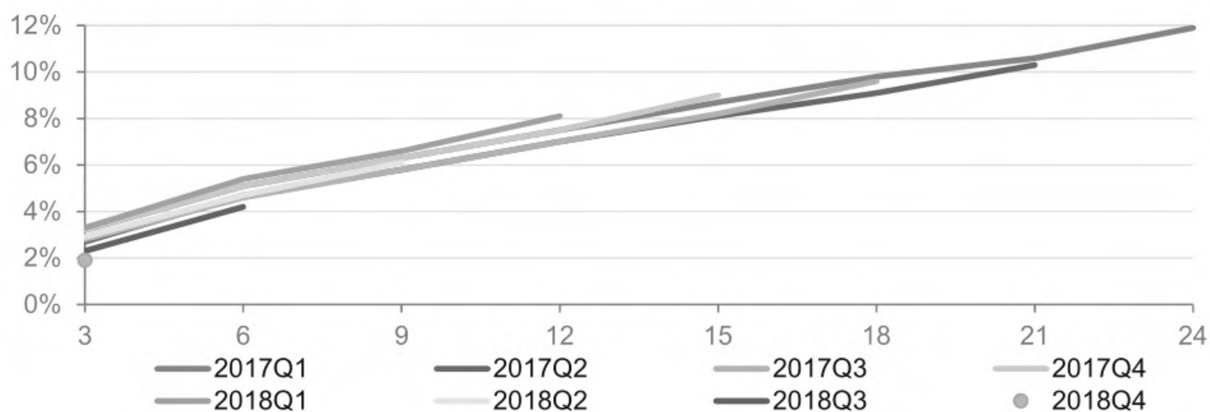
Creditors who employ third-party collectors generally contract with agencies to pursue a portfolio of accounts for a certain length of time. If an agency cannot recover money or establish contact on an account in the specified period, the creditor will generally recall the account. Accounts may be recalled from a third-party placement at any time, but recall usually follows a prescribed schedule determined by the age of the debt and the number of previous account placements.

PERFORMANCE

Performance of recovery is measured by the "cumulative recovery rate," which is the share of the charged-off balance that has been recovered over the life of the charged-off account. Recovery on charged-off debt can occur over several months or years. As the debt ages and the account moves from one placement to another, the amount of money the issuer expects to recover from that account generally decreases.

Figure 6 below shows the average cumulative recovery rates for balances that charged off each quarter between the first quarter of 2017 and the fourth quarter of 2018. These rates reflect the cumulative recovery on the debt across all potential placement channels, including internal placement, third-party agency placement, litigation, and proceeds from debt sales. Longer recovery periods mean that the issuers have had more time to collect on the debt, so the cumulative recovery rate rises over time.

Figure 6: CUMULATIVE RECOVERY RATES FOR QUARTERLY VINTAGES BY MONTHS FOLLOWING CHARGE-OFF (MMI)[248]



For debt that charged off in the first quarter of 2017, issuers recovered an average of 12 percent of the charged-off balance within a two-year period. Nearly two-thirds of this recovery occurred within the first year following charge-off. Quarterly vintages show stable performance over the two year review period. The first vintage for which there are 24 months of data is 2017Q1. After one year, issuers recovered 7.5 percent of the charged-off balances from this vintage. As debt ages, incremental gains in recovery decline. After the second year, issuers recovered an additional 4.4 percent, for a two-year total of 11.9 percent.

THIRD PARTY NETWORKS

The size of individual issuers' third-party vendor networks, which include both contingency agencies and law firms, was generally stable between 2017 and 2018. The overall number of unique vendors used across all issuers was 119 in both years. In 2018, all but one of the issuers' third-party vendor networks consisted of at least eight third-party vendors. Between 2017 and 2018, the largest single network employed by any surveyed issuer included 57 separate vendors. While no single vendor was used by all issuers, three were used by the majority.

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[248] Here, each "quarterly vintage" represents balances for all accounts that charged off at any time during the given quarter. Cumulative recovery includes all proceeds collected post-charge-off, including through third-party collections, litigation, and debt sales.

AGENCY COMPENSATION

Issuers who used third-party agencies to collect on post-charge-off debt typically paid a contingency fee that was a percentage of the amount of debt collected. Contingency fees are based on the level of placement (*e.g.*, primary, secondary, tertiary, and quaternary), with later placements typically receiving higher contingency fees as the debt ages and recovery becomes more difficult. In 2018, contingency fees ranged from 18 to 26 percent for primary placement, from 22 to 34 percent for secondary placement, from 26 to 44 percent for tertiary placement, and from 10 to 50 percent for quaternary placement. Some issuers reported higher contingency fees for tertiary placement than quaternary placement. These respondents noted that the volume of quaternary placements is generally low and includes only a select subset of accounts (*e.g.*, accounts that had previously broken from a payment plan) where some likelihood of collection remains. After quaternary placement, most issuers report that they recall accounts and place them in warehouse status, where no further collection activity typically occurs.

In addition to contingency fees, some issuers set incentives and penalties to encourage third-party agencies to meet performance targets. A minority of issuers reported that they offered incentives to reward agencies with superior performance relative to other agencies in the issuer's network. Some issuers reported that they rewarded their third-party collection agencies with additional bonuses for meeting hiring and retention goals. Many issuers' third-party agency compensation plans also contained a penalty component, where agencies could be penalized if they fell significantly behind their peers' average performance or had compliance problems. Penalties included reduced contingency fees and/or placements in future periods, exclusion from bonus consideration, increased frequency of audits, and termination for significant compliance violations.

VENDOR MANAGEMENT

Issuers manage their third-party vendors' compliance with the issuers' policies, procedures, applicable regulatory requirements, and financial performance targets using a variety of methods. These included:

- Monitoring of randomly-sampled collection calls on a periodic (*e.g.*, monthly) basis;
- Periodic (*e.g.*, semi-annual or annual) audits, including on-site visits;
- Direct engagement through a team that serves as the primary contact between issuer and vendor to provide oversight of day-to-day operations; and

- Complaint intake, tracking, investigation, resolution, and trend analysis.

All issuers have limits on consumer contact attempts that they extend to their third-party contingency agencies and monitor through quality assurance testing, routine audits, and call sampling. These limits are generally similar to the ones followed by issuers' in-house and first-party collectors in pre-charge-off collections, although a minority of issuers allowed slightly higher daily phone contact attempts in post-charge-off collections than in pre-charge-off collections.

Most issuers either prohibit or strictly limit their third-party collectors from using email and text to initiate contact with borrowers in post-charge-off collections, although information may be sent via these channels if a borrower specifically requests it. However, a minority of issuers allowed their third-party debt collectors to send follow-up communications, such as payment reminders, via email. Some issuers required their collectors to stop using an email address for communications following a "hard bounce" (*i.e.*, the recipient's email ID was invalid), but allowed communication to continue following a "soft bounce" (*i.e.*, the recipient's inbox was full).

Only a minority of the surveyed issuers reported that they sent an agency placement notification letter to alert the borrower that their debt had been placed with a third-party agency. These letters informed borrowers that their debt had been transferred, provided the name and contact information of the third-party agency, and offered borrowers an option to pay the balance online via the issuer's website.

All surveyed issuers monitored their third-party agencies' collections performance, both relative to the issuer's stated targets and to the performance of other agencies in the network. Several issuers reported that they tested a number of alternatives to determine optimal placement strategies between their internal recovery unit and third-party network. Respondents who engaged in such comparative testing indicated that based on the results of such tests, they are planning to retain a larger share of accounts to work internally in 2019.

7.3.3 Litigation

Card issuers may sue a borrower in certain situations to recover outstanding debts. Issuers use litigation strategies for both pre- and post-charge-off accounts, although only a minority of issuers reported initiating litigation proceedings prior to charge-off. According to the Bureau's current survey, issuers may select accounts for litigation based on factors such as account

balance, level of delinquency, and estimated likelihood of payment (indicated by the presence of assets and employment income). All issuers in the survey that litigated credit card debt reported that they used an external network of attorneys. A minority of issuers also reported that they leverage an internal attorney network to execute their litigation strategies. As observed in the Bureau's 2017 Report, a few issuers noted that they may litigate accounts upon notification that a consumer is working with a debt settlement company.[249]

All issuers that litigated debt reported that the volume of new balances placed in the litigation channel increased significantly during the survey period, with year-over-year growth ranging from nearly 10 to 55 percent across issuers. For issuers that used the litigation channel, litigated balances as a percentage of total post-charge-off inventory ranged from a low of 5 percent to a high of 36 percent. Increased litigation volume may be partially attributable to overall growth in delinquency and charge-off volumes during the review period. However, some issuers also indicated increasing use of the litigation channel in response to a growing volume of accounts in cease communication status (see Section 7.4.2). Survey respondents generally selected higher-balance accounts from their portfolios for litigation, with average litigated account balances ranging from $3,000 to $11,000 across issuers during the current survey period, compared to average pre-charge-off balances ranging from $1,300 to $4,800.

DEFAULT JUDGMENTS

A default judgment is a ruling in favor of the plaintiff collector when the defendant consumer has failed to respond to a summons or to appear in court. More than one-half of the issuers that use litigation as a strategy did not report default judgments separately. However, respondents who do track default judgments separately reported that more than 70 percent of all judgments were default judgments. This ratio was consistent with the Bureau's previous report, and remained relatively flat between 2017 and 2018 among issuers who tracked default judgments separately.[250]

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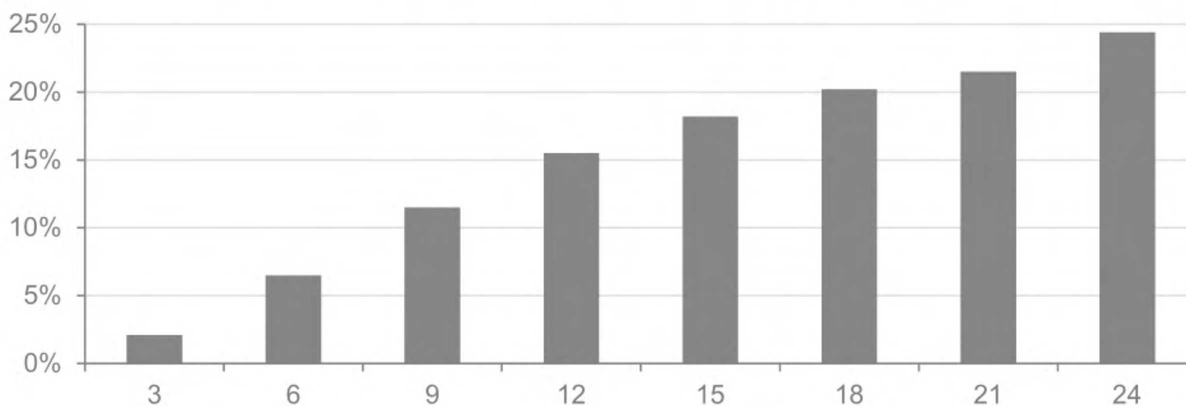
[249] 2017 Report, *supra* note 5, at 331.

[250] *Id.* at 326.

LITIGATION RECOVERY

After a creditor has won a judgment on a litigated account, recovery may occur over a prolonged period of time. To recover the debt, the issuer may exercise a wage garnishment against the debtor or ask the debtor to enroll in a payment plan. Thus, litigation generally produces a steady stream of recoveries from accounts with judgments against them, spread over a longer time period that may span several years. Figure 7 shows the cumulative recovery rate by months since judgment for vintages of accounts where a judgment was obtained between 2017 and 2018. Issuers recovered an average of 24 percent of the judgment balance for accounts where a judgment was obtained in the first quarter of 2017 (at 24 months, the longest performance window captured in the survey). Cumulative recoveries increased steadily over time as each vintage aged and a consistent flow of payments were applied to the account.

Figure 7: CUMULATIVE RECOVERY RATES BY MONTHS SINCE JUDGMENT WAS RECEIVED (MMI)[251]



The average two-year cumulative recovery rate for accounts with judgments was 24 percent, almost twice the overall two-year cumulative recovery rate for all charged-off accounts (compare with Figure 6). Accounts with judgments may have higher cumulative recovery rates because issuers disproportionately litigate accounts with a higher ability to repay—assessing borrowers' assets, employment, and other income as indicators.

[251] Here, each bar represents a "vintage" of accounts where judgment was received in a given quarter, starting with Q1 2017. Cumulative recovery for each vintage is measured as of December 31, 2018.

7.3.4 Debt sales

As part of their post-charge-off recovery strategy, some credit card issuers may sell credit card debt at a discounted rate to pre-selected debt buyers, receiving a fraction of the outstanding account balances sold. Typically, these sales are structured as "forward-flow" contracts, where a pool of accounts that meet a pre-determined criteria (*e.g.*, at charge-off or post-primary placement) are sold to the debt buyer on an ongoing (*e.g.*, monthly) basis. Issuers may also occasionally identify additional segments of accounts and sell them on an ad hoc basis depending upon market conditions. Finally, issuers may employ specific debt sale strategies for special segments like accounts where the issuer has received a notice of bankruptcy, where specialized expertise may be required to recover the amount owed. Debt buyers typically enter into contracts for the right to collect the entire balance, and they either attempt to collect themselves or employ third-party agencies to collect on their behalf on a contingency-fee basis.

MARKET STRUCTURE

The debt-buying market for credit card debt remains highly concentrated among a few buyers that purchase debt from many of the same issuers. Most of the surveyed issuers that sold debt in 2018 reported a roughly similar number of buyers year-over-year. However, there is a general trend of consolidation among surveyed issuers' debt buyer networks: the Bureau's 2017 Report found that in 2016, 20 unique debt buyers bought debt from the surveyed issuers that sold debt, while the current survey found that there were 15 unique buyers in 2018.[252] Eight buyers purchased debt from two or more issuers and six buyers bought debt from all the issuers that sold debt.

DEBT SALE VOLUME

Fewer than one-half of issuers surveyed sold debt in 2017 and 2018, and these issuers were the same ones that reported selling debt in the Bureau's 2017 Report. Issuers that reported that they did not sell debt in 2017 and 2018 also indicated that they have no plans to do so in 2019. A majority of issuers that sold debt during 2017 and 2018 reported that they planned to sell a

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[252] 2017 Report, *supra* note 5, at 327.

lower percentage of debt in 2019 compared to 2018, while a minority reported that they planned to sell roughly the same amount. This is a reversal from the results of the Bureau's 2017 Report, where all issuers that sold debt reported that they planned to sell a higher proportion of charge-offs in the next year due to heighted delinquencies and charge-offs.[253] In general, issuers that planned to reduce their use of debt sale strategies in 2019 explained this decision as an attempt to diversify post-charge-off recovery income across channels and strengthen financial resiliency. The survey respondents that sold debt in 2018 indicated that they planned to sell approximately 45 percent of their freshly-charged-off debt in 2019 at an expected average price ranging from $0.09 to $0.13 per dollar of debt balances.

Figure 8 compares the distribution of total post-charge-off inventory by recovery channel for issuers that did and did not sell debt in 2017 and 2018. Issuers that sold debt in 2017 and 2018 reported that in that period, roughly 12 percent of total post-charge-off inventory was sold to debt buyers. While both issuers that sold debt and those that did not sell debt relied on third-party agencies to collect a significant share of their charged-off inventory, issuers that did not sell debt placed a greater portion of balances in the internal recovery channel. As post-charge-off inventory aged between 2017 and 2018, all issuers held a growing share of debt in the warehouse category, where typically no active attempts are made to collect the balance owed.

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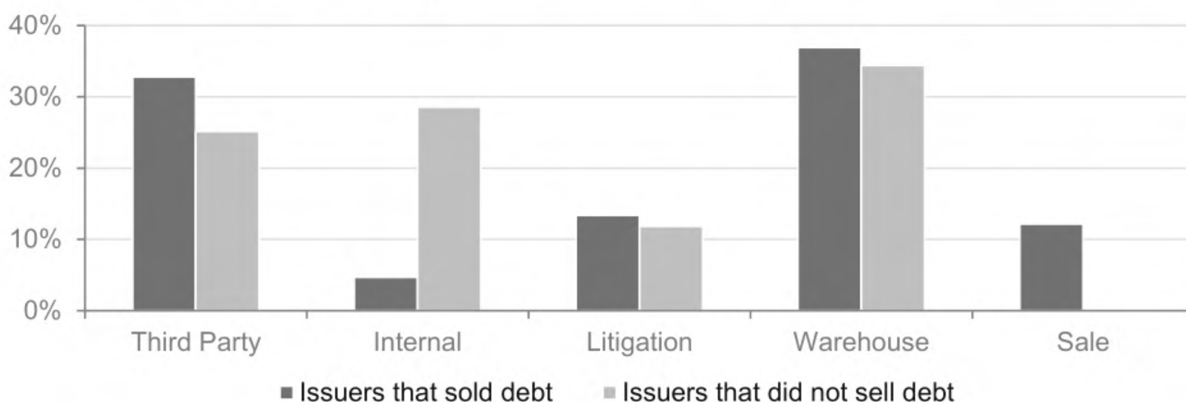
[253] *Id.*

Figure 8: SHARE OF CHARGED-OFF BALANCE INVENTORY BY CHANNEL FOR ISSUERS THAT DID AND DID NOT SELL DEBT (MMI)[254]



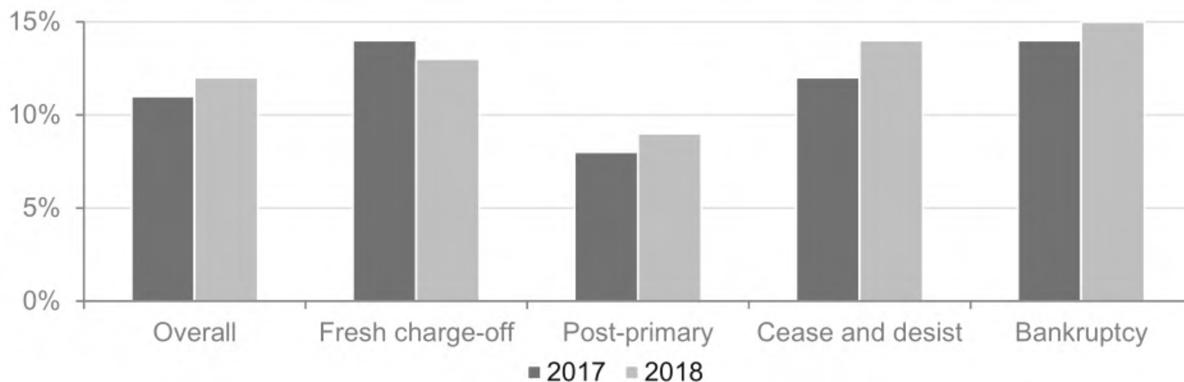
DEBT PRICE

Charged-off debt generally sells for a fraction of the account balance owed or "face value," at a price largely dependent upon the age of the debt. Additionally, certain special segments of debt, such as accounts for which the issuer has received notice of bankruptcy, may command higher prices. The price of bankruptcy accounts may be above the overall average price of debt sold because the buyer may be able to recover a larger portion of the debt by filing proofs of claim as part of the bankruptcy process. Figure 9 shows the average price of debt by type. The overall average price of debt increased from 11 percent to 12 percent of face value between 2017 and 2018. However, the price of freshly-charged-off debt declined from 14 percent to 13 percent of face value over the same period. The price of freshly-charged-off debt is now 2 percentage points lower than its previous high of 16 percent reported in 2016.[255]

[254] Bars represent the average share of total charged-off balance inventory in each of the five recovery channels. The issuers provided the share of balances placed in each channel by quarter as of the end of the quarter for 2017 and 2018. The distributions for 2017 and 2018 were averaged by issuer, and then averaged across issuers that sold debt and issuers that did not sell debt.

[255] 2017 Report, *supra* note 5, at 329.

Figure 9: AVERAGE PRICE OF DEBT SOLD AS A PERCENTAGE OF ACCOUNT BALANCE BY TYPE OF DEBT SOLD (MMI)



Debt sold after one or more placements (post-primary) was priced at only 9 percent. Accounts where the collector received a request to cease and desist communications or received a notice of bankruptcy sold for an average of roughly 14 percent of face value in 2018, suggesting higher expected debt buyer recoveries from such accounts.

DEBT SALE CONTRACTS

All survey respondents that sold debt reported that they provide buyers with key documents and account information at the time of sale, including:[256]

- The account's last 12 statements;
- The amount and date of the last account payment;
- Itemized account of all amounts claimed, including principal, interest, and fees;
- Special status indicators (*e.g.*, attorney representation or cease and desist); and
- Information relating to prior collection efforts.

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[256] An RFI commenter noted that OCC Bulletin 2014-37, which provided guidance on documentation to be transferred upon the sale of debt, applies only to national banks and federal savings associations, and not to credit card issuers more broadly. *See* ABA Comment Letter at 8.

After the debt is sold, issuers reported that they may provide additional documentation at the buyer's request, including cardholder agreements, written applications, affidavits, and earlier account statements. While most issuers who sold debt reported that debt buyers do not pay a fee to access these documents, a minority reported charging a fee to provide additional documentation.

All surveyed issuers that sold debt also stated that they send out "goodbye" letters to the cardholder. These letters inform borrowers of the sale and provide the name and contact information of the buyer.

Contractual restrictions imposed on buyers by all surveyed issuers that sold debt are generally consistent with OCC Bulletin 2014-37, and include:[257]

- Restrictions on resale of the debt, which is limited to special circumstances (*e.g.*, the buyer exiting the market);
- Restrictions on buyers' ability to assess interest on the purchased debt;
- Restrictions on buyers' ability to litigate purchased accounts;
- Prohibitions on litigation by buyers on debt that is past the statute of limitations; and
- Conditions under which the issuer will repurchase the debt.

Debt sale contracts generally do not restrict debt buyers from reporting to credit reporting agencies. Instead, the contracts require that the buyer adhere to all Fair Credit Reporting Act requirements.

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[257] *See* Off. of the Comptroller of the Currency, *Consumer Debt Sales - Risk Management Guidance, OCC Bulletin 2014-37* (Aug. 4, 2014), *available at* http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html.

7.4 Special topics in credit card collections

7.4.1 Debt settlement companies

Borrowers sometimes work with DSCs, which are typically for-profit entities with the primary objective of enrolling qualified borrowers in a debt settlement program.[258] These firms do not receive any compensation from issuers. Instead, they typically assess the borrower a fee based on the original debt balance and contingent upon completing the settlement with the creditor. Debt settlement programs involve redirecting payments that consumers would have made to creditors to a borrower-controlled fund, which is then used by the debt settlement company to pay negotiated settlements. Since enrolled consumers stop making payments to creditors, borrowers who work with the DSCs typically find that their accounts continue to grow in delinquency and are reported to the credit reporting agencies.[259] Issuers may also pursue legal collections on these accounts. DSCs also often advise consumers to send a cease and desist communication letter to creditors as part of the program. Those issuers who sell debt often sell charged-off debt for which they have received a cease and desist communication letter to debt buyers because such debts generally are more difficult to recover.

All of the surveyed issuers have established policies and procedures about how to manage accounts enrolled with DSCs. In most cases, issuers require a third-party authorization document signed or otherwise authorized by the consumer in order to communicate with the DSC about the account. Some issuers reported that they will not negotiate settlements with DSCs even after receiving third-party authorization from the consumer. Some issuers have policies that allow the accounts to move quickly to placement with special third-party agencies for potential litigation. Most issuers that work with DSCs reported that they apply the same

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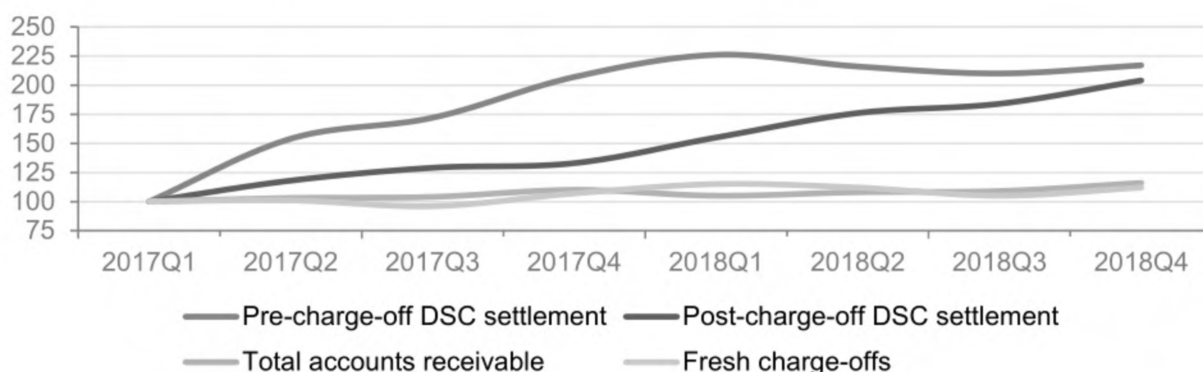
[258] *See* Greg J. Regan, *Options for Consumers in Crisis: An Updated Economic Analysis of The Debt Settlement Industry*, American Fair Credit Council, (Feb. 5, 2018), *available at* https://americanfaircreditcouncil.org/regan-reports/ (data as of Mar. 31, 2017).

[259] One RFI commenter claimed that consumers have "limited niche choices in debt relief assistance," while also lacking data necessary to make informed choices about debt relief products and services. The commenter advocated greater disclosure of performance data for non-profit and for-profit debt relief providers, including "success rate, the impact to future retirement savings, credit report/score impact, protection from legal action, and cost of the solution." *See* Steve Rhode Comment Letter, at 2.

settlement policies available to consumers who call the creditor directly to request settlements. However, a minority of issuers who work with DSCs have a set settlement rate specific to debt settlement companies, and these fixed rates forgive a smaller percentage of the balance owed than the floor settlement rates available to consumers who call the creditor directly and demonstrate financial hardship. In some cases, creditors have dedicated teams, either in-house or provided by third-parties, which specialize in engaging with DSCs.

Figure 10: INDEXED GROWTH IN PRE- AND POST-CHARGE-OFF DSC SETTLEMENT BALANCES, ACCOUNTS RECEIVABLE, AND FRESH CHARGE-OFFS (MMI)[260]



As shown in Figure 10, the volume of balances settled through DSCs grew proportionately faster than the growth in the issuers' overall account receivables and fresh charge-offs between 2017 and 2018. Pre-charge-off settlements grew 117 percent and post-charge-off settlements grew 104 percent between 2017 and 2018, compared to only 16 percent growth in accounts receivables and 12 percent growth in fresh charge-offs. Respondents reported nearly $2.2 billion in debt settled through DSCs within the two year survey period, $1.4 billion of which was settled post-charge-off, almost twice the volume of pre-charge-off settlements. Growth in pre-charge-off settlements accelerated more quickly than in post-charge-off settlements within the first half of the survey period before leveling off in 2018.

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[260] This graph represents changes in balances settled through for-profit DSCs, accounts receivables, or fresh charge-offs indexed to the values in the first quarter of 2017. These numbers do not include settlements for accounts where legal representation or other third parties were involved in settlement negotiations.

7.4.2 Cease communication

All issuers reported honoring cease communications requests, both verbal as well as written, from the consumers or their power-of-attorney, though only a minority of issuers reported tracking volumes of written requests separately from verbal requests. Issuers accommodated requests to cease all communications (phone calls, written communications, etc.) except to send legally required communications like monthly statements. They also accommodated special and limited cease communication requests (*e.g.*, "no phone calls only," "no calls to place of employment"). For accounts placed with third-party collectors, issuers generally recall those accounts with cease and desist requests and place them with attorney firms for further collections, including litigation. Those issuers who reported selling debt post-charge-off, regularly sold accounts with cease communication status. In 2018, 2.8 percent of the pre-charge-off balance inventory had cease and desist communication status, a 7 percent increase from 2017. Similarly, 4.7 percent of the post-charge-off balances had cease communication status representing a 10 percent increase compared to 2017. These increases may partly be due to the fact that more consumers are working with for-profit DSCs, who advise their clients to send cease communication requests to their creditors while waiting to negotiate settlements.

7.4.3 Consumer-level collections

When a consumer has multiple delinquent accounts, issuers may choose to collect debt at the consumer level by managing all the delinquent accounts together. Three-fourths of the surveyed issuers noted that they pursued some degree of consumer-level pre-charge-off collections for borrowers with multiple delinquent accounts, the same as in the Bureau's 2017 Report.[261] Respondents indicated that consumer-level collection strategies were more common for internal and first-party pre-charge-off collections than for third-party collections. Issuers who utilized a consumer-level strategy for pre-charge-off collections generally reported that the oldest delinquent account with the highest balance in the relationship was the lead account, and that all of a consumer's delinquent accounts were discussed during a single call to the consumer. The percentage of total pre-charge-off delinquent dollars belonging to consumers with multiple

[261] 2017 Report, *supra* note 5, at 333.

accounts from the same issuer varied widely across issuers, ranging from 5.2 to 66 percent in 2018.

Most of the surveyed issuers did not have a consumer-level approach for recovering post-charge-off debt. For the minority of issuers that used a consumer-level recovery strategy post-charge-off, some issuers reported that they placed all of a consumer's charged-off accounts with the same third-party agency, while others reported that they used a litigation strategy involving assigning all of a consumer's charged-off accounts to the same law firm.

8. Innovation

The Bureau's Congressional mandate to review the credit card marketplace specifically instructs the agency to assess "credit card product innovation."[262] Consumer and provider access to digital technology is fundamentally changing the ways in which consumers obtain and use credit cards. Since the 2017 Report, digital account servicing platforms, such as websites and mobile apps where consumers can view and manage account activity, continue to increase in the number of available features. Cardholders continue to transact online in large volumes and mobile wallets are increasingly used at the physical point-of-sale (POS). Gains in computing power and data analysis technology are being used by card issuers to enhance credit and risk management. Because of these innovations, consumers with access to the relevant technology can now readily and rapidly:

- Access their credit score and information about how to manage and improve their score;
- Identify and compare credit cards according to their own criteria;
- Apply for credit cards and, if approved, be able to use the card in near real-time;
- Permit/Allow the use of new data in the underwriting process;
- Specify the delivery of alerts about card use or payment obligations;
- Receive promotional offers based on the consumer's choice of criteria, such as location;
- Turn card functionality off and on, or limit and control its use in certain channels;

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[262] 15 U.S.C. § 1616(a)(4)(D) (2012). Congress established the Bureau's statutory purpose as ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. *See* 12 U.S.C. 5511(a) (2012). The Bureau's objective includes exercising its authorities for the purpose of ensuring access and innovation. *See* 12 U.S.C. 5511(b)(5) (2012).

- Manage card use interactively in accordance with the consumer's overall strategy for personal financial management; and
- Choose to repay obligations on the card with new alternative payment options.

Although some of these innovations have been available to some consumers for some time, the collective availability of these tools and use at scale is becoming a competitive differentiator in today's consumer credit card market. Digitally-based tools have been introduced in multiple stages of the product's life cycle—shopping, origination, servicing, and transacting.[263]

This section covers some of these recent changes in more detail. Section 8.1 reviews a number of changes associated with card servicing, including account management and payment tools. Section 8.2 covers a number of recent innovations at the point-of-sale. Section 8.3 reviews innovation in credit and fraud risk management.[264]

8.1 Account servicing innovation

8.1.1 Account management enhancements

Most basic account servicing actions are now standard in card companies' mobile and online platforms. As discussed in the 2017 Report, cardholders can review transactions (and dispute fraudulent ones), make payments, transfer balances, request cash advance PINs, activate new cards, request replacement cards, download full account statements, receive information about other card benefits, add or remove an authorized user from their accounts, inform their issuer of upcoming travel, report a card lost or stolen, change their account's due date, or send and read

[263] *See supra* note 2.

[264] Important innovations related to card marketing and comparison shopping are covered in Section 4.1.

messages to and from account servicing professionals or chat with them in real-time.[265] More recent changes provide customers with new account management features.

Important developments to these platforms include:

- Many credit and debit card providers now offer a feature that lets customers instantly freeze and subsequently 'un-freeze' the cards within the mobile app.[266] At least one credit card provider offers customers the ability to manage recurring card payments within its mobile app.[267] Another credit card provider offers cardholders virtual card numbers that can be used for individual or recurring transactions and may be accessed and dialed through a mobile app.[268] Another credit card provider has started to offer their customers the ability to dictate where or when the cards can be used, allowing consumers to set spending limits and alerts across merchant categories.[269] Both features may allow cardholders to have better control over their payment cards.[270]

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[265] *See* 2017 Report, *supra* note 5, at 171.

[266] *See* Susan Ladika, *Credit card on/off switches: More card issuers adding them*, Creditcards.com (Feb. 19, 2018), *available at* https://www.creditcards.com/credit-card-news/credit-card-on-off-switches.php; *see also* Press Release, Chase, *Chase Lets Customers Lock, Unlock Credit Cards from Their Phone and Computer*, (Sept. 27, 2018), *available at* https://www.businesswire.com/news/home/20180927005487/en/Chase-Lets-Customers-Lock-Unlock-Credit-Cards.

[267] Press Release, Wells Fargo, *Wells Fargo Launches Control Tower, New Digital Experience for Customers Nationwide* (Oct. 1, 2018), *available at* https://www.businesswire.com/news/home/20181001005683/en/Wells-Fargo-Launches-Control-Tower-SM-New.

[268] Kelly Dilworth, *Virtual card numbers: Safer, Convenient, and a Spending Risk, Creditcards.com* (Mar. 29, 2018), *available at* https://blogs.creditcards.com/2018/03/virtual-card-numbers-safer-convenient-and-a-spending-risk.php.

[269] Press Release, Barclays, *Barclays Launches "Control Your Card" Digital Features to Give Cardmembers More Control Over Credit Card Usage* (Apr. 16, 2019), *available at* https://www.prnewswire.com/news-releases/barclays-launches-control-your-card-digital-features-to-give-cardmembers-more-control-over-credit-card-usage-300832388.html.

[270] The developments build on functionality rolled out by the networks in 2016. Visa's Consumer Transaction Controls "enables account holders to set simple, convenient, and effective spending controls, receive transaction

- Card companies are now employing AI-powered chatbots to navigate and execute digital account management functions and make transactions.[271] Some of the most heavily-promoted chatbots are provided as tools within the issuers' mobile apps, where they provide an alternative method of accessing the apps' features in addition to providing higher-order functionality, such as responding to questions about spending patterns. For example, cardholders can use voice or text to direct a chatbot to search for certain transactions, display basic account information, add an authorized user, summarize and plot monthly spending, or send alerts for upcoming bills, among other options. Many chatbots are responsive to both voice and text, with voice recognition requiring an additional layer of technology. Several issuers and one network have integrated chatbots into the Facebook Messenger platform with the aim of providing a better experience for customers that transact through the app.[272]
- Several issuers have recently provided a means for consumers to load credit cards into digital wallets directly from individual issuers' mobile apps. Originally, cardholders had to navigate to a digital wallet and load it with the requisite card information. Now for certain mobile wallets, some issuers allow cardholders to manage this process beginning in the issuers' mobile apps, where card information is pre-loaded.[273]

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alerts, or even temporarily suspend their accounts using a simple on/off feature." *See* Press Release, Visa, *Visa Puts Consumers in Charge of Security* (Feb. 9, 2016), *available at* http://www.businesswire.com/news/home/20160209005812/en/Visa-Puts-Consumers-Charge-Security. Mastercard's In Control product can grant "greater convenience, security and control to consumers, small businesses and corporations," and "parents, employers and other customers can set parameters for when, where and how cards are used, giving them more control over their accounts." *See* Mastercard, *Empower Your Customers with Mastercard In Control*, *available at* https://www.mastercard.us/en-us/issuers/products-and-solutions/grow-manage-your-business/payment-innovations/mastercard-in-control.html (last visited July 1, 2019).

[271] Dawn Allcot, *Artificial Intelligence is Changing Credit Cards and Banking,* Bankrate.com (Feb. 4, 2019), *available at* https://www.bankrate.com/credit-cards/artificial-intelligence-banking-credit-card-rewards/.

[272] Rachel Brown, *Mastercard, American Express and Wells Fargo charge up Facebook Messenger chatbots*, Mobile Marketer, (Apr. 19, 2017), available at https://www.mobilemarketer.com/news/mastercard-american-express-and-wells-fargo-charge-up-facebook-messenger-c/440724/.

[273] *See* American Express, *Apple Pay*, https://www.americanexpress.com/us/credit-cards/features-benefits/digital-wallets/apple-pay.html (last visited June 19, 2019). *See also* Bank of America, *Show me how to: Digital wallets*,

- Several new credit cards provide interactive digital interfaces to assist the cardholder in making payments toward their credit card balances. Using one of these interfaces, a cardholder can 'dial' or 'slide' from the minimum payment amount to the full balance and see corresponding finance charges.[274]

8.1.2 Increased repayment options

One especially-notable new feature in account servicing is payment flexibility. Previous reports reviewed two types of emerging lending products that offer consumers alternative repayment options: (1) unsecured personal loans from fintech lenders used to pay off revolving credit card balances and (2) non-card loans offered to consumers at the point-of-sale as a credit-based payment option. The number of providers of these emerging lending products has continued to grow, while several credit card issuers have responded by introducing competing features on card accounts allowing for new forms of payment flexibility.

PERSONAL LENDING

Closed-end unsecured personal loans, such as those offered by nonbank lenders, compete with credit cards for consumer loan balances.[275] Personal loans are generally aimed at consumers looking to consolidate or reduce the cost of carrying credit card debt or those looking to finance a large purchase. As closed-end loans meant for a specific use, personal loans may, for some cardholders, be a lower cost means of borrowing than revolving a credit card balance.[276] If used

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https://promo.bankofamerica.com/cbobrochure/?showme_howto=digital (last visited June 19, 2019). *See also* Citi, *It's faster than ever to add your Citi card to Apple Pay right from the Citi Mobile App*, https://www.citi.com/credit-cards/creditcards/citi.action?ID=citi-apple-pay (last visited June 19, 2019).

[274] *See, e.g.*, Apple, *Apple Card*, https://www.apple.com/apple-card/ (last visited July 23, 2019); Petal, *Petal Card*, https://www.petalcard.com/ (last visited July 23, 2019).

[275] Loans of this nature are received as a cash disbursement and do not generally compete with credit card transacting.

[276] For example, one study found that given the same credit risk, consumers would be able to obtain credit at a lower rate through an online personal lender than through traditional credit cards. Study abstract: "for the same risk of default, consumers pay smaller spreads on loans from the Lending Club than from traditional lending channels."

to repay or consolidate credit card balances, personal loans also have the effect of increasing a cardholder's available line. There is an emerging body of research on the use of personal loans and their relationship to credit card debt. Consumer use and outcomes are still being researched.[277]

Personal loans have long been offered by banks and specialty finance companies, but competition has sharply increased since the Great Recession. Leading up to and then following the recession, online lenders emerged with a focus on providing personal loans to consumers for the purpose of debt consolidation.[278] Since the end of 2015, consumer personal loan balances have increased by 34 percent.[279] Credit card companies have begun to offer personal loans themselves and one bank made its first entry into the consumer market with a personal loan product.[280] At least one student loan refinancing company has expanded into personal lending.[281] Some banks have entered partnerships with fintechs to offer personal loans through fintechs' platforms.[282]

See Julapa Jagtiani and Catharine Lemieux, *Fintech Lending: Financial Inclusion, Risk Pricing, and Alternative Information*, (July 18, 2017), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3005260.

[277] One working paper finds that consumers that receive personal loans from fintech companies are likely to use the additional funds for consumption rather than for consolidating high-cost credit card debt. *See* Marco Di Maggio & Vincent Yao, *Fintech Borrowers: Lax-Screening or Cream-Skimming?*, (Aug. 1, 2018), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3224957.

[278] *See* J. Christina Wang, *Technology, the Nature of Information, and Fintech Marketplace Lending*, at 6. Fed. Reserve Bank of Boston (Oct. 2018) *available at* https://www.bostonfed.org/publications/current-policy-perspectives/2018/technology-nature-of-information-fintech-marketplace-lending.aspx.

[279] Oliver Wyman Experian MIR Q4 2018 and MIR Q4 2017.

[280] AnnaMaria Andriotis & Peter Rudegeair, *Lenders Shunned Risky Personal Loans. Now They're Competing for Them*, Wall St. J. (Aug. 24, 2018), *available at* https://www.wsj.com/articles/lenders-shunned-risky-personal-loans-now-theyre-competing-for-them-1535103000.

[281] *See* SoFi, *Personal Loans*, https://www.sofi.com/personal-loans/ (last visited June 19, 2019).

[282] Press Release, Regions Bank, *Regions Bank to Offer Expanded Online Consumer Loan Experience Powered by Leading Fintech Firm Avant* (Apr. 8, 2016), *available at* https://www.businesswire.com/news/home/20160408005117/en/Regions-Bank-Offer-Expanded-Online-

ALTERNATIVE CREDIT OPTIONS ONLINE AND AT THE POINT-OF-SALE

Another type of non-card loan offered to consumers for online purchases and at the physical POS offer a more direct alternative to credit cards than personal loans, and are sometimes marketed as such. Non-card loans at the online POS are typically closed-end, fully-amortized installment loans that are presented to consumers when making a purchase with a participating merchant, generally by means of a branded "pay with" button as a payment option during checkout. Physical POS financing is also available at some retailers through partnerships with lenders. In both cases, after inputting several pieces of personal information (sometimes on a merchant's device if in-store) a consumer is presented with repayment options as a result of a near real-time automatic underwriting process. Once an approved consumer's preferred terms have been selected, funds are sent directly to the merchant.

Competition with credit cards may intensify if these products become more widely available. Several POS lenders, for example, have engaged in strategies that leverage debit card networks to expand acceptance of their products beyond their merchant partners.[283] While many providers primarily serve online POS, competition at physical POS is increasing. One lender expanded to the physical POS with a major retailer partnership.[284] A payments provider recently announced plans to provide physical POS consumer loans through its merchant network.[285]

One emerging point of product differentiation is pricing. The more-established alternative lenders generally charge interest on POS loans. In some cases, financing may be offered for free

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Consumer-Loan. *See also* Hannah Levitt, *HSBC U.S. Partners With Web-Based Avant to Offer Personal Loans*, Bloomberg (Oct. 22, 2018), *available at* https://www.bloomberg.com/news/articles/2018-10-22/hsbc-u-s-partners-with-web-based-avant-to-offer-personal-loans.

[283] Providers that offer this capability describe it as using one-time prepaid debit cards. *See* Affirm, *Affirm In-store Virtual Card*, *available at* https://docs.affirm.com/Merchant_Resources/Affirm_In-store_Virtual_Card (last visited June 26, 2019). *See also* Klarna, *What is a Ghost card?,* https://www.klarna.com/us/customer-service/what-is-a-ghost-card/ (last visited June 26, 2019).

[284] Kevin Wack, *Walmart teams with Affirm to offer point-of-sale loans*, PaymentsSource (Feb. 27, 2019), *available at* https://www.paymentssource.com/news/walmart-teams-with-affirm-to-offer-point-of-sale-loans.

[285] Selina Wang, *Jack Dorsey's Square Rolls Out Lending for Customer Purchase,* Bloomberg (Oct. 4, 2018), *available at* https://www.bloomberg.com/news/articles/2018-10-04/jack-dorsey-s-square-rolls-out-lending-for-customer-purchases.

to the consumer, in which cases, the lenders generally receive additional compensation from the merchant. A new group of alternative POS lenders now offers no-interest financing as a default model. For example, several providers allow consumers to pay off purchases in a fixed number of installments—often four—over several months.[286] These payments sometimes include no interest, although consumers can incur late or missed payment fees. Merchants pay these lenders a fixed amount or percentage of each transaction. Some of these products have shown rapid growth—and attracted calls for more regulatory attention—in foreign markets.[287]

CREDIT CARD PAYMENT INNOVATION

As the previous two categories of products continue to grow, credit card issuers are positioned to lose purchase and revolving volume. Personal loans used to pay off credit card balances cause issuers to miss out on interest and fee revenue that would have been paid over time. POS loans divert sales that would add to those outstanding balances, also resulting in lost interest and fee revenue.

These long-term threats to credit card profitability may have contributed to the development of flexible payment options for credit card purchases. New fixed payment features of accounts leverage a card's existing credit line for a repayment plan that is separate from payments made toward the regular feature of the account, which may provide consumers with greater flexibility and control in paying down different purchases at different costs and speeds. Issuers have implemented a variety of these types of payment options into the card servicing platform for easier signup. New flexible payment features of credit card accounts fall into two categories: those that provide a payment plan for existing purchases and those that provide a payment plan for future purchases.

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[286] Valeriya Safronova, *It's Layaway, But for a Post-Recession Economy*, N.Y. Times (May 3, 2019), *available at* https://www.nytimes.com/2019/05/03/fashion/afterpay-quadpay-klarna-affirm.html.

[287] Michael McGowan, *Afterpay: buy-now pay-later scheme soars in popularity but experts sound warning*, The Guardian (Sept. 20, 2017), *available at* https://www.theguardian.com/australia-news/2017/sep/21/afterpay-buy-now-pay-later-scheme-soars-in-popularity-but-experts-sound-warning.

The first set of features allows certain individual purchases made on a credit card to be paid off using fixed monthly payments over a set period of time. Issuers that offer this type of feature let consumers select eligible transactions through the card's mobile app or online portal for fixed monthly payments.[288] For issuers, the feature may help retain incremental balances on the card and undercut competition from alternative lenders. In announcing this feature, one bank's leadership specifically noted that it will allow them to compete with other financial products at the POS.[289] The issuers' products (or announced products) differ slightly but, in general, purchases over a certain dollar threshold are eligible.[290]

Credit repayment flexibility is not new, but today's options differ in their use of credit card mobile apps. One issuer launched a credit card balance management platform in 2009, but it was delivered separately from the primary account interaction.[291] Today's repayment flexibility products are presented to the consumer in the flow of viewing his or her transaction history. Eligible transactions are denoted with an icon that links to the product terms. A range of repayment periods and corresponding costs are offered (*e.g.*, three payments, six payments, or 12 payments). In addition, one issuer provides a corresponding feature through which cardholders may pay down the account balance in an amount equal to a specific transaction's dollar amount.

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[288] Issuers describe such fixed monthly payments in different ways. American Express describes payments as including a fixed monthly fee with no interest. Citi describes payments as payments with a fixed APR. Chase describes payments as subject to the *My Chase Plan* fee, a fixed finance charge.

[289] Michelle Davis & Jennifer Surane, *JPMorgan Sees a $250 Billion Opportunity in New Credit Card Loan Features*, Bloomberg (Feb. 26, 2019), *available at* https://www.bloomberg.com/news/articles/2019-02-26/jpmorgan-eyes-250-billion-loan-opportunity-in-new-card-features.

[290] This threshold ranges from $100 for American Express's *Plan It* to $500 for JPMorgan Chase's *My Chase Plan*. *See* American Express, *Pay it Plan it*, https://www.americanexpress.com/us/credit-cards/features-benefits/plan-it/prospect-plan.html (last visited June 20, 2019); *see also, supra* note 289.

[291] Chase's Blueprint allowed consumers to split off certain purchases and pay them back with fixed payments. The feature was phased out in 2018. Robin Saks Frankel, *Chase to Scrap Blueprint, Its Card Management Program*, NerdWallet (Sept. 24, 2018), *available at* https://www.nerdwallet.com/blog/credit-cards/chase-ending-blueprint-credit-card-management-program/.

The second set of new repayment options for credit card accounts consists of features that provide a payment plan for purchases yet to be made. Multiple issuers offer cardholders the opportunity to receive a cash disbursement from an unused portion of their credit line, which is repaid in equal monthly payments over a set period of time. These initiatives allow the issuers to increase consumer use of portions of credit line that are not currently being used. A card issuer may offer this feature to cardholders that meet certain basic eligibility checks, such as satisfactory payment history on the card and meaningful unused line size. Cardholders may be able to select different lengths of repayment, depending on their eligibility. The transactions extended under this feature are repaid using equal monthly payments for a set period of time.[292]

These features and their structures implicate a broad array of regulatory provisions. Card issuers working in this space must navigate a complex regulatory landscape, including, but not limited to, limitations on APR and fee increases, payment allocation rules, and ability-to-pay requirements. Costs for consumers may differ from the costs of other balance items when using new repayment options.

8.2 Innovation at the physical point-of-sale

Beyond lending, innovation continues to focus on streamlining the consumer experience at the physical POS, providing greater speed, security, or convenience for consumers and merchants. Three significant developments are evident at the physical POS.

First, beginning in early 2018, all four major U.S. card networks eliminated signature requirements for EMV "chip" card transactions.[293] As merchant adoption of EMV terminals

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[292] *See, e.g.*, Citi, *Citi Flex Loan*, https://www.citi.com/credit-cards/creditcards/citi.action?ID=flex-loan (last visited June 13, 2019). *See also* Ethan Steinberg, *Chase to Introduce Two New Credit Card Financing Options*, The Points Guy (June 1, 2019), *available at* https://thepointsguy.com/news/my-chase-plan-my-chase-loan/.

[293] The EMV standard, often referred to as "chip" or "smart card" technology, is a security standard for credit and debit card transactions developed in the mid-1990s. The technology is most closely identified with a microchip embedded in a payment card, and is already widely used throughout much of the rest of the world outside of the U.S., particularly in developed economies such as Canada, Australia, and western Europe. EMVCo, which manages

increased following the October 2015 liability shift, networks observed declines in fraud on transactions at EMV-enabled merchants. The elimination of the signature requirement in reliance on digital authentication technology could increase transaction speed for consumers and merchants.

Second, near-field communication (NFC) acceptance at the physical POS continues to increase. NFC-enabled terminals allow for the two-way transmission of payment-related information without physical contact between the payment device and merchant terminal. As covered in the 2015 Report, many mobile wallets allow consumers to store payment information and make payments via smartphones or other digital devices.[294] Several of these mobile payments use NFC technology, meaning that consumers can purchase goods and services at any business that has an NFC-enabled payment terminal. Early on, relatively few merchants supported such payments and consumer adoption was small. In the last few years, however, the number of retail locations supporting NFC mobile wallets has nearly doubled.[295] Deployment of NFC terminals was initially delayed by the imminent transition to EMV, but now nearly all new terminals are

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the EMV specification, estimates that as of the second quarter of 2018, nearly 70 percent of card-present global transactions utilized the specification. *See* EMVCo, *EMV Chip Deployment Statistics*, https://www.emvco.com/about/deployment-statistics/ (last visited March 18, 2019).

[294] Most notably, smartwatches. *See* Conor Allison, *Google Pay: What it is, which smartwatches support it and how to use it*, Wareable (Mar. 26, 2019), *available at* https://www.wareable.com/android-wear/how-to-set-up-use-android-pay-wear-smartwatch. *See also* Apple, *How to use Apple Pay*, https://support.apple.com/en-us/HT201239 (last visited June 20, 2019).

[295] For example, in early 2017, several years after its launch, Apple Pay was accepted at 36 percent of retail locations. As of early 2019, Apple reported that Apple Pay is accepted at 65 percent of retail locations. Retailers that support Apple Pay also support other mobile wallets such as Google Pay. *See* Press Release, Apple, *Apple Pay coming to Target, Taco Bell and more top US retail locations* (Jan. 22, 2019), *available at* https://www.apple.com/newsroom/2019/01/apple-pay-coming-to-target-taco-bell-and-more-top-us-retail-locations. *See also* Juli Clover, *Apple Pay Now Supported by 36% of Merchants in the United States*, MacRumors (Feb. 7, 2017), *available at* https://www.macrumors.com/2017/02/07/apple-pay-36-percent-united-states/.

capable of accepting NFC transactions.[296] An industry analyst reports that consumer adoption of mobile wallets was stagnant from 2015 to 2017.[297]

Third, contactless cards—common in many other countries—are becoming more common in the United States as several large issuers are providing cards with an embedded antenna.[298] Generally, contactless cards contain technology that allows the transmission of card information to the reader, but cannot receive information from a device as is possible with NFC-equipped mobile devices.[299] Contactless cards were initially launched by issuers in the mid-2000s but failed to gain significant uptake in large part due to limited acceptance at merchants. Recent payment terminal upgrades and consumer familiarity with contactless mobile wallet payments has led card companies to return to issuing contactless cards.[300] The current generation of contactless cards may be used for contactless payments at NFC-enabled payment terminals and may also be used for traditional 'dip' or 'swipe' payments using the EMV chip or magnetic strip. Contactless payment provides faster transaction time than current EMV payments. As with

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[296] Thad Peterson, *Contactless Cards in America—When, Oh When, Will They Appear?*, Digital Transactions (Nov. 1, 2018), *available at* https://www.digitaltransactions.net/magazine_articles/contactless-cards-in-america-when-oh-when-will-they-appear/. *See also* PYMNTS, *Visa: Why the US Is Finally Ready for Contactless*, PYMNTS.com (Sept. 25, 2018), *available at https://www.pymnts.com/visa/2018/contactless-cards-payments-mobile-wallet-pos-emv-apple-pay/*.

[297] Press Release, Javelin, *Merchants Winning the Battle for Mobile Wallet Supremacy* (Sept. 7, 2018), *available at* https://www.javelinstrategy.com/press-release/merchants-winning-battle-mobile-wallet-supremacy.

[298] Contactless adoption has lagged behind other parts of the world in part because the United States was slower to migrate to EMV—a change that precipitated widespread upgrades to terminals able to support EMV and contactless. *See* Jim Daly, *As U.S. Contactless Card Payments Ramp up, Canada and the U.K. Point the Way to Mass Adoption*, Digital Transactions (May 21, 2019), *available at* https://www.digitaltransactions.net/as-u-s-contactless-card-payments-ramp-up-canada-and-the-u-k-point-the-way-to-mass-adoption/.

[299] James Thrasher, *RFID vs. NFC: What's the Difference?*, RFID Insider (Oct. 11, 2013), *available at* https://blog.atlasrfidstore.com/rfid-vs-nfc.

[300] Jim Daly, *Contactless II*, Digital Transactions (Apr. 2, 2018), *available at* http://www.digitaltransactions.net/magazine_articles/contactless-ii/. *See also* Marianne Crowe & Elisa Tavilla, *Tap to Pay: Will Contactless Cards Pave the Way for NFC Mobile Payments in the U.S.?,* Fed. Reserve Bank of Boston (Apr. 23, 2019), *available at* https://www.bostonfed.org/publications/payment-strategies/tap-to-pay-will-contactless-cards-pave-the-way-for-nfc-mobile-payments-in-the-us.aspx.

mobile payments, contactless cards transmit tokenized one-time payment codes, securing the card payment credentials. However, in contrast to mobile payments, contactless cards do not act a means of user authentication and do not prevent use of a stolen card.

8.3 Risk management innovation

Issuers are incorporating technological advancements and new data into risk-scoring models used for underwriting and for fraud management.

8.3.1 Credit risk management innovation

Recent innovations in underwriting may enable credit card issuers to offer credit to more people more cheaply by leveraging new technology and the rising availability of new data sources. New underwriting solutions allow card companies to better evaluate credit risks to issue cards to thin-file and no-file consumers with greater confidence. The Bureau estimates 26 million U.S. adults lack sufficient data to generate a typical credit bureau score, either because they do not possess any reported credit history or because their credit history is limited or stale.[301] Underwriting innovations have the potential to expand credit inclusion to portions of this population. An increasing ability for lenders to accurately assess risk could reduce the price of credit for those who are shown to be good risks (although it could *increase* the price of credit for those shown to be worse risks), and might even reduce the overall average price of credit for those who qualify for credit.[302]

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[301] *See* Office of Research, Bureau of Consumer Fin. Prot., *Data Point: Credit Invisibles*, (May 2015), http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

[302] The efficacy of these new data and computational techniques used for the purposes of credit risk management is still being understood. At least one non-profit organization, FinRegLab is partnering with industry to research the use of alternative data. *See* FinRegLab, *Advancing the Safe & Smart Use of Technology & Data in Financial Services*, https://finreglab.org/ (last visited July 19, 2019).

Over the past several years, credit risk management innovation has focused on two areas: first, expanding the pool of eligible loan candidates; and second, developing tools that identify credit risk more effectively. Achieving either goal may involve the use of new datasets beyond the traditional credit repayment history data creditors have relied upon for decades. In addition, either may include analytical approaches, such as models that more heavily weigh recent credit behavior (also known as "trended data" solutions), and solutions that rely on machine learning to find new predictive combinations of indicators.[303]

NEW DATA SOURCES

Traditional credit scores use information available on standard credit reports sourced from one of the three national credit reporting agencies (NCRAs). Such information includes credit history, debts in collection, and bankruptcies.[304] Companies that build tools to aid the assessment of credit risk, however, have frequently invested in alternative sources of data. For example, companies have invested in data such as consumer payment history on non-financial products that have recurring billing, such as rent, telecommunications, and utilities.[305] More recently, cash flow data from checking accounts has been leveraged.[306] There are recent

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[303] For some consumers, the use of new sources of information and analytical approaches may be a way to gain access to credit. Some commentators have raised concerns that new information sources and analytical approaches may pose risks to consumers or may not be in compliance with regulatory requirements. *See* 82 Fed. Reg. 11183 (Feb. 21, 2017), NCLC Comment Letter, at 11.

[304] Prior to July 2017, NCRAs included information on tax liens and civil judgments on consumer credit files. *See* Eric Ellman, *Statement Consumer Data Industry Association*, Consumer Data Industry Ass'n (Mar. 13, 2017), https://s3.amazonaws.com/rdcms-cdia/files/production/public/PDFs/FNL.3.13.CDIA_Media_Statement_Liens.pdf.

[305] For example, NCTUE maintains a database of consumer payment information reported by utility and telecom providers, Experian RentBureau houses payment data reported by large landlords, and MicroBilt provides credit reports and scores that leverages the aforementioned data elements and more. *See* Nat'l Consumer Telecom & Utilities Exchange, *Mission Statement*, https://www.nctue.com/about-us (last visited July 19, 2019); Experian, *Unlock the Power of Rental Payment Data*, https://www.experian.com/rentbureau/renter-credit.html (July 19, 2019); and MicroBilt, *Lend Smarter. Collect Quicker. Grow Your Business.*, https://www.microbilt.com/ (last visited July 19, 2019).

[306] Checking account data is consumer-permissioned and is provided to score developers and issuers through data aggregation technology.

indications that these new data sources may become more broadly used for credit card underwriting. Important developments include the following:

- In 2015, credit-scoring company FICO introduced FICO Score XD, a score that uses traditional credit report information as well as—for consumers that lack sufficient credit history to generate a score using a credit report alone—telecommunications and utility payments, and public records and property data. The score is designed to share the same scale (300–850) and odds-to-score relationships as other FICO models.[307] With the additional data, FICO reports being able to provide scores for more than half of previously unscored consumers.[308]
- Cash flow-based underwriting is an emerging trend that also depends on consumer-permissioned access to transaction data. As with other alternative data sources, cash flows may allow lenders to assess the credit risk of no-file and thin-file consumers with greater certainty. One company using such data offers perks and rewards with its credit cards that are not typical for entry level cards. Another purports to provide higher credit limits and lower interest rates than competitors, along with not charging any fees to customers. Yet another has a special application channel for international students studying in the United States.[309]
- In addition to card companies that have developed credit risk scoring models in-house, there is at least one commercially-available credit score, UltraFICO, which considers

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[307] The odds-to-score relationship describes the repayment odds at a given credit score.

[308] FICO, *FICO Score XD*, https://www.fico.com/en/latest-thinking/product-sheet/fico-score-xd (last visited July 19, 2019).

[309] International students are likely to benefit from the use of cash flow underwriting because they typically lack credit history in the U.S. and do not possess a social security number.

consumers cash flows from consumer permissioned access to transaction account data.[310]

- In 2019, CRA Experian launched Boost, which allows individual consumers to permission access to bank account transaction data from which Experian records payments to telecommunications and utilities providers.[311] Experian then adds positive payment history to Experian credit files for as long as the consumer stays enrolled. Experian reports that among a sample of consumer FICO scores, 10 percent of thin-file consumers became scoreable after using Experian Boost. Experian also reports credit score improvements among those that started with a score below 680.[312]

OTHER INNOVATIONS

New analytical approaches, which are often combined with alternative data sources, are being used more frequently than in the past for consumer loan underwriting. One analytical approach new in the last several years, trended data, is being applied by some score developers to standard credit bureau data.[313] Traditionally, credit bureau scores consider discrete events within a credit history, such as the occurrence of a 60-day delinquency. In contrast, trended data considers the trend in credit behavior over time to help inform whether a consumer's credit standing is improving or worsening.[314] It does so by looking at specific data fields within a credit report, when they are available, such as the actual payment amount consumers make toward an

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[310] As of this writing, UltraFICO is in its pilot phase. FICO, *UltraFICO*, https://www.fico.com/ultrafico/ (last visited July 19, 2019).

[311] Commercially available credit scores have long considered payments to telecommunications and utilities providers when this information is present on a consumer credit report; however, such information is rarely present on credit reports.

[312] Susan Henson, *Introducing Experian Boost, a New Way to Instantly Improve Your Credit Scores*, Experian (Apr. 8, 2019), *available at* https://www.experian.com/blogs/ask-experian/introducing-experian-boost/.

[313] Lisa Prevost, *A Focus on Credit History for Mortgage Approvals*, N.Y. Times (Oct. 25, 2015), *available at* https://www.nytimes.com/2015/10/25/realestate/a-focus-on-credit-history-formortgage-approvals.html.

[314] VantageScore, *VantageScore Solutions Debuts VantageScore 4.0 Credit Scoring Model*, (Apr. 3, 2017), *available at* https://www.vantagescore.com/news-story/226/vantagescore-solutions-debuts-vantagescore-40-credit-scoring.

outstanding balance.[315] Other approaches include the application of machine learning to risk scoring. Several known applications of machine learning based underwriting models exist in the subprime and non-credit card market.[316] In addition, at least one new credit card company utilizes machine learning to evaluate credit risk and other card companies may also be exploring the use of machine learning-based credit scoring models as means to drive higher approval rates without sacrificing credit risk.[317] It has been reported that one large retailer has encouraged partner banks to consider vendors that specialize in machine learning models.[318]

While technological advancements may benefit the credit card market, they may also present some risks. New technology has the potential to expand credit access, improve issuers' risk assessment, and provide better service and convenience to consumers. However, certain advancements may have unintended side effects, including the potential for unlawful lending discrimination, or misunderstanding by consumers. The Bureau is interested in promoting innovation that may help extend affordable, responsible credit to more people, while at the same time ensuring compliance with applicable Federal and State law, so that consumers are treated fairly and remain protected.

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[315] In response to the Bureau's Request for Information a commentator noted that sometimes credit card issuers do not report information to the credit bureaus that trended data models rely upon. *See* NCLC Comment Letter, at 10.

[316] Becky Yerak, *AI Helps Auto-Loan Company Handle Industry's Trickiest Turn*, Wall St. J. (Jan. 3, 2019), *available at* https://www.wsj.com/articles/ai-helps-auto-loan-company-handle-industrys-trickiest-turn-11546516801. *See also* Penny Crosman, *Is AI making credit scores better, or more confusing?*, American Banker (Feb. 14, 2017), *available at* https://www.americanbanker.com/news/is-ai-making-credit-scores-better-or-more-confusing.

[317] John Adams, *Can artificial intelligence match credit cards to millennials?*, PaymentsSource (Sept. 8, 2017), *available at* https://www.paymentssource.com/news/petal-uses-artificial-intelligence-to-lure-millennials-to-credit-cards.

[318] AnnaMaria Andriotis, *The $10 Billion Tussle Over Walmart's Credit Cards*, Wall St. J. (Oct. 24, 2018), *available at* https://www.wsj.com/articles/the-10-billion-tussle-over-walmarts-credit-cards-1540378800.

8.3.2 Fraud risk management innovation

Fraud remains a constant and costly reality of the credit card market. One recent estimate pegged total 2017 debit and credit card fraud at $24.26 billion, and projected that to increase to $34.66 billion by 2022.[319] This subsection briefly reviews fraud trends, then covers a number of trends in fraud prevention.

CARD-PRESENT FRAUD AND EMV ADOPTION

Card-present transactions involve physical cards and are susceptible to stolen or counterfeit card fraud. This type of fraud is continuing to decline in the wake of EMV roll-out in the United States. Visa, for example, reports that the dollar volume of counterfeit card fraud on its network has decreased 80 percent from September 2015 to September 2018 for merchants that have upgraded to chip-enabled terminals.

The adoption of EMV technology in the U.S. has been accompanied by the so-called "liability shift" that occurred in October 2015. It required liability for losses in card-present transactions to shift to whichever party—the card issuer or the merchant acquirer—had not implemented the EMV standard. By the end of 2018, U.S.-issued debit and credit chip cards in circulation totaled over 840 million, representing 61 percent of all U.S.-issued Visa cards.[320]

CARD-NOT-PRESENT (CNP) FRAUD

CNP transactions introduce additional security complications surrounding identity and authentication. As EMV technology has targeted card-present fraud and digital commerce has become more prevalent, fraudsters have shifted their focus to CNP fraud. Tokenization, discussed in detail in the 2015 Report, was introduced to limit the value of payment data breaches, however, there has been a simultaneous boom in digital commerce transactions. The U.S. Department of Commerce estimates that total e-commerce sales for 2018 were $513.6

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[319] *See* The Nilson Report, *No. 1142*, (Nov. 2018).

[320] *See* EMVCo, *supra* note 293.

billion, up 14.2 percent from 2017.[321] As of 2018, over half of all debit and credit card fraud losses worldwide are from CNP transactions, totaling $6.5 billion.[322]

Card-not-present fraud also involves a different set of liabilities. Unlike card-present fraud, in which the credit card issuer generally bears financial liability absent specific circumstances allowing chargeback under network rules, merchants generally bear the financial liability in card-not-present fraud cases.

TRENDS IN FRAUD AND FRAUD PREVENTION

A consistent theme cutting across various types of fraud is the difficulty of verifying a customer's identity. The plethora of recent data breaches have compromised a vast amount of consumer data that can be used to commit fraud. According to one estimate, since 2013 nearly 15 billion data records have been lost or stolen.[323]

Struggles with identity verification begin with application fraud. Using stolen or synthetic identifying information, fraudsters apply for financial products that can then be used for fraudulent payments and account access.[324] One estimate predicts financial institutions' costs associated with credit card application fraud will reach $781 million by 2020.[325] Even if a consumer has been successfully identified in the application process, any credit card purchase can be a result of account takeover fraud. Fraudsters gain access to a customer's account itself,

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[321] U.S. Census Bureau News, U.S. Department of Commerce, *Quarterly Retail E-commerce Sales , 4th Quarter 2018*, (Mar. 13, 2019) *available at* https://www.census.gov/retail/index.html#ecommerce.

[322] *See* The Nilson Report, *No. 1142*, (Nov. 2018).

[323] *See* Breach Level Index, *Data Breach Statistics*, https://breachlevelindex.com/ (last visited Mar. 18, 2019).

[324] Synthetic fraud occurs when there is no real-world person from which identifying information is stolen. Instead, fraudsters manufacture identities with information required for credit applications.

[325] Shirley W. Inscoe, *Application Fraud: Fighting an Uphill Battle,* Aite (Dec. 11, 2018), *available at* https://aitegroup.com/report/application-fraud-fighting-uphill-battle.

providing them the opportunity to reroute communications and potentially access other financial products and services at the financial institution without the consumer's knowledge.

Traditional fraud models attempt to pinpoint fraud by checking a single transaction against a number of rules that result in a pass/fail decision. For example, if a transaction is above a certain threshold or made in a foreign country, it might be flagged as fraudulent. These rules have been easy for fraudsters to learn and evade. In addition, the traditional model's rigidity caused a substantial number of non-fraudulent transactions to be denied. One source estimates that 70 percent of transactions that were declined due to fraud were false positives.[326] These false positives cause issuers and merchants to lose out on authentic sales and customer loyalty.

Issuers and payment networks are investing in more adaptive technologies and strategies to better combat fraud loss. Important developments include the following:

- Machine learning: Unlike the system of rigid decisions in traditional fraud detection, machine learning systems can adapt more quickly to variations in data, learning to better identify fraudulent transactions over time. Machine learning fraud prevention efforts use thousands of individualized data checks on any one transaction to increase the likelihood of accurately identifying a fraudulent or permissible payment.[327]
- Dynamic CVV: If a credit card's card number, expiration date, and CVV code have been collected, a fraudulent card-not-present transaction is difficult to prevent. At least one

[326] Al Pascual, *The Financial Impact of Fraud: Merchants Challenged as E-commerce Fraud Rises Post-EMV*, Javelin (Oct. 25, 2016), *available at* https://www.javelinstrategy.com/coverage-area/financial-impact-fraud.

[327] As with underwriting, the use of AI for fraud control raises concerns of unintentional bias, which can affect consumers through declined transactions and closed accounts. Rob Matheson, *Reducing False Positives in Credit Card Fraud Detection*, MIT News (Sept. 20, 2018), *available at* http://news.mit.edu/2018/machine-learning-financial-credit-card-fraud-0920. *See also* Penny Crosman, *Can AI's 'black box' problem be solved?,* American Banker (Jan. 1, 2019), *available at* *https://www.americanbanker.com/news/can-ais-black-box-problem-be-solved*.

issuer is experimenting with dynamic CVV codes on credit cards which will refresh periodically, rendering previously gathered card information inaccurate.[328]

- 3D Secure 2.0: 3D Secure was developed by the major card networks in 2001 as an additional layer of fraud protection. The 3D Secure process requires consumers to take steps to authenticate themselves in the course of a transaction. This process has contributed to increases in cart abandonment as consumers are routed through additional authentications steps. 3D Secure 2.0 is being introduced in 2019 and includes multi-platform digital support, additional contextual data share between merchants and issuers, and a more frictionless authentication experience.[329]

- Secure Remote Commerce (SRC): An additional joint card network effort, SRC is a still-developing standard for card payments in digital commerce. The approach would do away with the current standard of inputting card credentials, a commonly-cited friction point in the payments process. SRC is focusing on interoperability, raising the possibility that consumers may someday only interact with one "Pay" button at the digital point-of-sale that can accommodate many types of payments.[330] Merchants have raised concerns that SRC requirements will lead higher shopping cart abandonment and could limit merchants' transaction-routing choices.[331]

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[328] PNC, *Innovation in Fraud Protection*, https://www.pnc.com/en/corporate-and-institutional/treasury-management/resources/payment-solutions-news/innovations-in-fraud-protection.html (last visited June 27, 2019).

[329] *See* Visa, *FAQ: Visa 3-D Secure 2.0*, https://technologypartner.visa.com/Download.aspx?id=681 (last visited June 27, 2019).

[330] *See* EMVCo, *EMV Secure Remote Commerce*, https://www.emvco.com/emv-technologies/src/ (last visited July 19, 2019).

[331] John Stewart, *Networks Say SRC Will Go Live Later This Year to Simplify—And Secure—Digital Checkouts*, Digital Transactions (June 7, 2019), *available at* https://www.digitaltransactions.net/networks-say-src-will-go-live-later-this-year-to-declutter-and-secure-digital-checkouts/.

APPENDIX A: SUPPORTING FIGURES

Figure 1: AVERAGE APR, GENERAL PURPOSE (Y-14+)

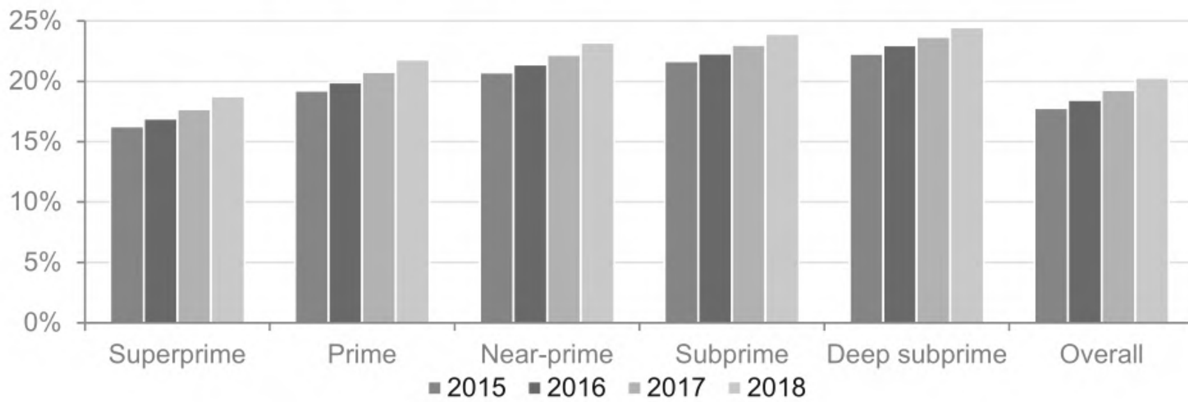


Figure 2: AVERAGE APR, PRIVATE LABEL (Y-14+)

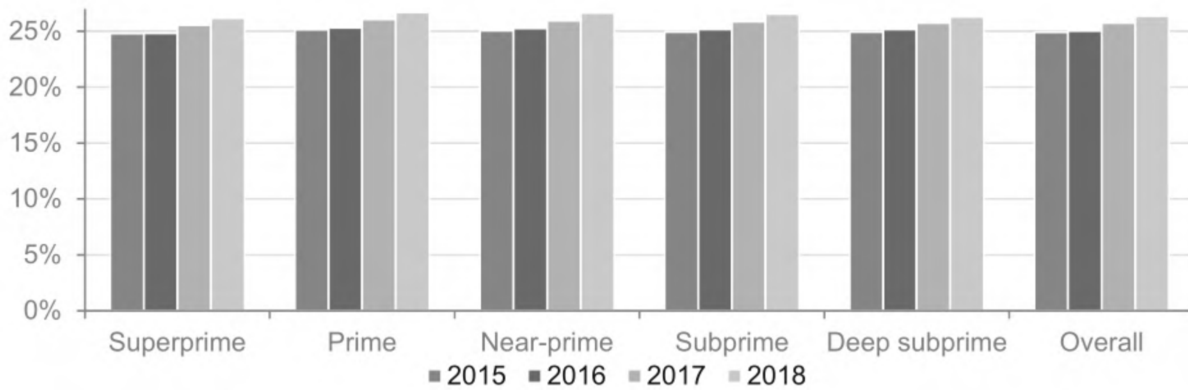


Figure 3: FEDERAL FUNDS RATE COMPARED TO WSJ PRIME RATE(WSJ,FEDERAL RESERVE)[332]

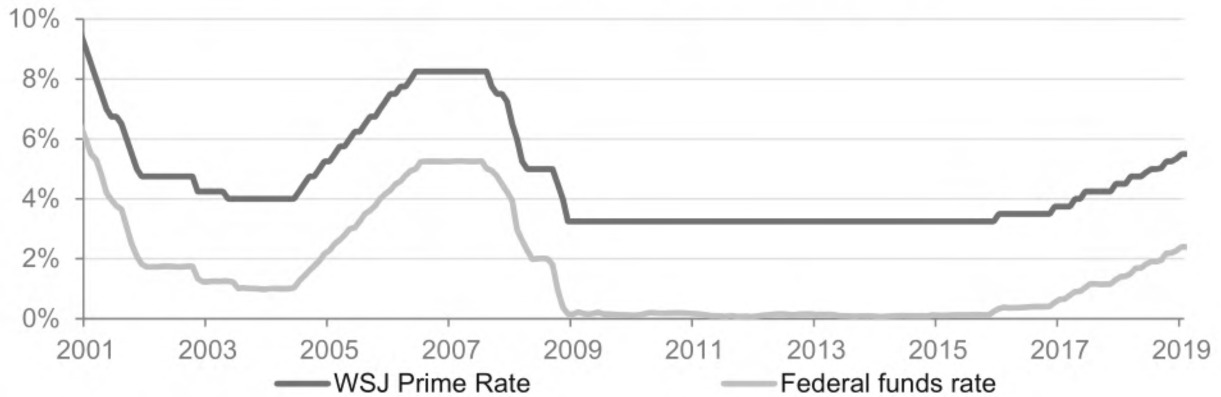
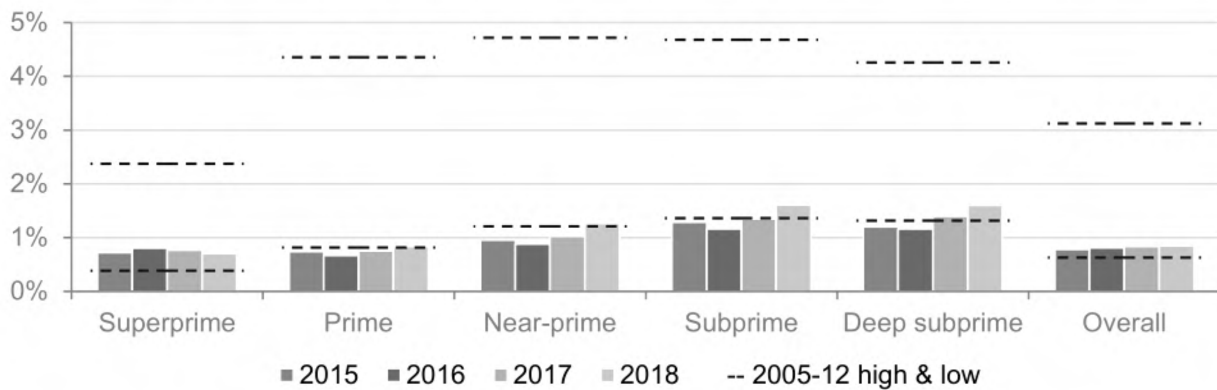


Figure 4: AVERAGE QUARTERLY CREDIT LINE DECREASE INCIDENCE, GENERAL PURPOSE (CCP)



[332] Fed. Reserve Bank of St. Louis, *Effective Federal Funds Rate*, https://fred.stlouisfed.org/series/fedfunds (last visited June 13, 2019); Wall St. J., *Market Data Center*, https://www.wsj.com/market-data/bonds/moneyrates (last visited June 13, 2019).

Figure 5: AVERAGE QUARTERLY CREDIT LINE DECREASE INCIDENCE, PRIVATE LABEL (CCP)

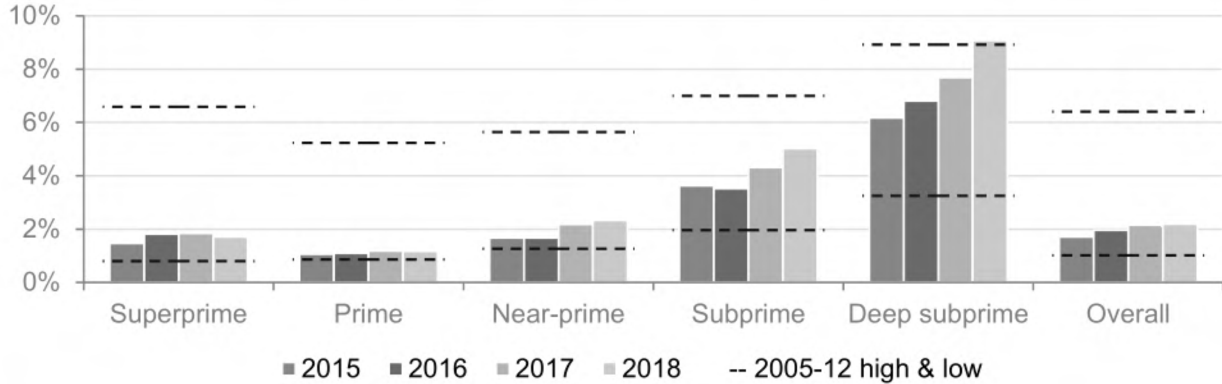


Figure 6: MEDIAN CREDIT LINE DECREASE AMOUNT, GENERAL PURPOSE (CCP)

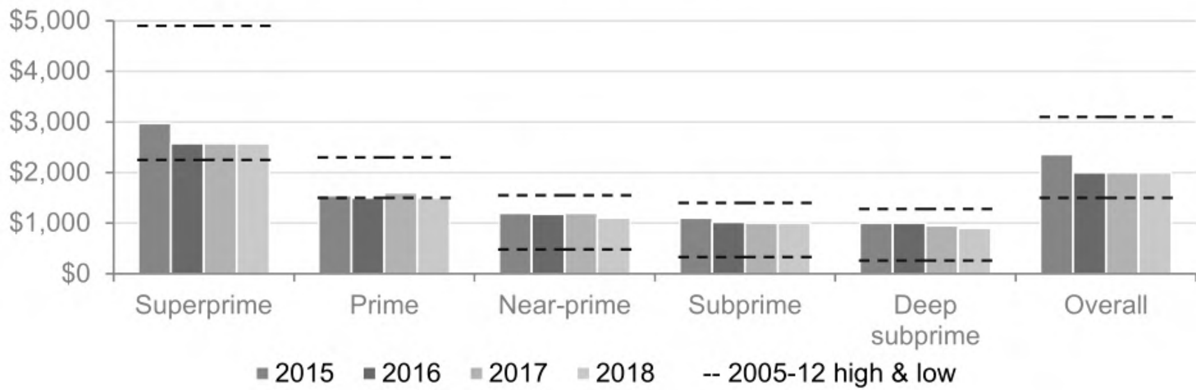
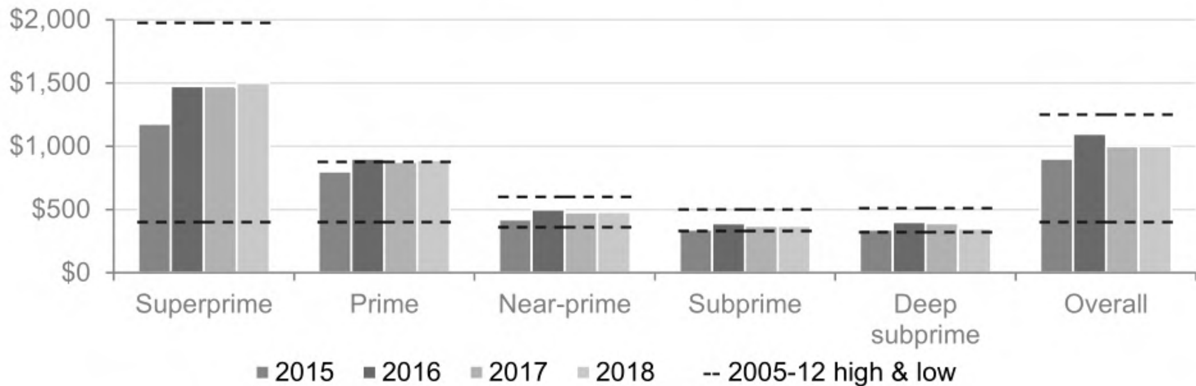


Figure 7: MEDIAN CREDIT LINE DECREASE AMOUNT, PRIVATE LABEL (CCP)



Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

August 27, 2019

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
4340 O'Neill House Office Building
Washington, DC 20515

Dear Chairwoman Waters and Ranking Member McHenry:

Enclosed is the Consumer Financial Protection Bureau's report on the impact of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (CARD Act) on the consumer credit card market, pursuant to Section 502(a) of the CARD Act.

Should you have any questions concerning this report, please do not hesitate to contact me or have your staff contact Meredith Manna in the Bureau's Office of Legislative Affairs. Ms. Manna can be reached at (b)(6)

Sincerely,

Kathleen L. Kraninger
Director

The Consumer Credit Card Market

Message from Kathleen L. Kraninger

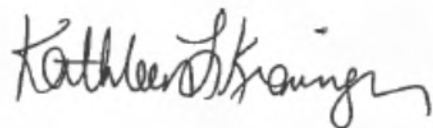
Director of the Bureau of Consumer Financial Protection

Credit cards are one of the most commonly-held and widely-used financial products in America. At last count, nearly 170 million Americans hold credit cards, many of them carrying more than one. Some consumers use these strictly as payment devices, paying their balances in full each month, while others use them as a source of credit and carry a balance from month to month.

The Credit Card Accountability Responsibility and Disclosure Act (CARD Act) requires the Bureau to prepare a biennial report to Congress regarding the consumer credit card market. This is the Bureau's fourth report, and details findings regarding, among other things, the cost and availability of credit and innovations in the credit card marketplace. The report also emphasizes that with the passage of time, it is becoming increasingly difficult to correlate the CARD Act with specific effects in the marketplace that have occurred since the issuance of the Bureau's last biennial report, and, even more so, to demonstrate a causal relationship between the CARD Act and those effects. Accordingly, while the Bureau will continue to report on the CARD Act's effects where appropriate and feasible, the Bureau anticipates future reports will focus more on overall conditions in the credit card market.

Evidence-based research like this is one way in which the Bureau discharges its statutory duty to monitor for risks to consumers in the offering or provision of consumer financial products and services. It is my hope that the publication of this report with the latest data on this important market will be useful to consumers, providers of credit card products, and policymakers.

Sincerely,



Kathleen L. Kraninger

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Executive summary

Credit cards are central to the financial lives of nearly 170 million American consumers. Over the last few years, the credit card market, the largest U.S. consumer lending market measured by number of users, has continued to grow in almost all dimensions and measures. Market conditions remain stable, in large part because of low unemployment, modest wage growth, and high consumer confidence in the past two years. Credit cardholders continue to use their cards to facilitate transactions, smooth consumption, and earn rewards, all with the added security of stringent limitations on liability. Consumer satisfaction with credit cards remains high,[1] while consumers' debt service burden remains near its lowest level recorded in more than a decade.

Late payment and default rates have risen modestly over this period but remain below pre-recession levels. In general, credit card issuers continue to generate profitable returns consistent with historical levels. Innovation has continued to reshape the market, for both users and providers. New providers, including large and small financial institutions as well as startup and mainstream technology companies have entered—or are in the process of entering—the market with competing products, features, and new ways of issuing credit cards.[2]

The Credit Card Accountability Responsibility and Disclosure Act (CARD Act or Act)[3] was enacted ten years ago. Since its passage, researchers, including the CFPB, have studied the

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[1] J.D. Power reported that in 2018 consumer satisfaction with credit cards remained near its record high. *See* Press Release, J.D. Power, *Credit Card Rewards Battle Continues as Customers Seek Better Programs, J.D. Power Finds* (Aug. 16, 2018), *available at* https://www.jdpower.com/business/press-releases/2018-credit-card-satisfaction-study.

[2] Reference in this report to any specific commercial product, service, firm, or corporation name is for the information and convenience of the public, and does not constitute endorsement or recommendation by the Bureau.

[3] Pub. L. No. 111-24, 123 Stat. 1734 (2009).

effects of the CARD Act on the cost and availability of credit to consumers. This report discusses that research. However, the Bureau also emphasizes that with the passage of time, it is becoming increasingly difficult to correlate the CARD Act with specific effects in the marketplace that have occurred since the issuance of the Bureau's most recent biennial report, and, even more so, to demonstrate a causal relationship between the CARD Act and those effects. Accordingly, while the Bureau will continue to report on the CARD Act's effects where appropriate and feasible, the Bureau anticipates that future reports will focus more on overall conditions in the credit card market.

This executive summary provides some background for the report, then summarizes key findings.

BACKGROUND

In 2009, Congress passed the CARD Act.[4] The Act made substantial changes to the credit card market. The CARD Act mandated new disclosures and underwriting standards, curbed certain fees, and restricted interest rate increases on existing balances. Among the CARD Act's many provisions was a requirement that the Board of Governors of the Federal Reserve System (Board) report every two years on the state of the consumer credit card market. With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010, that requirement passed to the Bureau of Consumer Financial Protection (Bureau) alongside broader responsibility for administering most of the CARD Act's provisions. This is the fourth report published pursuant to that obligation, building on prior reports published by the Bureau in 2013, 2015, and 2017.[5]

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[4] The Act superseded a number of earlier regulations that had been finalized, but had not yet become effective, by the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the Board of Governors of the Federal Reserve System. Those earlier rules were announced in December of 2008 and published in the Federal Register the following month. *See* 74 Fed. Reg. 5244 (Jan. 29, 2009); 74 Fed. Reg. 5498 (Jan. 29, 2009). The rules were withdrawn in light of the CARD Act. *See* 75 Fed. Reg. 7657, 75 Fed. Reg. 7925 (Feb. 22, 2010).

[5] *See* Bureau of Consumer Fin. Prot., *Card Act Report*, (Oct. 1, 2013) (2013 Report), http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market*, (Dec. 2015)(2015 Report),

The Bureau's 2013 Report focused on trends in the credit card marketplace before and after the CARD Act. Because the implementation of the Act coincided with a period of economic recovery, the effects of the CARD Act were difficult to discern. The Bureau found that the CARD Act "significantly enhanced transparency for consumers" and largely eliminated "[o]verlimit fees and repricing actions."[6] The report found that from early 2009 and continuing through February 2010 when many provisions of the Act took effect, the interest rate on credit card accounts increased. But because back-end fees also decreased across this period the total cost of credit "*declined* by 194 basis points from Q4 2008 to Q4 2012."[7] The report was not able to conclude how much of that change was attributable to the CARD Act. The report also noted declines in credit availability beginning in 2008, prior to the enactment of the CARD Act, but after the onset of the Great Recession. Certain metrics, such as total credit line, continued to decrease after the implementation of CARD Act provisions, with their effect disproportionately concentrated in subprime tiers.[8] With some exceptions, the report was not able to conclude the extent to which such change resulted from the Act. However, the report did find evidence that suggests the CARD Act had a discernible impact on credit availability in three respects—a substantial decrease in the number of credit card accounts originated among students and other consumers under the age of 21, a small but discernible percentage of applicants deemed otherwise creditworthy were declined as a result of insufficient income to satisfy the CARD Act's

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http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf; Bureau of Consumer Fin. Prot., *The Consumer Credit Card Market*, (Dec. 2017) (2017 Report), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf. The Bureau also held a conference in 2011 in which numerous market stakeholders contributed information and perspective on developments in the credit card market. *See* Press Release, Bureau of Consumer Fin. Prot., *CFPB Launches Public Inquiry on the Impact of the Card Act* (Dec. 19, 2012), *available at* https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-public-inquiry-on-the-impact-of-the-card-act.

[6] *See* 2013 Report, *supra* note 5, at 5.

[7] The report defined total cost of credit as the annualized sum of all amounts paid by consumers (including both interest charges and fees) divided by the average of outstanding balances. *See id.*

[8] According to the Bureau's data, total credit line was $200 billion lower at the end of 2012 than when many provisions of the CARD Act took effect in February 2010. *See id.* at 6.

ability-to-pay requirement, and a marked decline in the percentage of consumers receiving unsolicited credit line increases.[9]

The Bureau's 2015 Report had a broader scope. It continued to assess post-CARD Act trends, generally corroborating the prior report and finding that most of the market trends identified in that 2013 Report had persisted over the next two years. The 2015 Report also laid out a broader set of market indicators, establishing potential baselines against which to measure the evolution of the market in future reports. In addition, the report included several in-depth analyses of certain issuer practices in the market—deferred interest promotions, rewards cards, and debt collection.

The Bureau's 2017 Report provided similar coverage of post-CARD Act trends. It found the cost of card credit remained "largely stable," and that by most measures credit card availability "remained stable or…increased" since the 2015 Report.[10] It repeated the debt collection analysis and added two new subjects: credit card products marketed to and used by consumers who lack prime credit scores; and issuer and consumer use of rapidly emerging "third-party comparison" websites.

THE 2019 REPORT

This report continues the approach of the Bureau's previous reports. The Bureau revisits most of the same baseline indicators as prior reports to track key market developments and trends. It also revisits some of the 2015 in-depth topics to assess how the market has changed. For example, the current report updates the debt collection analysis first conducted in the 2015 Report. In addition, this report reviews significant findings from economics scholarship focused on the CARD Act.

Below is a summary of the core findings from each section of the report:

- Total outstanding credit card balances have continued to grow and at year-end 2018 were nominally above pre-recession levels. Throughout the post-recession period, including the

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[9] *See id.*

[10] *See* 2017 Report, *supra* note 5, at 7-8.

period since the Bureau's 2017 Report, purchase volume has grown faster than outstanding balances. After falling to historical lows in the years following the recession, delinquency and charge-off rates have increased over the last two years. Late payment rates have increased for new originations of general purpose and private label cards, both overall and within different credit tiers.

- The total cost of credit (TCC) on revolving accounts has increased over the last two years and in 2018 stood at 18.7 percent, which is the highest overall level observed in the Bureau's biennial reports. Recent TCC increases are largely the result of increases in the indices underlying variable rates, such as the prime rate. General purpose cards, which generally have interest rates linked to the prime rate, have driven the increase across every credit tier. TCC has fallen over the last two years for private label cards, in part because relatively fewer of these cards have rates linked directly to index rates, offset by a decline in fees as a share of balances.

- Most measures of credit card availability—overall and across credit score tiers—have remained stable or decreased slightly since the Bureau's 2017 Report. Measured by application volume, consumer demand for credit cards peaked in 2016. Approval rates have also declined slightly since 2016. Driven by lower approval rates, annual growth in the number of credit card accounts opened and the amount of credit line on new accounts has also leveled off. Even so, total credit line across all consumer credit cards reached $4.3 trillion in 2018, nearly equal to its pre-recession high, largely due to the growth in unused line on accounts held by consumers with superprime scores.

- Cardholders have increased their use of rewards cards, thereby driving up the cost to industry to fund these products. The level and consumer cost of balance transfer and cash advance use remains largely unchanged.

- In the ten years since the CARD Act was passed, social scientists have examined the Act's effects on consumers and the credit card market as a whole. Using a range of theoretical and empirical approaches, scholarship has looked at a range of potential direct and indirect effects of the CARD Act, including pricing, credit availability, consumer repayment behavior, and cardholding.

- Since the 2017 Report, issuers have lowered the range of their daily limits on debt collection phone calls for delinquent credit card accounts. In addition, over that same period, the

volume of balances settled through for-profit debt settlement companies (DSCs) grew at a faster rate than issuers' overall accounts receivable did.

- New technologies further enhance consumers' interactions with and control over their credit cards—from originating one card rather than another, to ways of transacting and paying. Cardholders increasingly use and service their cards through digital portals, including those accessed via mobile devices. New technologies such as artificial intelligence and machine learning, as well as new data sources, are changing how providers are able to manage risk and provide customer service.

USE OF CREDIT

The credit card market is one of the United States' largest consumer financial markets and continues to grow by most measures. By the end of 2018, total credit card balances were around $900 billion, well above their pre-recession peak of $792 billion. Over the last few years, the total amount of *spending* using credit cards has grown much faster than the total volume of balances *carried* on cards. At $4.3 trillion, the aggregate of credit card lines extended (total line) is near its pre-recession high, while cardholding incidence remains further from its historic high.

Cardholders with prime or superprime credit scores continue to account for most credit card debt and spending. However, in the last few years, the share of total credit card debt held by consumers with relatively lower credit scores has been increasing. Cardholders with lower scores have also increased the average number of credit cards they hold. In addition, average credit card debt has risen faster for these cardholders over the last few years than it has for cardholders with higher scores, although all credit tiers have seen some growth in average outstanding balances. Aggregate credit card indebtedness for consumers with lower scores, however, remains below 2008 peaks.

For all credit score tiers, the share of cardholders revolving a balance continues to be higher for general purpose cards than private label ones. Private label revolving rates continue to show more variation across credit tiers. Payment rates on general purpose payment cards have continued their steady growth since the recession, whereas private label payment rates have declined in recent years.

Rates of credit card delinquency and charge-off have declined sharply since their peak during the recession, and remain lower than they were prior to the recession. Both indicators have

increased slightly in recent years. Newer originations, both overall and within each different credit tier, are showing greater incidence of late payment than older originations did after the same period. Recent private label vintages in particular show one-year cumulative delinquency rates in excess of historical norms, both overall and within different credit tiers.

COST OF CREDIT

The total cost of credit on revolving accounts has increased over the last few years, driven largely by increases in interest charges. In 2018, the average annual percentage rate (APR) for general purpose and private label cards rose to 20.3 and 26.4 percent respectively. This is in large part the result of changes in prevailing market rates.

Annual fee volume has risen significantly over the last few years, leading to an increase in annual fees as a share of total fees. Fee composition otherwise shows relatively little change. Annual fees averaged roughly $80 per card in 2018. That amount has been increasing steadily for all credit score tiers reflecting, in particular, the increased prevalence in the past two years of richer rewards credit cards with higher annual fees. The prevalence for cardholders with below-prime scores, however, has been declining since 2015.

AVAILABILITY OF CREDIT

Consumers' demand for credit as measured by application volume reached its peak in 2016 and declined somewhat in 2017 and 2018 in both general purpose and retail cards. Approval rates have also declined slightly since 2016. As a result, new credit card openings are lower than the post-recession high reached in 2016, both overall and for every credit tier. Total credit line on new accounts, both overall and within every credit tier, is down from its 2016 high point. Total credit line across all consumer credit cards reached $4.3 trillion in 2018, nearly equal to its pre-recession high. Despite this picture of increasing credit availability, most of the growth in available credit is accounted for by unused line on accounts held by consumers with superprime scores.

Consumers are increasingly obtaining credit cards through digital channels. Direct mail volume continues to fall. More consumers are finding their way to application pages via digital advertisements or third-party credit card comparison sites. More consumers are also applying for credit on their mobile devices. In 2018, applications submitted via mobile devices surpassed those submitted using desktop personal computers as the leading digital channel. The growth in the mobile channel has been significant in the past two years for both general purpose and retail

cards. Mobile application use is also disproportionately heavy for consumers with lower credit scores, even as approval rates for these channels and consumers have held relatively steady.

PRACTICES OF CREDIT CARD ISSUERS

Credit cards offering points, miles, cash back, or other rewards remain popular, with the share of credit card spending accounted for by rewards cards continuing to increase over the last few years. That is true both overall and for each of the main credit tiers with growth particularly notable for consumers with lower credit scores. While rewards cards continue to account for a larger share of total credit card spending, the share of originations that are rewards cards declined in all credit score tiers except superprime. Meanwhile, the cost of offering rewards has risen over the past several years as issuers continue to compete using richer rewards offers—and as cardholders take greater advantage of the rewards that are offered. Since the first quarter of 2015, data available to the Bureau show a roughly 84 percent increase in overall rewards expense incurred by issuers to support rewards programs.

Balance transfers remain popular among consumers. Annual balance transfer volume rose roughly 38 percent from 2015 through the end of 2018, outpacing growth in balances and purchase volume. Meanwhile, the cost of balance transfers to consumers has been declining in recent years. Cash advance usage growth has significantly lagged behind growth in balances and purchase volume, with declines most notably in the below-prime market segment. The cost to consumers of cash advances has remained stable since the Bureau's 2017 Report.

SCHOLARSHIP ON CARD ACT EFFECTS

This report also reviews recent academic research in the social sciences that has examined the CARD Act's effects. In many cases, these academic analyses corroborate the Bureau's findings from prior years' card market reports including, for example, findings that the Act led to reductions in consumers' total payments toward certain fees such as late fees and over-limit fees. However, across the methodologies and analyses reviewed in this section, a consistent theme is the challenge of disentangling the *effects* of the CARD Act itself, rather than the effects of other market changes such as the Great Recession.

Overall, the scholarship reviewed in this section suggests that the CARD Act's effect on consumer welfare is mixed. The reviewed analyses examine, both theoretically and empirically, how the CARD Act may have had unintended consequences (but not necessarily unanticipated ones) in parts of the market not explicitly regulated by the Act: for example, whether interest

rates at account opening may have risen in response to the CARD Act's restrictions on later repricing of interest rates on future outstanding balances. Academic research indicates that the direct and indirect consequences from the CARD Act may vary by consumer credit score, age, and other characteristics. The scholarship also highlights how these effects may depend on various features of the credit card market, such as market competitiveness and to what extent there is asymmetric information between different market participants.

DEBT COLLECTION

Issuers have lowered their daily limits on debt collection phone calls for delinquent credit card accounts since the Bureau's last report. Average daily attempts remained well below these stated limits, which is consistent with findings from the 2017 Report. Most issuers now supplement their internal collections communication strategy with email and text messages, but these channels are used primarily for account servicing and not for delivering required collections notices. Issuers' third-party collection networks typically do not use email and text.

The volume of balances settled through for-profit DSCs grew faster than did issuers' overall accounts receivable. Most issuers will not work with DSCs without receiving a signed or verbal authorization from the consumer. When engaging with DSCs, issuers generally apply the same settlement policies available to consumers who call the creditor directly to request settlements.

INNOVATION

Digital technology is being leveraged to offer consumers more tools to control how they shop for credit cards, how they qualify for different products, how they transact with physical cards or mobile phones, and how they pay for the associated debts. Some of these tools implicate a broad array of regulatory provisions that card issuers working in this space must navigate carefully. Technological advancements like machine learning and artificial intelligence incorporating new data sources are increasingly enabling the responsible expansion of credit availability to populations that lack a traditional credit score while also lowering the cost of credit to those with poor credit history. However, these same advancements may also bring new risks, such as unintended side effects and greater potential for discrimination, which companies must monitor closely.

1. Introduction

1.1 Review mandate

The Dodd-Frank Act which became law on July 21, 2010, established the Bureau. One year later, pursuant to that Act, authority and responsibility for implementing and enforcing the CARD Act were transferred from the Board to the Bureau. The CARD Act became law on May 22, 2009. Its stated purpose was to "establish fair and transparent practices related to the extension of credit" in the credit card marketplace.[11]

Among those responsibilities Congress originally assigned the Board was a mandate to "review, within the limits of its existing resources available for reporting purposes, [the] consumer credit card market [every two years]."[12] In 2012, the Board and the Bureau agreed that responsibility

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[11] *Supra* note 3, at 1. A full summary of the CARD Act rules implemented by the Board is at pages 11 through 13 of the Bureau's 2013 Report. *See* 2013 Report, *supra* note 5. The Bureau subsequently reissued these rules without material changes in December 2011. The Bureau later revised one CARD Act rule issued by the Board. On November 7, 2012, the Bureau proposed selected revisions to the ability-to-pay rules, which were intended to address a number of unintended impacts of the prior rule on consumers who did not work outside the home. The final rule implementing this revision became effective on May 3, 2013, with an associated compliance deadline of November 4, 2013. *See* 78 Fed. Reg. 25818 (May 3, 2013). On March 22, 2013, the Bureau finalized another revision to the CARD Act rules in response to a federal court ruling in 2012 that had granted a preliminary injunction to block a part of the Board's 2011 rule from taking effect. The final rule became effective March 28, 2013. *See* 78 Fed. Reg. 18795 (Mar. 28, 2013). *See also* Press Release, Bureau of Consumer Fin. Prot., *CFPB Finalizes Credit CARD Act Rule* (Mar. 22, 2013), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-finalizes-credit-card-act-rule.

[12] 15 U.S.C. § 1616(a) (2012).

for the review passed to the Bureau under the terms of the Dodd-Frank Act. This report represents the Bureau's fourth mandated review of the consumer credit card market, following the Bureau's reports on the market in 2013, 2015, and 2017.[13]

1.2 Report scope

This report fulfills Congress' directive to review the consumer credit card market in two overlapping ways.

First, it responds to the general congressional mandate in section 502 of the CARD Act to review and report on the "consumer credit card market." Second, it addresses "within the limits of [the Bureau's] existing resources available for reporting purposes" topics explicitly enumerated by Congress for inclusion in this review, including:

1. the terms of credit card agreements and the practices of credit card issuers;
2. the effectiveness of disclosure of terms, fees, and other expenses of credit card plans;
3. the adequacy of protections against unfair or deceptive acts or practices relating to credit card plans; and
4. whether or not, and to what extent, the implementation of this Act and the amendments made by this Act have affected:
    a. the cost and availability of credit, particularly with respect to non-prime borrowers;
    b. the safety and soundness of credit card issuers;
    c. the use of risk-based pricing; or

[13] *See generally*, *supra* note 5.

d. credit card product innovation.[14]

The CARD Act also requires the Bureau to "solicit comment from consumers, credit card issuers, and other interested parties" in connection with its review.[15] As in past years, the Bureau has done so through a Request for Information (RFI) published in the Federal Register, and the Bureau discusses specific evidence or arguments provided by commenters throughout the report.[16]

1.3 Methodology

This section reviews several aspects of the Bureau's general methodology in compiling this report. Methodological approaches used in specific sections of this report are explained in more detail in those sections.

1.3.1 Data sources

This report leverages several data sources. It emphasizes sources already held by the Bureau, by other Federal regulators, and by industry stakeholders. All results reported from data throughout this report aggregate results from multiple industry participants.[17]

[14] 15 U.S.C. § 1616(a) (2012). While this report presents information which may be relevant to assessments of safety and soundness issues relating to credit card issuers, the Bureau does not produce any further analysis on this subject in this report. The prudential regulators (*e.g.*, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration) have the primary responsibility for monitoring the safety and soundness of financial institutions.

[15] 15 U.S.C. § 1616(b) (2012).

[16] Request for Information Regarding Consumer Credit Card Market, 84 Fed. Reg. 647 (Jan. 31, 2019).

[17] No results in this report can be used to identify the outcomes or practices of individual entities. At the same time, outcomes and patterns observed in the market as a whole may not be true for (or may only apply in a limited degree to) any particular industry player.

Sources include the following:

1. Data from the Bureau's Consumer Credit Panel (CCP), which is a 1-in-48 longitudinal sample of de-identified credit records purchased from one of the three nationwide credit reporting agencies, which is representative of U.S. consumers with credit records. These data also inform other Bureau products, such as the Consumer Credit Trends reports.[18] These data contain no personal identifiers, such as name, address, or Social Security number.

2. De-identified information that the Board collects as part of its "Y-14M" (Y-14) data collection. The Board collects these data monthly from bank holding companies that have total consolidated assets exceeding $50 billion.[19] The Board shares with the Bureau data from Y-14 banks. The data received by the Bureau cover the period from the middle of 2012 through the present, and accounted for just under 70 percent of outstanding balances on consumer credit cards as of year-end 2018.[20]

Information in the Y-14 data do not include any personal identifiers. Additionally, accounts associated with the same consumer are not linked across issuers. The Y-14 does not include transaction-level data pertaining to consumer purchases. In addition, this study reports only aggregate metrics, and reveals no information about any specific issuer.

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[18] *See* Bureau of Consumer Fin. Prot., *Consumer Credit Trends*, https://www.consumerfinance.gov/data-research/consumer-credit-trends/ (last visited July 15, 2019).

[19] *See* Bd. of Govs. of the Fed. Reserve System, *Report Forms FR Y-14M*, https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDYnbIw+U9pka3sMtCMopzoV (last visited July 15, 2019) (for more information on the Y-14M collection).

[20] The Board has expanded the fields it collects from banks over time; therefore, some results reported below do not extend all the way back to 2012. Additionally, these data are periodically revised retroactively, and are therefore not fully static. These issuers represent a large portion of the market, but are not necessarily representative of the portion of the market not covered by the data the Bureau receives. A substantial number of consumer credit cards, cumulatively representing the remainder of the market as measured by outstanding balances, are outside the scope of the Y-14 data used by the Bureau because, among other reasons, they are issued by banks with assets of less than $50 billion, or are issued by non-banks, such as credit unions. Results reported from Y-14 data throughout this report should be interpreted accordingly.

These data replace loan-level credit card collections that the Bureau previously collected.[21] The Bureau no longer requires or oversees the collection of any loan-level credit card data on an ongoing basis.

3. Information provided in response to a series of data requests made to several industry participants, comprised of two distinct sets:[22]

a. Data requested from a broad and diverse group of issuers to address a range of topics that neither CCP nor Y-14 data can address. This report refers to these data as Mass Market Issuer (MMI) data. These data cover application and approval volumes, rates, and channels, digital account servicing, and debt collection.

b. Data requested from a diverse group of specialized issuers. These summary data, which focus on basic metrics of usage and cost, in places supplement the Y-14 to allow for a broader or more detailed perspective into certain facets of the market than either the Y-14 or CCP allow. Where these data supplement Y-14 data, those data are collectively called "Y-14+".

4. The CFPB's Credit Card Agreement Database, an online database available to the public at http://www.consumerfinance.gov/credit-cards/agreements, was created pursuant to the CARD Act. It contains most credit card agreements available to consumers as of quarter's end for each quarter from the third quarter of 2011 to the fourth quarter of 2014, and from the first quarter of 2016 to present.[23] After the fourth quarter of 2014, the Bureau temporarily suspended collection of agreements for one year to reduce burden while the

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[21] *See generally* Bureau of Consumer Fin. Prot., *Sources and Uses of Data*, at 57-58 (Sept. 26, 2018), *available at* https://www.consumerfinance.gov/data-research/research-reports/sources-and-uses-data-bureau-consumer-financial-protection/.

[22] The Bureau notes that many players in the credit card industry are also entities with which the Bureau has one or more institutional relationships, such as a research partnership or membership on a Bureau-convened body.

[23] Credit card issuers are not required to submit any credit card agreements to the Bureau if the card issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. 12 C.F.R. § 1026.58(c)(5).

Bureau developed a more streamlined and automated electronic submission system.[24] Submission and publication resumed in the first quarter of 2016.

5. Responses to the RFI, which sought comment on all aspects of the review described in Section 1.2 above.[25] The RFI generated 11 comments. That total includes six letters from trade associations representing credit card issuers and other market participants, two letters from individual issuers, one letter from an industry-side market participant, one letter from a consumer advocacy group, and one letter from a consumer.

6. Credit card complaints that consumers have submitted to the Bureau's Office of Consumer Response.

7. Commercially available data sources to which the Bureau subscribes that focus on the credit card industry, including mail volume monitoring reports, industry analyst reports, and data services and analytics from industry consultants.

8. Numerous public sources, including but not limited to Securities and Exchange Commission (SEC) filings, analyst reports, studies and data produced by other regulators, academic scholarship, and the trade press.

9. Other information gathered informally through Bureau market monitoring activities.

1.3.2 Credit scores

Throughout this report, the Bureau refers to consumer credit scores. Lenders use these scores to predict a consumer's relative likelihood of repaying a debt compared to other consumers. Credit scores provided by major national consumer reporting agencies are used by most credit card issuers to determine consumers' eligibility for credit and to set pricing for credit lines.[26] Data relied upon in this report include widely-used, commercially-available credit scores.

There are two important limitations to the way the Bureau uses credit scores in this report. Different credit score models, while fundamentally similar, may include or exclude different

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[24] 80 Fed. Reg. 21153 (Apr. 17, 2015); 12 C.F.R. § 1026.58(g).

[25] 82 Fed. Reg. 13313 (Mar. 10, 2017).

[26] Section 8.3.1 discusses the increased reliance of some credit card lenders on data and/or scores other than those provided by the major national credit bureaus.

data points or weight them differently. This means, first, that data are aggregated on the basis of credit score even though not all consumer credit scores are computed using identical methodologies. Second, it means that, when reporting certain metrics over longer time horizons, the introduction of new models and changes in the prevalence of various models complicates comparisons between different points in time. In some cases, one or both of those two issues could affect which "credit score tier" applies to a certain account or consumer. ("Credit score tiers" used are defined further below.) The Bureau believes that different credit scoring methodologies, over the time periods and set of market participants examined in this report, are sufficiently consistent that it remains informative and useful to report aggregated results and changes over time by credit score. The Bureau nevertheless proceeds with caution when assigning precision, beyond a reasonable degree, to certain results.

When reporting results by credit score in this report, scores are grouped into five tiers. This five-tier grouping aligns with the groupings used in the Bureau's 2017 Report on the credit card market and the Bureau's Consumer Credit Trends reporting. Table 1 shows the distribution of adults, scored adults, and scored cardholders in each credit score tier.

TABLE 1: CREDIT SCORE RANGE SHARES AS OF Q4 2018 (CCP)

Credit score tiers	U.S. adult population	U.S. scored population	U.S. scored credit cardholding population
Superprime (scores of 720 or greater)	42%	53%	62%
Prime (scores from 660 to 719)	12%	16%	17%
Near-prime (scores from 620 to 659)	6%	8%	8%
Subprime (scores from 580 to 619)	6%	7%	6%
Deep subprime (scores of 579 or less)	13%	16%	7%
Thin or stale score file	11%	-	-
Credit invisible[27]	11%	-	-

[27] Kenneth P. Brevoort, Philipp Grimm, & Michelle Kambara, *Data Point: Credit Invisibles*, at 6, Office of Research, Bureau of Consumer Fin. Prot., (May 2015), http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

Credit scores in the CCP and Y-14 are refreshed regularly. Unless noted otherwise, accounts and consumers are classified into score tiers based on their credit score at that time. As a result, when analyzing trends over time within a particular credit score tier, the set of accounts or consumers in a tier changes over time. This fact is especially important to note given that many consumers experience changes in their credit score that are large enough to move them from one credit tier to another.[28]

Credit scores have generally shifted upward in recent years. In fact, this shift has occurred even as the total scored population has been growing, making it even more striking that the absolute numbers of consumers with lower credit scores has been declining. Since the period from 2011 through 2012, when both the absolute number and the share of consumers with below-prime credit scores peaked, the number of consumers with lower scores has fallen by 8.5 million and the share has fallen by 7 percent. Nearly all of this change was in the deep subprime tier.[29]

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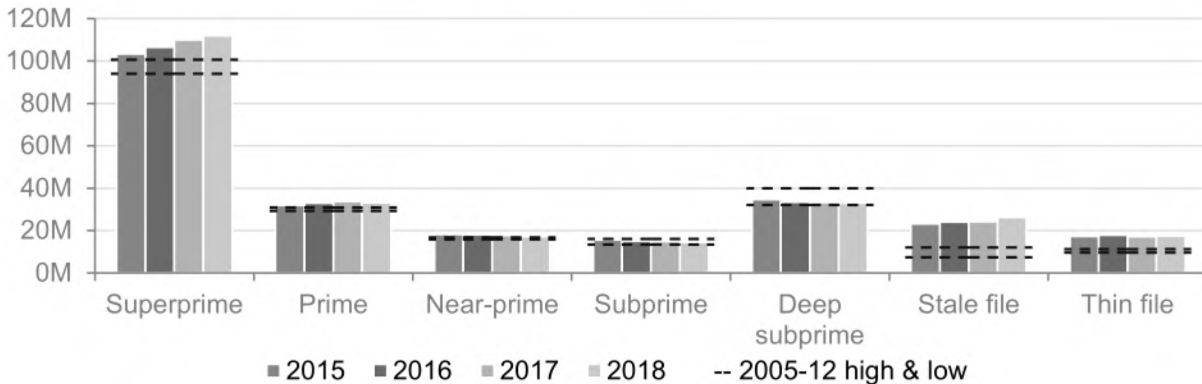
[28] *See* 2015 Report, *supra* note 5, at 53-55.

[29] One commenter asserted that "credit scores are currently over-inflated." *See* Randolph-Brooks Federal Credit Union Comment Letter, at 2-3. The basis for this assertion is that falling unemployment rates have contributed to this phenomenon because the relationship between unemployment and credit scores appears to have changed since the recession. The Bureau notes that many factors might contribute to increasing scores, including evolving scoring models, the adoption or use of alternative credit data, the removal of some recession-era derogatory marks, and the effect of certain CARD Act restrictions on younger and lower-income borrowers. The Bureau presents some findings on credit scores and scoring shifts in Section 4, effects of the CARD Act in Section 6, and innovations that may also be contributing to those changes in Section 8.3.1.

Figure 1: CONSUMERS WITH A CREDIT SCORE (CCP)



1.3.3 Other definitions

Throughout most of this report, the term "general purpose credit card" refers to credit cards that can transact over a network accepted by a wide variety of merchants, including the Visa, Mastercard, American Express, and Discover networks. The term "private label" refers to cards that can only be used at one merchant or a small group of related merchants.[30] In some instances, mainly in certain parts of Sections 4 and 5, the term "retail" refers to a combined category of private label cards and some network-branded cards that are managed by a business unit that specializes in retail credit cards.[31]

There are many ways to take a snapshot of consumer credit card indebtedness. The Bureau relies on two of the most prevalent, using nominal figures unless otherwise indicated. The first one entails measuring the current amount owed by consumers on a specific date, regardless of where in any individual consumer's billing cycle that date falls. Debt calculated in this manner is

[30] Private label cards generally transact over a private network maintained by the issuer to which the merchant is granted access. Some cards can transact over both a private label network and a general purpose network. For example, a consumer may be issued a card that features a merchant's brand as well as a general purpose network brand. When used at the merchant, the transaction may be routed over the issuer's private network, but at other merchants the transaction is routed over the general purpose network. For the purposes of this report, those cards are considered to be general purpose credit cards except where explicitly noted otherwise.

[31] Retail cards do not include network-branded cards that carry hotel or airline branding, even if those cards are managed by a business unit that specializes in retail credit cards.

referred to as "outstandings." For example, if one were to report the total amount owed by consumers on credit cards as of December 31, 2018, it would be referred to as outstandings.

The second method entails measuring the amount owed by consumers at the end of their billing cycles, regardless of whether those cycles fall on a certain date. The Bureau refers to debt calculated in this manner as "balances," and in most cases as "cycle-ending balances." For example, if one were to report the total amount owed by consumers at the end of their billing cycles that concluded in December 2018, it would be referred to as cycle-ending balances and, for some accounts, would calculate balances as of, *e.g.*, the 10th of the month.

This report also uses the term "debt" to refer to both of these amounts interchangeably. Note also that consumer debt on credit cards (whether calculated as month-end outstandings or cycle-end balances) includes both "revolving" debt—the amount owed on accounts for which the balance was not paid in full by the immediately prior statement due date—and "transacting" debt—charges incurred on accounts for which the balance was paid in full by the immediately prior statement due date. While transacting accounts represent a large share of all credit card purchase volume, revolving accounts generally represent a large share of all credit card debt at any given point in time. More detail on revolving and transacting patterns is provided in the subsequent sections of this report.

Throughout this report, the Bureau refers to the "Great Recession," which officially began in the final quarter of 2007 and ended in the second quarter of 2009. This report sometimes refers to it simply using the shorthand "the recession." In many instances, these terms are used interchangeably, generally when attempting to compare or contrast trends or measurements taken in the period prior to the onset of the recession to more recent periods. Those references are generally used for convenience and should not be interpreted as a statement as to precisely when the recession began or concluded.

1.3.4 Limitations

The limitations inherent to the Bureau's methodology in this report are substantially similar to those inherent in the Bureau's previous reports on the credit card market.[32] Those limitations are restated here briefly.

First, while the Bureau would ideally like data and evidence that allows it to definitively identify the causes of certain outcomes, the data available generally do not allow it to do so. The Bureau cautions against interpreting factual observations in the study as definitively proving or disproving particular causal relationships.

Second, each of the data sources the Bureau analyzes have particular limitations. Some sources are not a comprehensive view of the market; some are limited to the account level or the aggregate level; and some are purely qualitative. Not all data sources use consistent definitions or delineations or cover the same periods, products, or phenomena. To the extent possible, the Bureau mitigates these limitations. Every attempt is made to harmonize definitions and to identify those places where the Bureau is unable to do so.

[32] See, in particular, the 2015 Report at page 27.

2. Use of credit

To provide a foundation for analyses in subsequent sections, this section reviews several market metrics that cover four aspects of the consumer credit card market.

First, this section describes the overall size of the market. By some metrics, such as total credit card debt outstanding, the market has generally grown back to or even surpassed its pre-recession size, at least in nominal terms.[33]

Second, this section looks at a number of basic metrics about consumer usage, including cardholding patterns, consumer-level and account-level balance and payment behavior, and persistent indebtedness. Some of these point to potentially significant differences between the credit card debt held by consumers prior to the recession and the debt they hold today.

Third, this section reports on delinquency and charge-off rates. These remain below historic norms but are worsening even as widely relied-upon macroeconomic indicators—like the unemployment rate—are not deteriorating.

Last, this section covers consumers' increasing use of digital technology to, for example, review transactions and pay credit card bills.

2.1 Market-level metrics

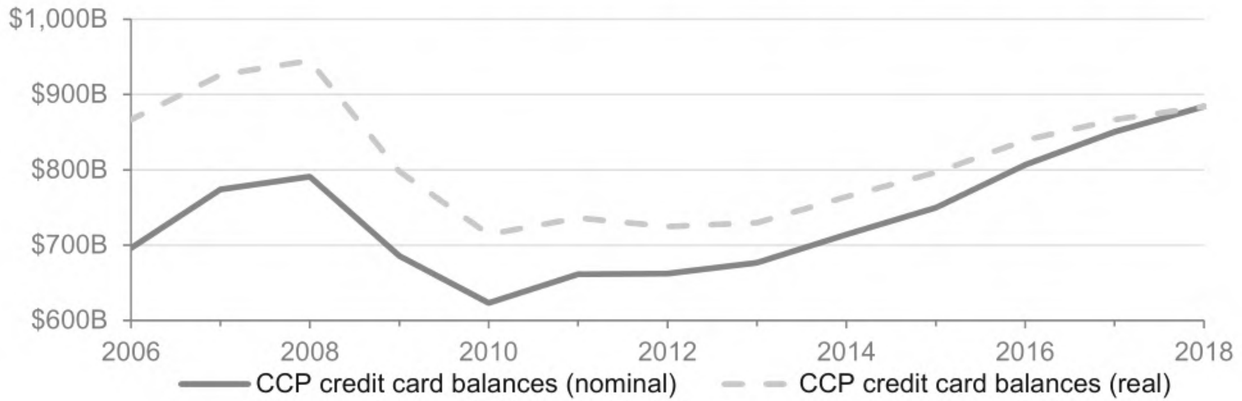
2.1.1 Total debt

Since the Bureau's 2017 Report, consumer credit card debt has continued its steady growth. In nominal terms, by the end of 2018, it was approaching $900 billion, well above its pre-recession

[33] In addition, as some commenters point out, "credit card debt as a share of disposable income has been relatively flat and remains…below pre-recession levels." ABA Comment Letter, at 3.

peak of $792 billion. Adjusted for inflation, however, current debt is more comparable to 2006 levels, as shown in Figure 1.

Figure 1: AVERAGE CREDIT CARD BALANCES, NOMINAL AND INFLATION-ADJUSTED (CCP, BLS)[34]



Considering just general purpose cards, in its last report the Bureau noted that balances had more-or-less steadily increased since the end of 2010 but had not yet returned to nominal pre-recession levels. By the fourth quarter of 2018, however, total outstanding general purpose credit card debt stood at $793 billion, well above the $732 billion mark reached in the third quarter of 2008. This result has been driven by growth in debt, including transacting debt, held by cardholders with superprime scores. General purpose card balances for consumers in every other tier remained below pre-recession highs, even in nominal terms, although consumers with prime scores were approaching those previous levels.

Private label credit card debt has also been growing rapidly in recent years. It reached $91 billion in the fourth quarter of 2018, an increase of 20 percent since the start of 2015 and a 38 percent increase since its pre-recession high in the fourth quarter of 2007. In marked contrast to general purpose balances, by the end of 2018, private balances held by consumers in every credit

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[34] This chart displays average cycle-ending balances calculated across each full year, which decreases the effect of seasonality.

tier had attained pre-recession levels. Consumers with deep subprime scores were the last to cross this threshold in the fourth quarter of 2017.

2.1.2 Purchase volume

Purchase volume has continued to grow much faster than debt. Figure 2 shows the growth in annual purchase volume on general purpose cards compared to the change in debt levels, open accounts, and credit limits on these products, all indexed to 2005 levels.[35] Purchase volume has taken off while balances and credit limits have only just surpassed their pre-recession peaks and account incidence is still below pre-recession levels.[36] From 2015 through 2018, purchase volume grew 30 percent compared with growth of 20, 17, and 10 percent for balances, credit line, and account incidence respectively.

General purpose credit card purchase volume was $3.7 trillion in 2018, nearly double its pre-recession high. Consumers with superprime credit scores accounted for 82 percent of this 2018 spending, some 0.8 percentage points higher than in 2015. Consumers with prime scores accounted for 13 percent, some 0.6 percentage points lower than in 2015. The remaining tiers made up 5 percent, which was 0.15 percentage points lower than in 2015.

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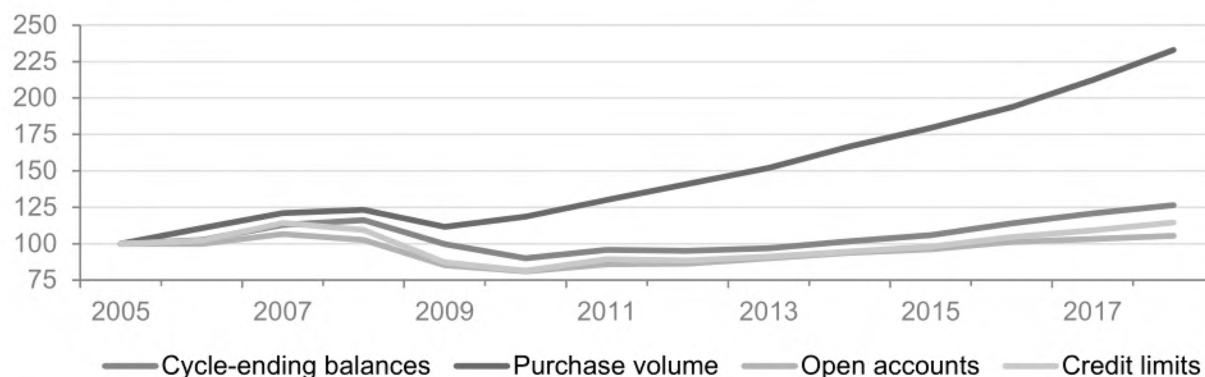
[35] Figure 2 uses *The Nilson Report* data to show a perspective on purchase volume longer than Y-14 sources permit. Data on purchase volume are not included in the CCP.

[36] General purpose balances and credit line are each up 0.3 percent on pre-recession levels. General purpose account incidence is 1.2 percent lower than its 2007 high. The Federal Reserve reports card payments "continued to show robust growth…" which may suggest an increase in tender share. Fed. Reserve Board, *The Federal Reserve Payments Study: 2018 Annual Supplement*, at 1 (Dec. 2018), *available at* https://www.federalreserve.gov/paymentsystems/2018-December-The-Federal-Reserve-Payments-Study.htm.

Figure 2: INDEXED ANNUAL GROWTH OF CREDIT CARD CYCLE-ENDING BALANCES, PURCHASE VOLUME, ACCOUNTS, AND CREDIT LIMITS, GENERAL PURPOSE (CCP, THE NILSON REPORT)



Overall, this means that the long-running trend wherein cardholders increasingly make credit card purchases that they do not revolve (or do not revolve for long) has continued into the last few years. A recent *The Nilson Report* notes that "the percentage of total credit card debt subject to finance charges, the revolving debt component of outstanding receivables, has declined almost every year over the last two decades."[37] *The Nilson Report* further states that credit card debt as a percentage of purchase volume on U.S. general purpose cards has fallen from 64.7 percent in 1996 to 26.5 percent in 2018.[38]

Private label cards show very different trends. Until recently, private label balances and purchase volume expanded roughly in tandem. Over the last few years, however, balances have grown more significantly than purchase volume. The discrepancy in growth rates peaked in 2017, when balances reached 156 percent of their 2005 level and purchase volume actually fell to 129 percent of their level in 2005. By the end of 2018, though, private label purchase volume was growing again, while balances had returned to 2016 levels. The value of total private label credit lines has continued to grow steadily over the last few years, surpassing pre-recession levels for the first time in 2018. That run-up has been achieved even as the total number of open private label accounts in 2018 was similar to the total in 2010 and still well below its 2007 peak.

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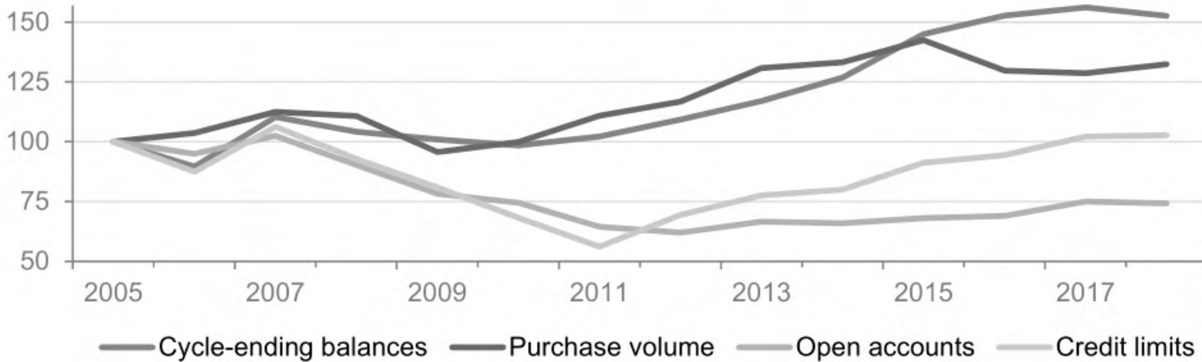
[37] The Nilson Report, *No. 1145*. Data available to the Bureau does not cover as broad a period, but confirms this trend for general purpose cards from 2015 through 2018.

[38] *Id.*

Spending on private label credit cards is also spread marginally more evenly across credit tiers, with consumers in the superprime and prime tiers together accounting for 84 percent of all private label spending in 2018.

Figure 3: INDEXED ANNUAL GROWTH OF CREDIT CARD CYCLE-ENDING BALANCES, PURCHASE VOLUME, ACCOUNTS, AND CREDIT LIMITS, PRIVATE LABEL (CCP, THE NILSON REPORT)[39]



2.2 Consumer use metrics

This subsection examines changes in a number of metrics of consumer use of credit cards. At the consumer level, this subsection reviews average credit card debt and cardholding.[40] At the account level, it reviews revolving and payment rates. This section also introduces a new measure of the amount of time that balance is carried. In contrast to the market's general return

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[39] Purchase volume as reported here uses a different definition of private label cycle-ending balances than in the Bureau's 2017 Report. The latter definition relied on store cards alone. The present report includes other private label products, such as medical, oil or gas company cards, and fleet private label cards.

[40] Average purchase volume cannot be observed over this same period because the Bureau does not have purchase volume data in the CCP. The Bureau's analysis of average credit line can be found in Section 4.

to pre-recession scale, these consumer use metrics reveal some notable differences between then and now.

2.2.1 Average debt

GENERAL PURPOSE

Figure 4 shows average general purpose credit card balances for consumers who held at least one such card with a balance. These were roughly $5,700 as of the end of 2018, which is the highest figure observed since the middle of 2009. Superprime cardholders show average balances in 2018 above their recession high of nearly $5,000, which was recorded in late 2008.[41] Given that fewer than one in three cardholders with superprime scores revolve a balance on their credit cards, this likely represents less a shift in consumer indebtedness patterns than in purchase behavior, with credit cards potentially substituting for other payment instruments.[42]

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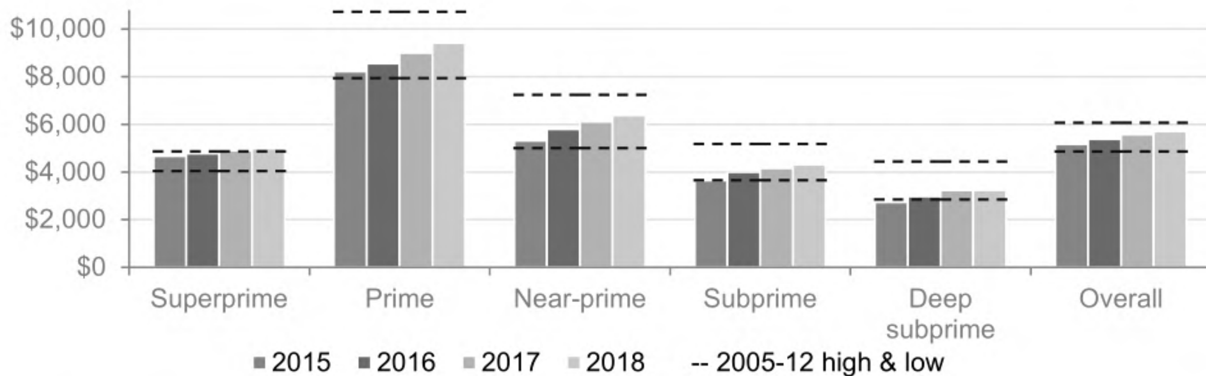
[41] In real terms, however, not even superprime consumers have reached average debt levels seen before the recession. Their 2008 level translates to $4,700 in 2018 dollars, 8 percent above their level in the fourth quarter of 2018.

[42] See Figures 8 and 9 in Section 2.2.3. General purpose credit card transactions increased 10.8 percent by value year-over-year in 2017, compared to 7.0 percent growth for non-prepaid debit cards and 3.0 percent growth for prepaid cards. Further, based on available data the Federal Reserve observed that the number of check payments and cash withdrawals from ATMs continued to decline. Fed. Reserve Board, *The Federal Reserve Payments Study – 2018 Annual Supplement*, (Dec. 20, 2018), *available at* https://www.federalreserve.gov/paymentsystems/2018-December-The-Federal-Reserve-Payments-Study.htm.

Figure 4: AVERAGE PER-CARDHOLDER YEAR-END CREDIT CARD BALANCES, GENERAL PURPOSE (CCP)[43]



General purpose card debt per cardholder has grown for all credit score tiers since 2015, although this measure remains below highs during the recession. Per-cardholder general purpose credit card debt has grown 11 percent since the beginning of 2015. In fact, consumers with deep subprime scores have seen average balances increase by 20 percent over this same time period. As discussed in more detail below, payment rates have increased much more slowly and rates of revolving in below-prime credit tiers are high. The growth in per-cardholder debt among cardholders with lower scores, therefore, represents an increase in revolving debt rather than a shift in purchase behavior.

Cardholders with prime credit scores consistently show significantly higher credit card balances on average than cardholders in any other credit score tier. Over the four quarters in 2018, general purpose balances for these consumers averaged over $8,000 per cardholder. Despite these high and increasing debt levels, these levels remain well below their peak values recorded in 2008, even in nominal terms.

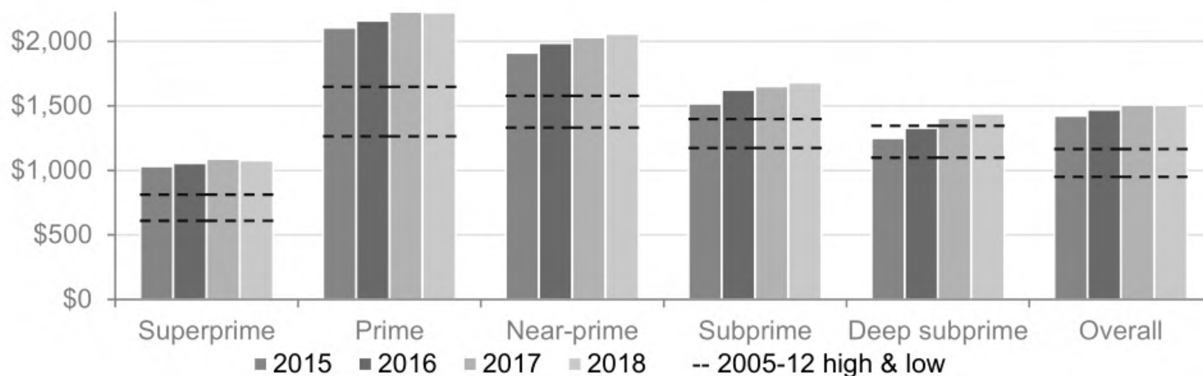
PRIVATE LABEL

Figure 5 similarly shows average per-cardholder balances for private label cardholders has grown for all tiers since 2016. Growth in average private label balances since 2011 has been

[43] Figures 4 and 5 show average per-cardholder balances for cardholders with a balance reported as of the last quarter of the year.

significant, with values in all of the credit tiers above their peak levels before or through the recession. Growth over the past three years has been more modest. Average per-cardholder private label balances were $1,507 as of the end of 2018, compared to $1,470 for the same quarter of 2016.

Figure 5: AVERAGE PER-CARDHOLDER YEAR-END CREDIT CARD BALANCES, PRIVATE LABEL (CCP)



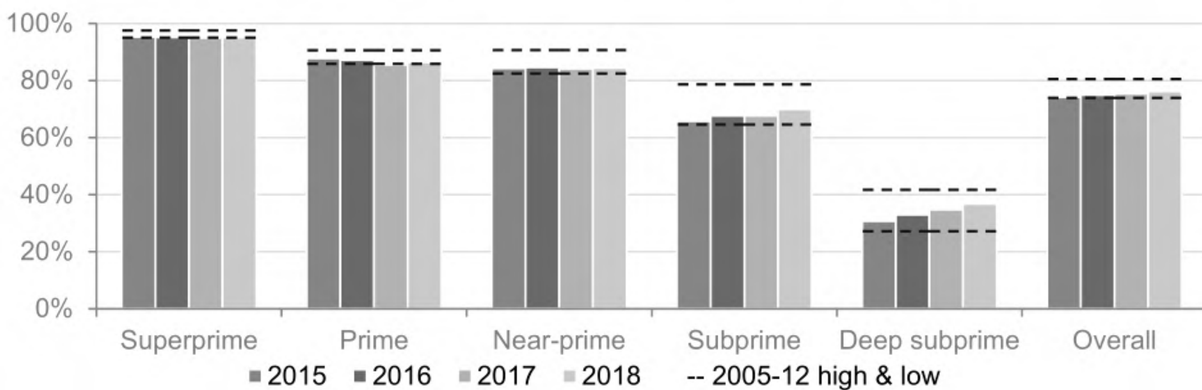
2.2.2 Consumer cardholding

The Bureau estimates 66 percent of the 255 million adults in the United States had a credit card account in their name as of the end of 2018.[44] Around 93 million consumers hold at least one general purpose and at least one private label card. Some 64 million hold only general purpose cards. Just under 10 million hold only private label cards. Private label cardholding was less common in 2018 than it was prior to the recession—in 2005, 51 percent of adults held at least one private label card, compared to 40 percent in 2018. For scored consumers, that trend holds for consumers in all credit score tiers. In contrast, general purpose cardholding is just as common today as it was prior to the recession, at 61 percent.

[44] A recent report from the Federal Reserve finds 81 percent of consumers report having at least one credit card. As noted above in this section, roughly 66 percent of consumers have one, though this does not include authorized users, who are individuals designated by the primary account holder to use the same credit account. At 12 million, authorized users would account for roughly an additional 5 percent of the adult population. *See* Fed. Reserve Board, *Report on the Economic Well-Being of U.S. Households in 2018*, at 27 (May 2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf.

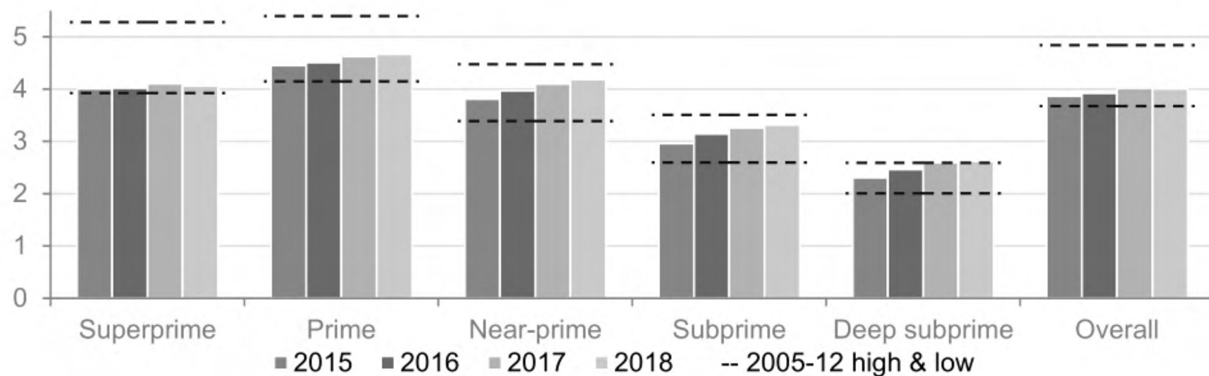
Figure 6 shows recent trends in the share of scored consumers, by credit tier, holding at least one open credit card account. Cardholding dropped significantly across every credit score tier during (and for a year or two following) the recession. This metric has grown in recent years in the lower credit tiers, but it has not yet returned to pre-recession levels for cardholders in any credit tier.

Figure 6: SHARE OF CONSUMERS WITH SCORES AND AT LEAST ONE CREDIT CARD (CCP)



As Figure 7 reflects, this same increase is also evident in the average number of open accounts held. However, Figure 7 also shows that consumers in nearly every credit tier still hold fewer cards than they did before the recession. The difference is sharpest for consumers with superprime scores, who averaged well over five open accounts in each tier before the recession, but in 2018 were at or nearer four such accounts. Cardholders in below-superprime tiers, however, have shown positive year-over-year growth in every quarter since 2012 when they reached their lowest levels. Interestingly, the average number of open accounts held by prime cardholders has increased, even while the share of prime consumers with at least one credit card has decreased since 2015.

Figure 7: AVERAGE NUMBER OF OPEN CREDIT CARD ACCOUNTS HELD PER CARDHOLDER (CCP)



2.2.3 Revolving rates

Accounts with balances can be identified as exhibiting one of two basic patterns in any given cycle. "Transacting" accounts pay off the previous cycle's balance in full before the end of the next cycle. "Revolving" accounts pay some amount less than that.[45] Although an account can move back and forth between transacting and revolving, many accounts reveal persistent payment behavior over time.[46]

Figures 8 and 9 show the average share of accounts revolving a balance from one month to the next for general purpose and private label cards, broken down by cardholder credit score. There are no significant changes in revolving rates in any credit tier over the last few years. Revolving rates decrease as credit scores increase. For all credit score tiers, general purpose revolving rates continue to be higher than private label ones.

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[45] The methodology for determining an account is revolving has changed from when the Bureau reported on this in 2017. In this report, an account is considered "revolving" in a cycle if its beginning balance is larger than the sum of payments received in a given cycle. If the sum of payments is equal to or exceeds a non-zero beginning balance, it is considered "transacting." If an account does not satisfy either condition, for example if the beginning balance is zero, it is "neither transacting nor revolving."

[46] 2015 Report, *supra* note 5, at 50-52 (citing Benjamin J. Keys & Jialan Wang, *Minimum Payments and Debt Paydown in Consumer Credit Cards*, (U. of Chicago Harris Sch. of Pub. Pol'y, Working Paper 2015), https://business.illinois.edu/finance/wp-content/uploads/sites/46/2015/01/Jialan-Wang-JMP.pdf.

Figure 8: SHARE OF ACCOUNTS REVOLVING, GENERAL PURPOSE (Y-14+)[47]

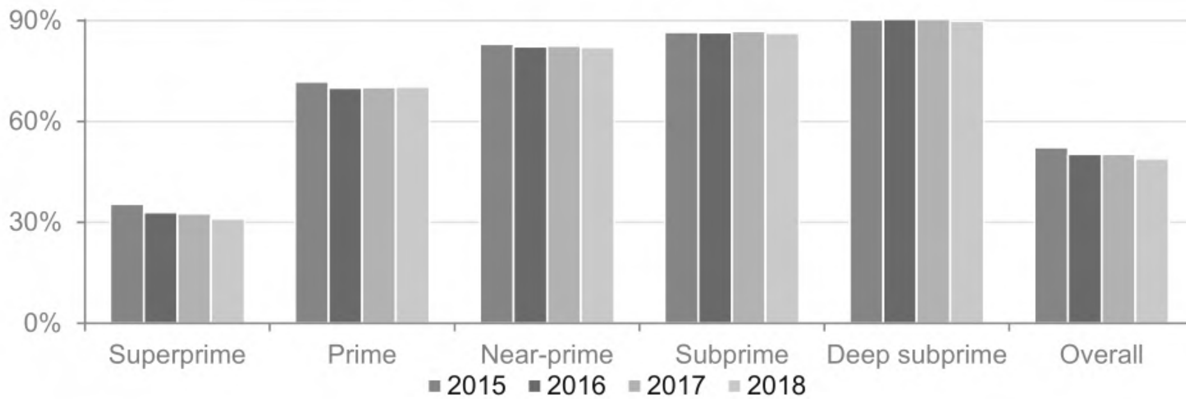
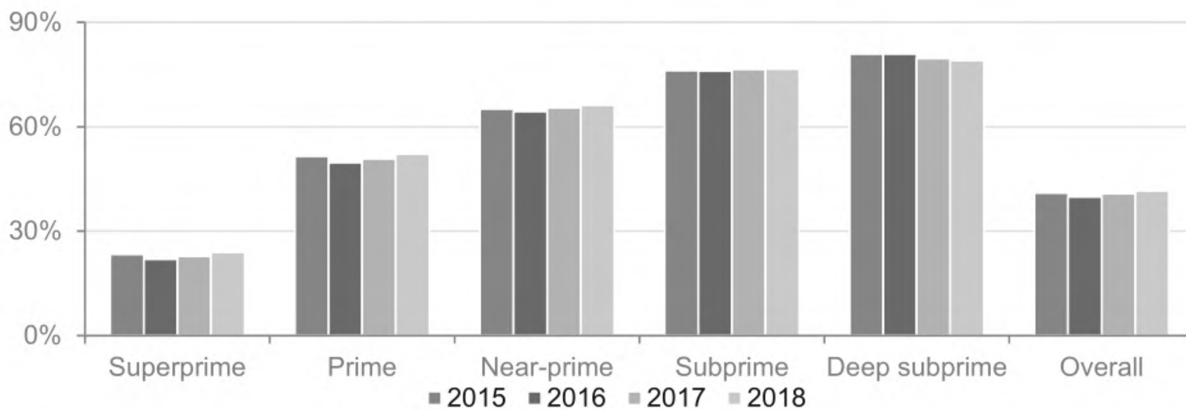


Figure 9: SHARE OF ACCOUNTS REVOLVING, PRIVATE LABEL (Y-14+)



Although the Bureau cannot quantify the share of consumers who revolve—only the share of accounts that do so—recent Federal Reserve Board data sheds some light on the consumer experience in this respect. Among those with a credit card, about one-half report that they never carried an unpaid balance during the preceding 12 months, according to the latest survey on economic well-being of U.S. households conducted by the Board. The 2018 survey also found

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[47] Figures that use Y-14 and Y-14+ data are based only on accounts that are "open and active" in a given month or cycle.

that 28 percent of those with a credit card reported paying only the minimum on their bill at least some of the time in 2017. The reported frequency of regular borrowing with credit cards during 2018 was similar to 2017, which was also similar to 2016.[48]

2.2.4 Payment rates

Payment rates provide an additional measure of consumer reliance on credit cards as a source of credit.[49] The payment rate is the share of total cycle-beginning balances that are paid that cycle.[50]

General purpose card payment rates have continued their steady growth since the recession.[51] As of the end of 2018, they exceeded 30 percent, with recent increases almost entirely driven by consumers with superprime scores. Superprime payment rates were 41 percent in 2015 and rose to 48 percent in 2018. This rise in payment rates occurred without a corresponding decline in revolving rates, indicating that consumers using general purpose cards as transaction devices are increasing purchase volume. That inference is further supported by Figure 2 in Section 2.1.2 showing that purchase volume has grown at a significantly faster rate than balances since the recession.

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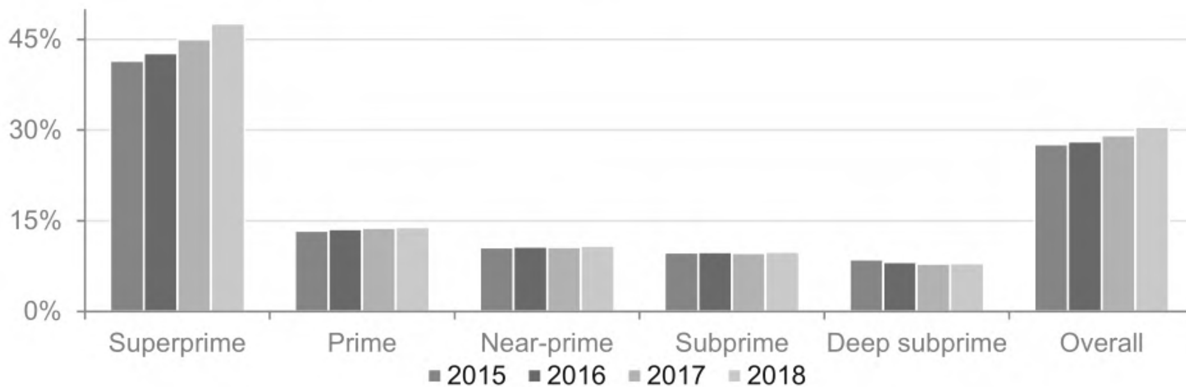
[48] *See* Fed. Reserve Board, *Report on the Economic Well-Being of U.S. Households in 2018*, at 27 (May 2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf. *See also* Fed. Reserve Board, *Report on the Economic Well-Being of U.S. Households in 2017*, at 28 (May 2018), https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf.

[49] Payment metrics cannot be shown at the consumer level because the CCP does not contain payment data. The Y-14 is used instead for these views.

[50] Thus, a payment rate of 100 percent corresponds to all account balances being paid in full, and a payment rate of 0 percent indicates that no one is paying any credit card bill even in part.

[51] *See* 2015 Report, *supra* note 5, at 49.

Figure 10: PAYMENT RATE, GENERAL PURPOSE (Y-14+)



Private label payment rates, by contrast, have fallen over recent years, further increasing the spread between general purpose and private label payment rates. Most of the discrepancy is a product of superprime consumer behavior, with superprime general purpose balances paid at a rate more than double that of superprime private label balances. One explanation for decreasing private label payment rates may be an increased prevalence of deferred interest promotions, which incentivize consumers to pay less than the full balance each month so long as the full promotional balance is repaid in full by the end of the promotional period.[52]

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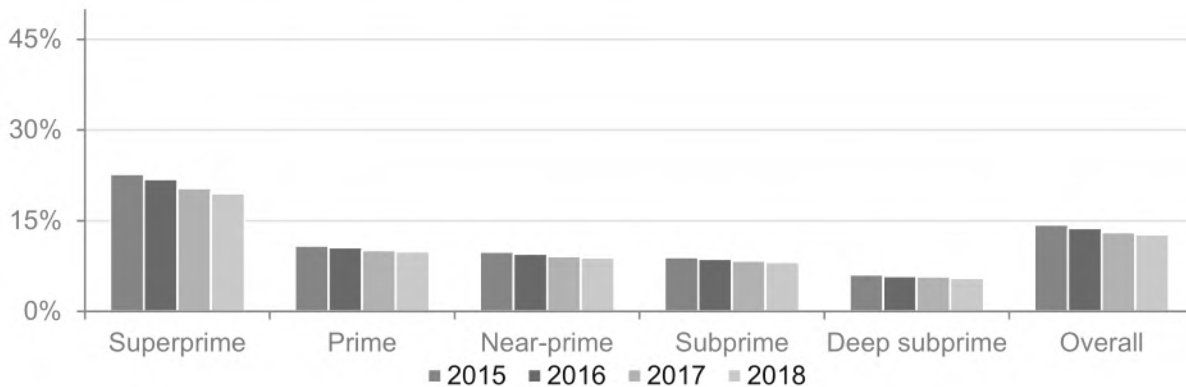
[52] *See* 2017 Report, *supra* note 5, at 58 (finding that deferred interest promotional balances outstanding for consumers with superprime scores were equivalent to over half of private label balances owed by those same consumers).

Figure 11: PAYMENT RATE, PRIVATE LABEL (Y-14+)



2.3 Delinquency and charge-off

2.3.1 Delinquency

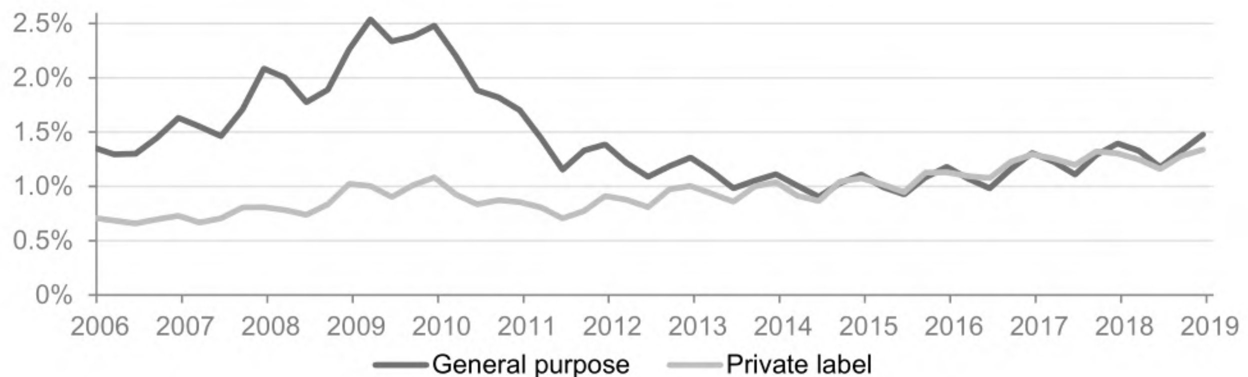
Since 2017, both general purpose and private label card delinquency rates have continued to increase.[53] For general purpose cards, the delinquency rate—the share of accounts or balances on those accounts on which a consumer fails to pay the minimum payment by the due date—remains close to or below pre-recession levels. For private label cards, the delinquency picture is more complex.

Before and through the recession, general purpose card accounts became delinquent much more often than private label card accounts. At the height of the recession, general purpose accounts became delinquent at more than twice the rate of private label accounts. In the wake of the recession, however, account delinquency rates for the two major types of cards have moved in near lockstep. General purpose account delinquencies in 2018 were close to their 1.5 percent pre-recession average, whereas private label account delinquency rates in 2018 were higher than

[53] When a consumer fails to make a required minimum payment by the due date, the credit card account becomes "delinquent." Because credit scores are heavily influenced by delinquency and charge-offs, these measures are not shown by credit score.

they have been at any point during the recession. Figure 12 shows account delinquency rate trends.

Figure 12: SHARE OF ACCOUNTS 60 OR MORE DAYS DELINQUENT (CCP)[54]



One explanation for the convergence in account delinquency rates for general purpose and private label cards may be that private label card issuers are increasingly offering cards to consumers with lower credit scores. As discussed in Section 4, prior to 2008, the median credit score associated with new private label cards was about 20 points higher than for general purpose cards. From 2008 until mid-2013, median credit scores on both cards dovetailed. Since late 2013, however, new private label cards have had median credit scores about 10 points lower than new general purpose cards.[55]

Even as account delinquency rates have converged in the wake of the recession, delinquency rates as shares of balances show the opposite trend, as shown in Figure 13. By mid-2015, balance delinquency rates on general purpose cards declined to 1.5 percent from its recession peak of 6 percent, while private label balance delinquency rates were around 3 percent. They have since

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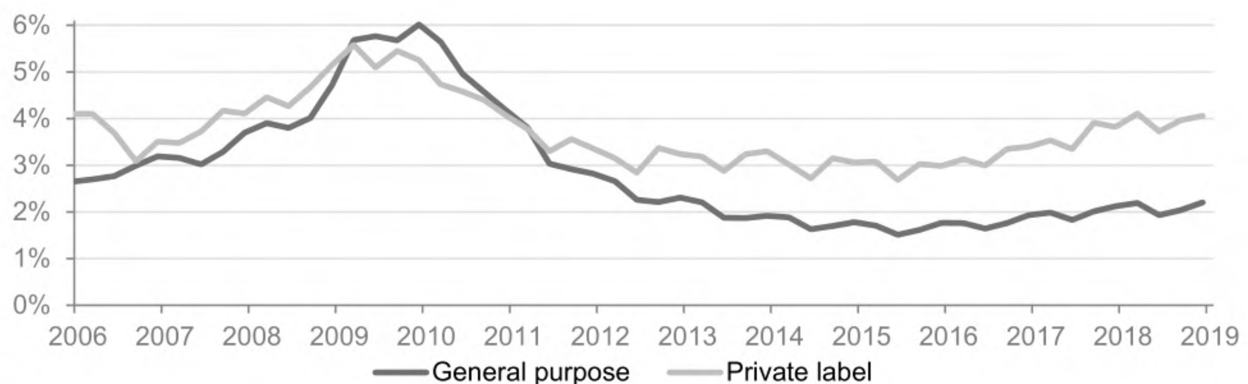
[54] Figures 12 and 13 use the delinquency definition "60 or more days delinquent," meaning that the account is at least three minimum monthly payments behind on debt repayment. This is considered "severe" delinquency.

[55] See Figures 15 and 16 in Section 2.3.2.

increased to 2 percent and 4 percent on general purpose and private label cards respectively. This discrepancy may be explained by different usage patterns between the two cards and changes in the credit profile of new accounts.[56]

Figure 13: SHARE OF BALANCES 60 OR MORE DAYS DELINQUENT (CCP)



The Bureau also looked at the share of *consumers* that fail to pay and become delinquent. The Bureau's 2017 Report showed that the share of consumers with at least one severe delinquency on a card in the preceding year started falling around 2011 for both general purpose and private label cards.[57] Since 2017, this share has increased marginally. By 2018, around 9 percent of general purpose cardholders and about 4.5 percent of private label cardholders had at least one severe delinquency in the preceding 12 months.

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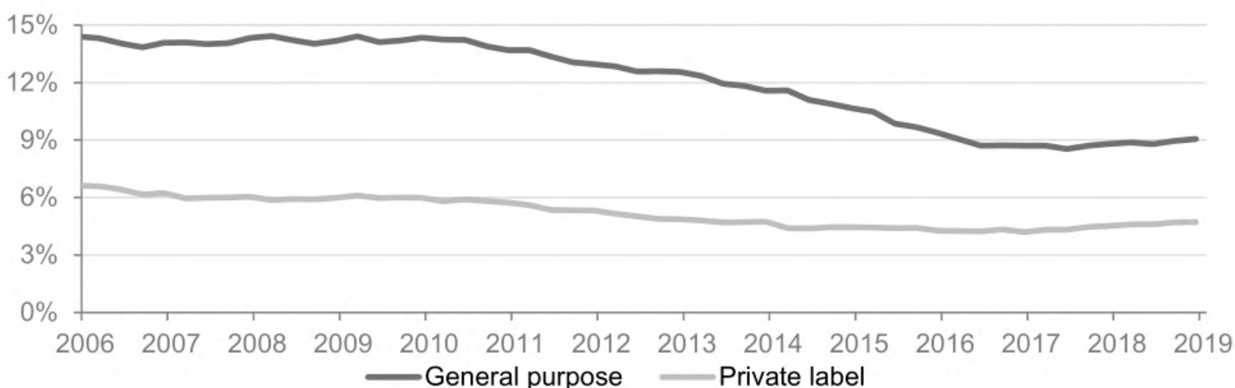
[56] See Figures 15 and 16 in Section 2.3.2.

[57] *See* 2017 Report, *supra* note 5, at 67.

Figure 14: SHARE OF CONSUMERS WITH A CREDIT RECORD WHO HAVE AT LEAST ONE 60 OR MORE DAY DELINQUENCY ON A CREDIT CARD ACCOUNT IN THE PRECEDING YEAR (CCP)



2.3.2 Vintage delinquency

To better understand drivers of recent delinquency trends, it is helpful to review *cumulative* trends in severe delinquency by means of a vintage analysis. With snapshot views of delinquency (like those shown in Section 2.3.1. above), it can be hard to tell what is driving changes in the delinquency rate—an influx of accounts with different risk profiles or a change in delinquencies for accounts that have been open for some time. A vintage analysis can shed light on this by comparing the performance of accounts according to the time period (or "vintage") in which they opened. It is therefore possible to observe how recently-issued card "vintages" are performing compared to vintages issued previously, including those from right before and after the recession. This vintage analysis can also control for the credit profile associated with an account at origination.[58]

For quarterly vintages of general purpose cards originated since 2015, between 4 and 6 percent of accounts had at least one severe delinquency within the first year after origination. (This is referred to as the "one-year cumulative delinquency" rate.) That is well within the historic range of 2.6 to 7.9 percent for the entire data period, which is shown in Figure 15. There is typically an inverse relationship between credit scores and delinquency; for example, the vintage with the

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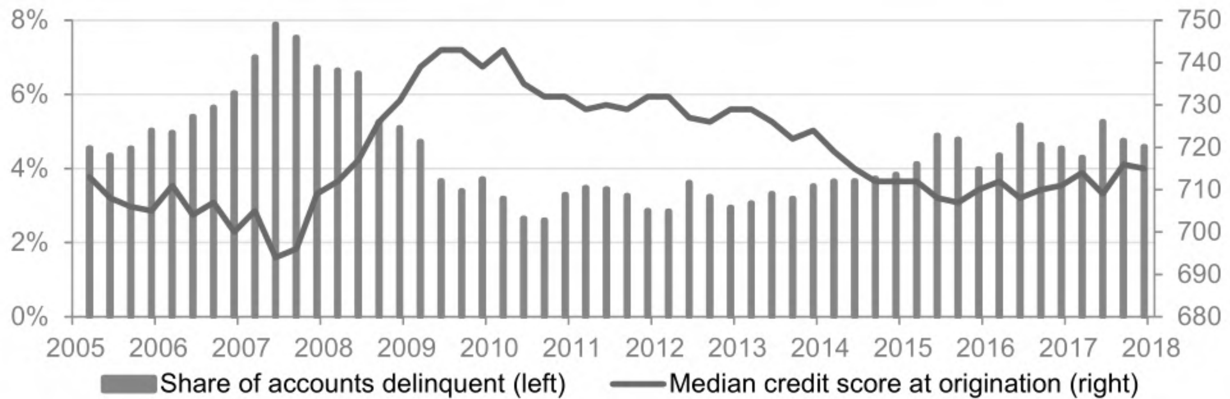
[58] Since delinquency has a strong negative impact on a consumer's credit score, for this analysis cardholders are not grouped by their credit score at issuance.

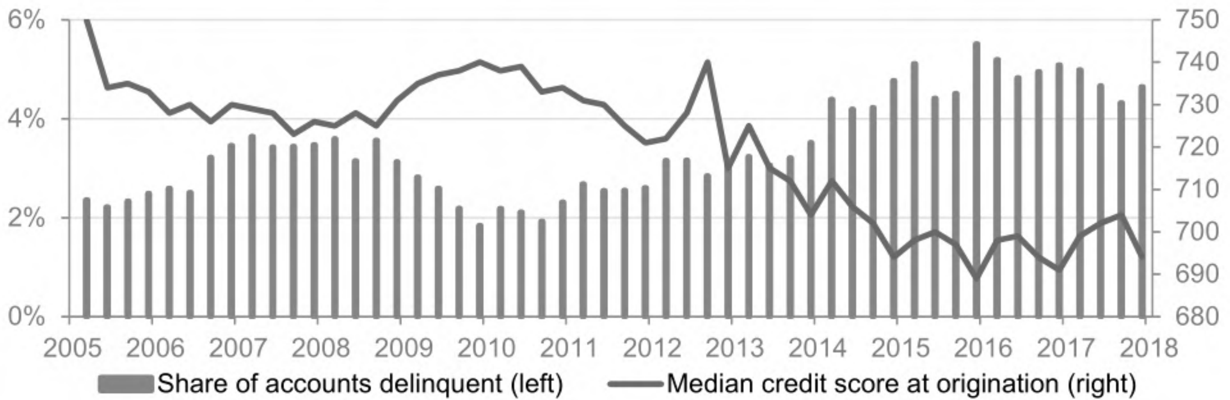
highest delinquency is also the vintage with the lowest median credit score and dates to the second quarter of 2007. However, while recent vintages have delinquency rates on par with pre-recession vintages, they also have higher median credit scores.

Figure 15: SHARE OF ACCOUNTS THAT HAVE HAD AT LEAST ONE 60-OR-MORE-DAY DELINQUENCY AT 12 MONTHS SINCE ORIGINATION AND MEDIAN CREDIT SCORE AT ORIGINATION, BY VINTAGE, GENERAL PURPOSE (CCP)



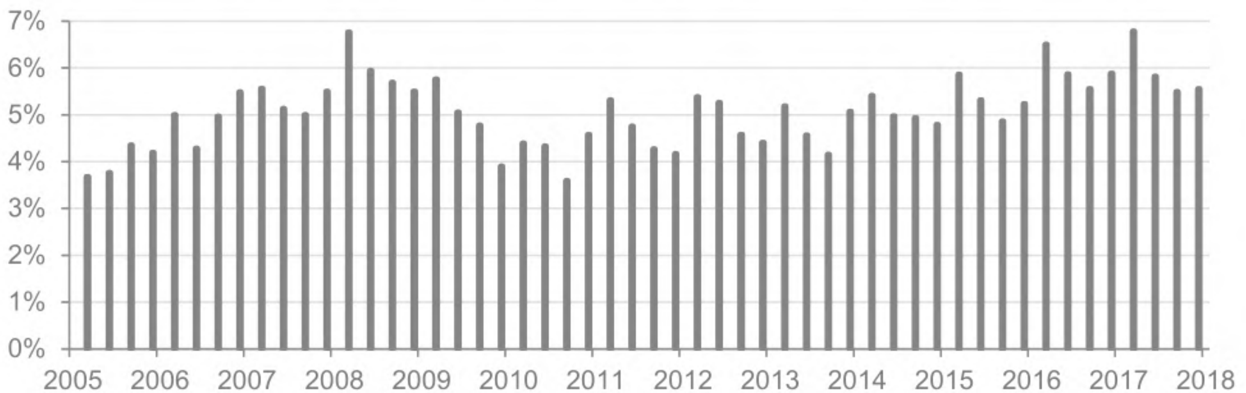
In contrast, Figure 16 shows that one-year cumulative delinquency rates for recent private label vintages markedly exceed historic norms. Part of the explanation may be the looser underwriting standards used by private label card issuers as indicated by the lower median scores at origination for those vintages. As shown in Figure 16, the median credit score on new private label cards in recent years has hovered just below 700, roughly 30 points below that recorded during pre-recession periods.

Figure 16: SHARE OF ACCOUNTS THAT HAVE HAD AT LEAST ONE 60-OR-MORE-DAY DELINQUENCY AT 12 MONTHS SINCE ORIGINATION AND MEDIAN CREDIT SCORE AT ORIGINATION, BY VINTAGE, PRIVATE LABEL (CCP)



Looking within credit score tiers, trends in delinquency rates by vintage are similar to the overall trends. As shown in Figure 17, near-prime account vintages since 2015 have experienced a delinquency trajectory more in-line with the worst-performing vintages of 2008 than with historical norms for that tier. Similarly, while at much lower delinquency rate levels, superprime account vintages from 2017 show higher cumulative delinquency numbers at 12 months than at any point between 2006 and 2014.

Figure 17: SHARE OF NEAR-PRIME ACCOUNTS THAT HAVE HAD AT LEAST ONE 60-OR-MORE-DAY DELINQUENCY AT 12 MONTHS SINCE ORIGINATION, BY VINTAGE, PRIVATE LABEL (CCP)



2.3.3 Charge-off

Charged-off balances continue to show similar trends to balance delinquencies, as Figure 18 reflects.[59] Both general purpose and private label charge-offs fell from high points during the recession to pre-recession levels or lower for most of the past five years. However, both markets have seen upticks in recent periods, recording their highest levels in several years. Forward-looking statements made by several major issuers suggest issuers expect that charge-offs will moderate as economic indicators remain positive.[60]

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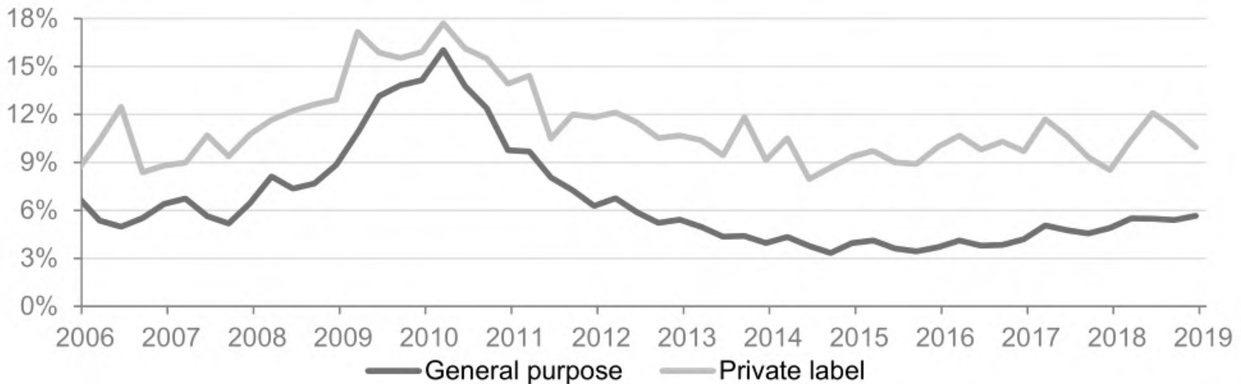
[59] Accounts that remain delinquent for 180 days must be "charged off," meaning that the issuer can no longer consider the outstanding balance as an asset on its balance sheet. Delinquent accounts may have to be charged off prior to 180 days in certain circumstances as, for example, with a bankruptcy. *See* Off. of the Comptroller of the Currency, *Policy Implementation – The Guidance Attached to this Bulletin Continues to Apply to Federal Savings Associations*, OCC Bulletin 2000-20, (June 20, 2000), *available at* https://occ.gov/news-issuances/bulletins/2000/bulletin-2000-20.html.

[60] Issuers note losses are moderating and the economic environment remains positive. "From a sequential perspective, this was the sixth consecutive quarter of slowing year over- year increases in card charge-offs. This positive trend reflects the fact that normalization continues to moderate." Discover Financial Services, *Q1 2019 Results – Earnings Call Transcript*, (Apr. 25. 2019), *available at* https://seekingalpha.com/article/4256971-discover-financial-services-dfs-ceo-roger-hochschild-q1-2019-results-earnings-call-transcript?part=single; "Our losses are still improving on a year-over-year basis" Capital One, *Q1 2019 Results – Earnings Call Transcript*, (Apr. 25. 2019), *available at* https://seekingalpha.com/article/4256945-capital-one-financial-corporation-cof-ceo-richard-fairbank-q1-2019-results-earnings-call?part=single;. "The outlook for credit as we see it remains positive...Economic indicators remain upbeat." JPMorgan Chase & Co., *Q4 2018 Results – Earnings Call Transcript*, (Jan. 15, 2019), *available at* https://seekingalpha.com/article/4233603-jpmorgan-chase-and-co-jpm-ceo-jamie-dimon-q4-2018-results-earnings-call-transcript?part=single.

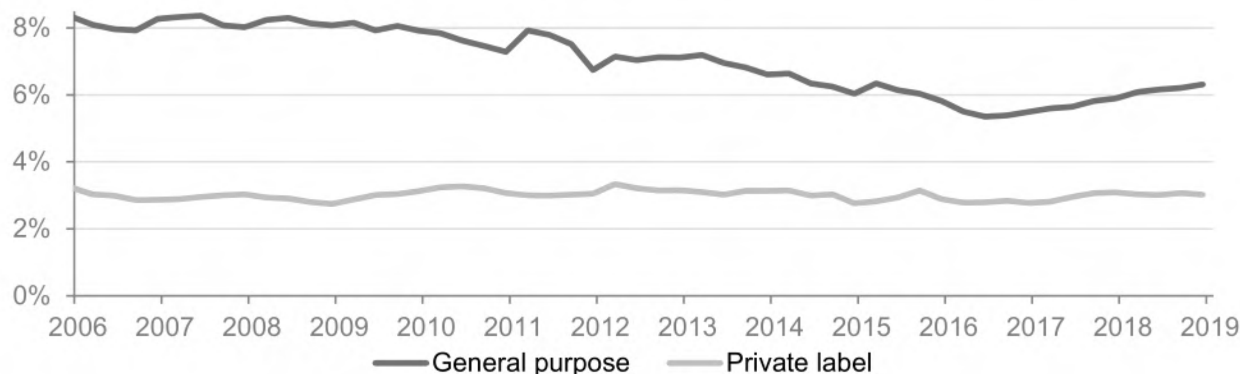
Figure 18: ANNUALIZED RATE OF GROSS OUTSTANDING BALANCES CHARGED OFF (CCP)



Annualized charge-off rates for general purpose cards rose in 2017 and 2018, and by year-end 2018 equaled 5.7 percent of balances. This represents a return to the 2005 to 2007 average charge-off rate of 6 percent, and remains well below charge-off rates observed during the recession, including the high of 16 percent in the first quarter of 2010. Private label charge-off rates follow a roughly similar pattern, but at a higher level. From 2017 to 2018, charge-off rates averaged 10.5 percent, roughly equal to the average observed from 2005 through 2007.

Figure 19 shows the share of consumers who have experienced at least one charge-off in the last year was largely stable for both general purpose and private label cards before and during the recession. From 2010 through mid-2016, the share of general purpose cardholders experiencing a charge-off followed a downward trend, declining from about 8 percent in 2009 Q4 to 5.4 percent in 2016 Q2. Since mid-2016, however, that share has begun to rise, likely owing to expanded credit access to consumers with lower credit scores. On the private label side, the share of consumers who have experienced a charge-off has hewed closely to about 3 percent since 2006.

Figure 19: SHARE OF CONSUMERS WITH A CREDIT RECORD WHO HAVE EXPERIENCED AT LEAST ONE CHARGE-OFF OF A CREDIT CARD ACCOUNT IN THE PRECEDING YEAR (CCP)



2.4 Usage of digital servicing

As discussed elsewhere in this report, digital developments are changing many aspects of the credit card market.[61] This is particularly true with respect to online and smartphone-based account servicing applications (mobile apps) for general purpose credit cards.[62] This section uses MMI data to examine how consumers use digital account servicing platforms—online account servicing portals (online portals) and mobile apps.

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[61] Credit card solicitations and applications through digital channels are discussed in Section 4.1.1. Other aspects of digital servicing are covered in Section 8.1.

[62] Private label card accounts also utilize digital tools, but the experience is likely different, since many cardholders reach them through merchant websites or also use merchants' digital tools for browsing or shopping rather than for strictly financial means. According to J.D. Power, credit card mobile app users report higher levels of satisfaction with their credit card accounts than do those who do not use mobile apps. *See* J.D. Power Satisfaction Study, *supra* note 1, (reporting that "use of a credit card mobile app is associated with a 25-point increase in customer satisfaction, although just 39% of customers are currently utilizing credit card mobile apps…").

2.4.1 Enrollment and account information

Digital engagement is growing across all age groups and platform types. The share of people electing to receive statements digitally (e-statements) rather than by mail is continuing to increase significantly. Growth in mobile app use is especially pronounced, and those who use mobile apps use them a lot—J.D. Power finds 39 percent of customers use mobile banking apps, and Citigroup finds 31 percent of customers include a mobile banking app as one of their top three most-used apps.[63] In recent years, several large bank issuers have publicly announced increases in investment into their digital servicing platforms.[64]

Figure 20 shows the share of active mass market credit card accounts enrolled in issuers' online portals and/or mobile apps.[65] As of 2018, 78 percent of active accounts are enrolled in online portals for general purpose cards, significantly higher than the 55 percent the Bureau reported as of 2014.[66] That share is nearly 85 percent for active accounts held by consumers ages 25 to 64 and over 87 percent for active account holders under age 25.

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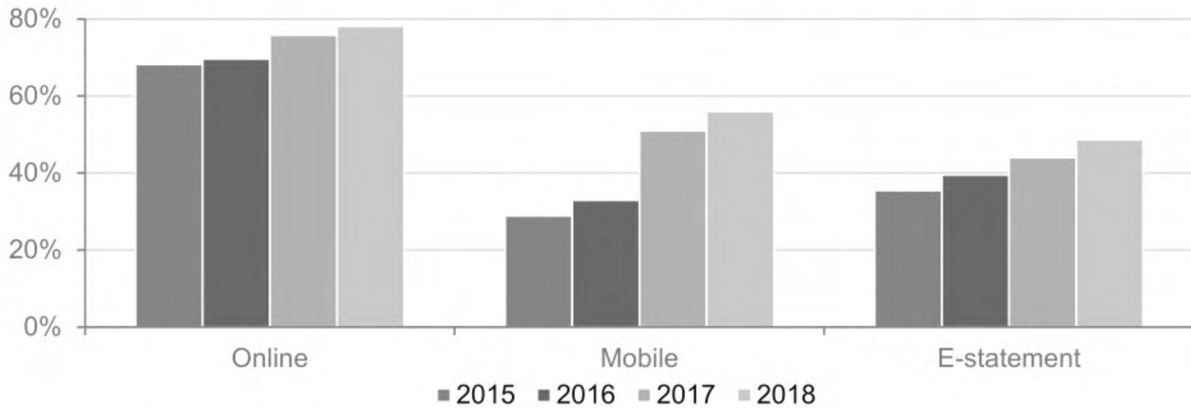
[63] *Id.* Citigroup Inc.'s 2018 Mobile Payment Study reported that 31 percent of people listed mobile banking apps in their top three most-used apps, behind social media (55 percent) and weather (33 percent). *See* Press Release, Citigroup Inc., *Mobile Banking one of the Top Three Most Used Apps by Americans, 2018 Citi Mobile Banking Study Reveals* (Apr. 26, 2018), *available at* https://www.citigroup.com/citi/news/2018/180426a.htm.

[64] *See, e.g.*, Citigroup Inc., *Q4 2018 Results – Earnings Call Transcript*, (Jan. 14, 2019), *available at* https://seekingalpha.com/article/4233320-citigroup-inc-c-ceo-mike-corbat-q4-2018-results-earnings-call-transcript?part=single; Synchrony Financial, *Q4 2018 Results – Earnings Call Transcript*, (Jan. 23, 2019), *available at* https://seekingalpha.com/article/4235000-synchrony-financial-syf-ceo-margaret-keane-q4-2018-results-earnings-call-transcript?part=single.

[65] A consumer may be enrolled in an online portal and may also have the mobile app. In fact, some issuers require online enrollment before mobile app use can be engaged.

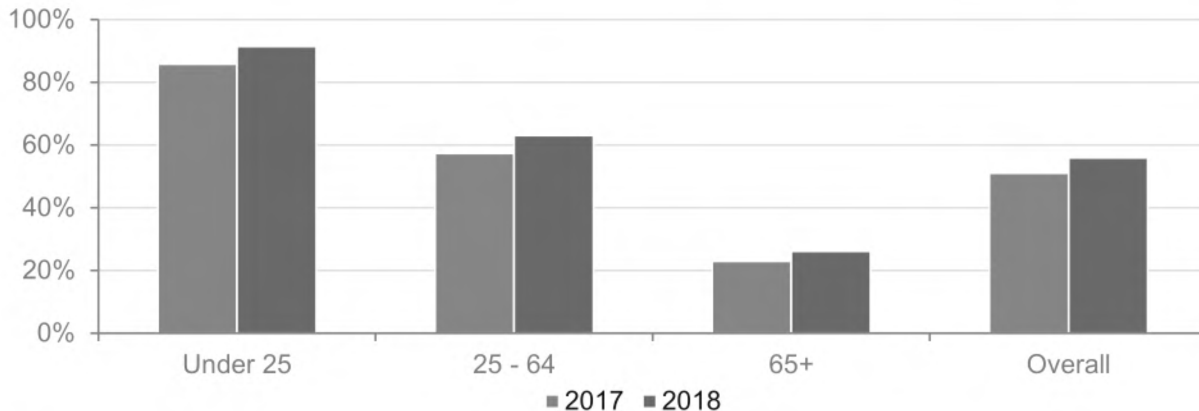
[66] 2015 Report, *supra* note 5, at 133.

Figure 20: SHARE OF ACTIVE ACCOUNTS ENROLLED IN ONLINE PORTAL, MOBILE APPS, AND RECEIVING ONLY E-STATEMENTS, GENERAL PURPOSE (MMI)



Also noteworthy is the rise in the share of accounts enrolled in mobile apps, which has nearly doubled in only three years, from 29 percent in 2015 to 56 percent in 2018. Mobile app use is more common among younger consumers, but increases in use can be seen across all age groups. In 2018, over 90 percent of active accounts held by consumers under age 25 were enrolled in the issuer's mobile app. For consumers between the ages of 25 and 64, and over 65, mobile enrollment share was 63 percent and 26 percent, respectively. Overall, the Bureau expects the trend toward increasing mobile app usage to continue.

Figure 21: SHARE OF ACTIVE ACCOUNTS ENROLLED IN MOBILE APPS BY AGE, GENERAL PURPOSE (MMI)



The share of mass market accounts that do not receive paper statements from their issuer has risen by more than one-third over the last four years and in 2018 was nearly 50 percent. This means that paperless rates have risen faster over the last few years than digital engagement generally, with the result that the phenomenon of digitally engaged consumers choosing to

continue to receive paper statements is becoming less common over time. There are indications that this change is closely related to the increase in mobile app use, particularly by younger consumers. Although younger consumers show higher rates of paperless engagement, consumers 40 and older self-report more significant benefit from transitioning to digital billing.[67] The extent to which paperless cardholders review e-statements remains an open question.[68] Consumer Action found 61 percent of the credit card consumers they surveyed online chose paper over digital delivery.[69] Further, recipients of paper statements were more likely to report reviewing transactions than did those who receive bills electronically.[70]

2.4.2 Payment methods

The most common forms of digital servicing are reviewing transaction history and making payments.[71] After entering deposit account information through their card issuer's online portal or mobile app, consumers can generally authorize non-recurring "one-time" payments or recurring "automatic" payments. For a one-time payment, consumers can generally enter any payment amount and payment date they want. In some instances, there is a pre-selected default option presented, be it the full statement balance or the minimum payment. For automatic payments, all but one issuer respondent in the MMI survey allow cardholders to choose their full statement balance or their minimum payment amount. All issuers allow cardholders to choose a different, fixed payment amount rather than the full balance or minimum payment. Only one

[67] J.D. Power Satisfaction Study, *supra* note 1 (reporting that "although younger customers (under age 40) have been quicker to adopt digital billing, the effect of switching from paper to digital billing is most pronounced in the over-40 population. Among customers 40 years old and older, satisfaction increases 23 points when customers switch from a traditional paper bill to digital billing. That differential is just 1 point in the under-40 population…").

[68] *See* 2015 Report, *supra* note 5, at 15.

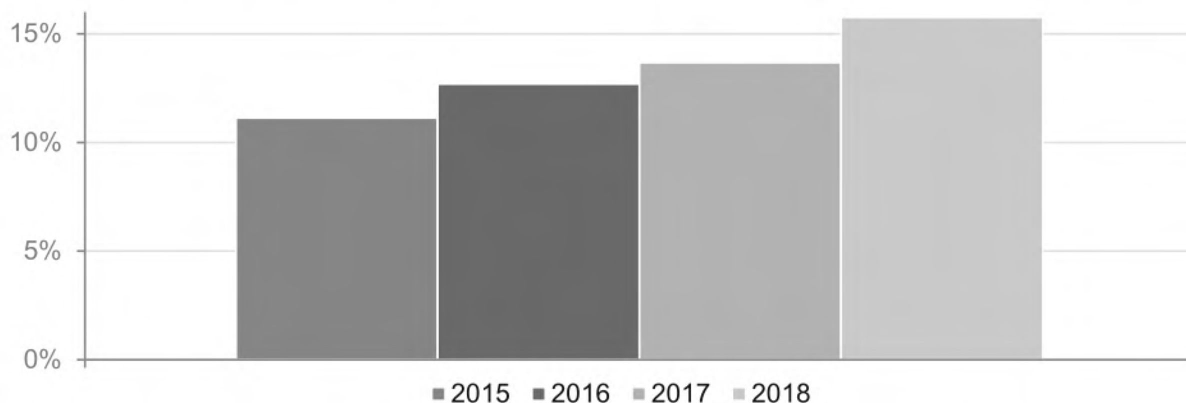
[69] Alegra Howard, *Consumer Action survey: Given the choice, consumers prefer a paper trail*, Consumer Action (Jan. 15, 2019), *available at* https://www.consumer-action.org/news/articles/paper-or-digital-winter-2018-2019.

[70] *Id.*

[71] The information contained in this section does not include information outside of the servicing relationship with the issuer (*e.g.*, payments sent to the card issuer *from a third party* at the consumer's direction).

has a pre-selected default payment option, while the rest instead force the cardholder to write in an amount or select among a set of options.

Figure 22: SHARE OF ACTIVE ACCOUNTS ENROLLED IN AUTOMATIC PAYMENTS AT YEAR-END, GENERAL PURPOSE (MMI)



As reflected in Figure 22, consumers have increasingly enrolled in automatic payments. In 2018, nearly 16 percent of active accounts within the scope of the MMI survey were enrolled in automatic payments at year-end, as compared to 11 percent in 2015.[72] Automatic payment enrollment obviously eliminates late fee charges, but the Bureau has not attempted to quantify this impact or to determine whether non-recurring payments are also associated with lower late fee incidence rates.

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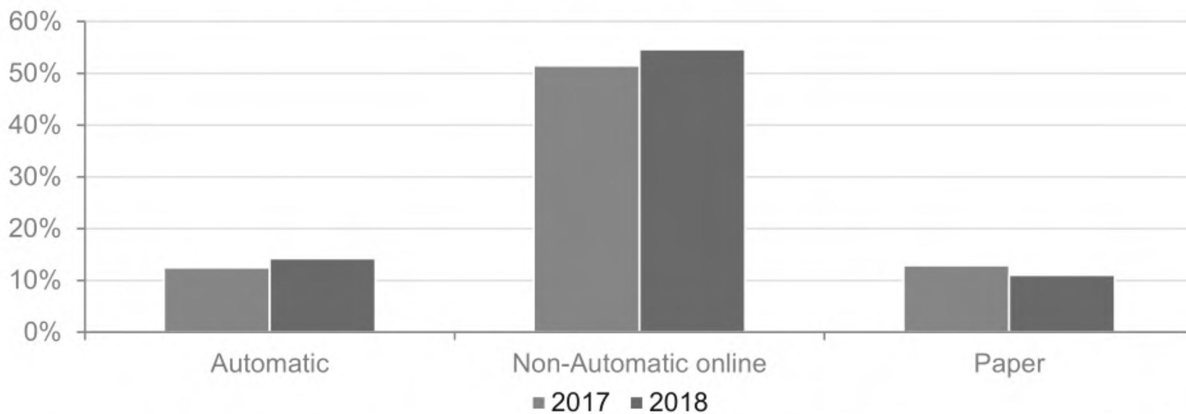
[72] Some studies have reported markedly higher consumer-reported rates of automatic payment. *See, e.g.*, Mercator Advisory Group, *U.S. Consumers and Credit: Rising Usage*, at 38 (Dec. 2018), *available at* https://www.mercatoradvisorygroup.com/Reports/Consumers-and-Credit--Rising-Usage/. It is possible that consumers who self-report overstate the extent of their use of automatic payment. Consumers may also be including *pre-authorized* one-time payments as automatic payments.

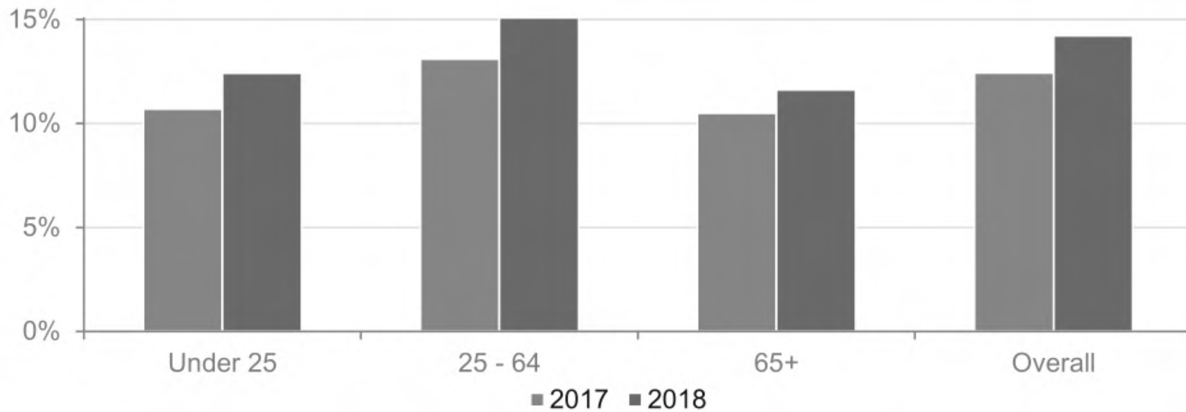
Figure 23: SHARE OF ACTIVE ACCOUNTS THAT MADE A PAYMENT IN THE LAST CYCLE OF THE YEAR BY PAYMENT METHOD, GENERAL PURPOSE (MMI)[73]



While non-automatic online payments remain the most popular, in 2018 automatic payments surpassed paper as the second-most-common payment method. Use of automatic payments has increased across consumers in all age groups. As shown in Figure 24, the age group with the highest share of accounts making an automatic payment (at 15 percent) are cardholders aged 25 to 64. But other age groups show high rates as well, with consumers under age 25 about as likely to use automatic payments as those 65 years and older—roughly 12 percent for both groups.

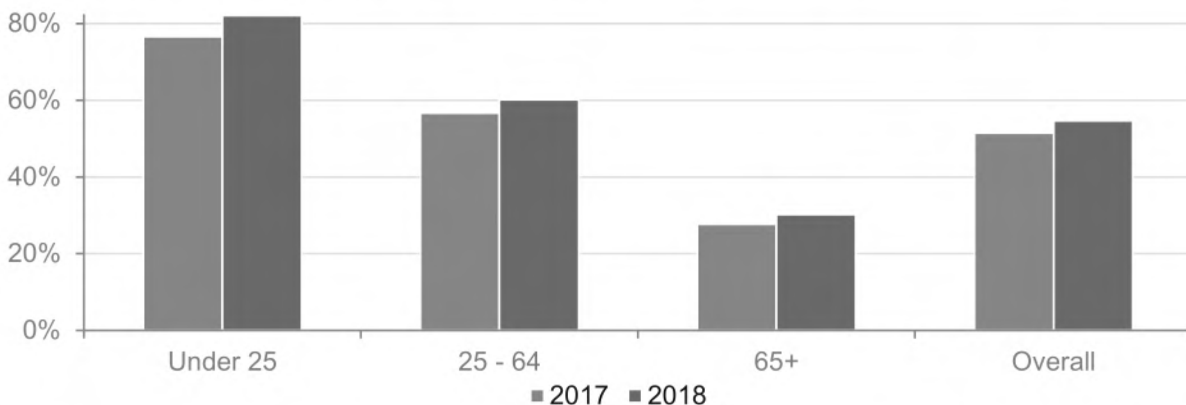
[73] Values do not sum to 100 percent as certain forms of payment, such as telephone and payments from a third-party, are not included.

Figure 24: SHARE OF ACTIVE PAYMENT-MAKING ACCOUNTS THAT MADE AT LEAST ONE AUTOMATIC PAYMENT IN THE LAST CYCLE OF THE YEAR VIA ONLINE PORTAL OR MOBILE APP BY AGE, GENERAL PURPOSE (MMI)



Unlike automatic payments, online but non-automatic payment usage displayed significant differences across age groups. Younger consumers were significantly more likely than other age groups to use online portals or mobile apps for this kind of payment. This likely reflects the relative share of these consumers enrolled in online and mobile servicing platforms. However, as with automatic payments, all age groups saw increased usage of these one-time digital payments in 2018.

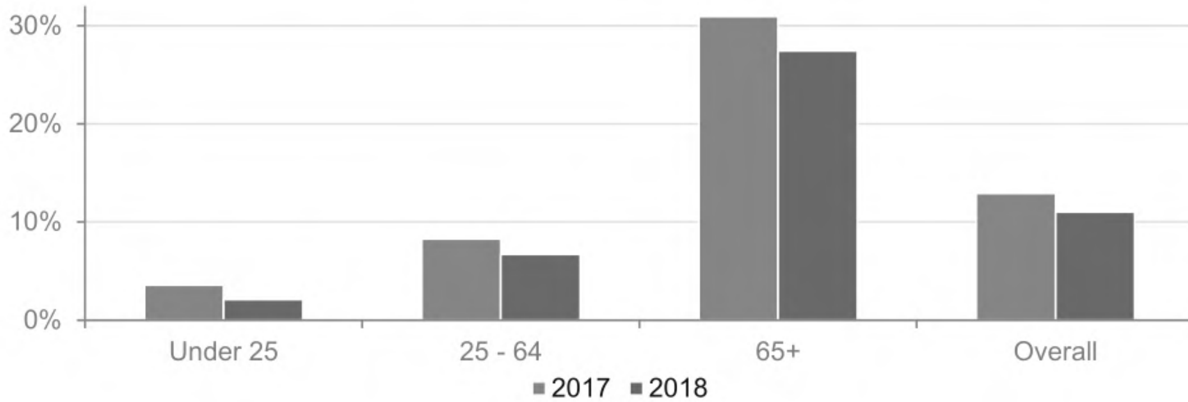
Figure 25: SHARE OF ACTIVE PAYMENT-MAKING ACCOUNTS THAT MADE AT LEAST ONE "ONE-TIME" ELECTRONIC PAYMENT IN THE LAST CYCLE OF THE YEAR VIA ONLINE PORTAL OR MOBILE APP BY AGE, GENERAL PURPOSE (MMI)



Paper-based payments remain a prominent payment method for older Americans, but that may be changing. In 2017, 31 percent of consumers 65 and older that made a payment in the final month of the year used a paper check at least once that cycle. In 2018, that figure had fallen to 27 percent. Furthermore, the difference between age groups is stark—only 2 percent of

consumers under 25 and 7 percent of consumers between the ages of 25 and 64 used a paper check to pay their credit card bill in the last payment cycle of 2018.

Figure 26: SHARE OF ACTIVE PAYMENT-MAKING ACCOUNTS THAT MADE AT LEAST ONE PAPER PAYMENT IN THE LAST CYCLE OF THE YEAR BY AGE, GENERAL PURPOSE (MMI)



3. Cost of credit

As its predecessors did, this report assesses overall costs to credit card consumers using the Bureau's total cost of credit (TCC) measure. TCC captures the totality of payments by consumers to issuers as an annualized percentage of cycle-ending balances on their accounts.[74] This section also looks separately at the main components of TCC—interest charges and fees.[75] Cardholders revolving debt from one month to the next pay the majority of fees and interest. This analysis focuses primarily (but not exclusively) on costs to revolving cardholders.

3.1 Total cost of credit

TCC on revolving accounts has increased since the Bureau's last report in 2017, driven largely by increases in interest rates. As of the end of 2018, it stood at 18.7 percent. That remains lower than its highest mark during the recession. Split by card type, TCC for revolving accounts was 17.8 percent and 23.2 percent in 2018 for general purpose and private label cards, respectively. For both general purpose and private label revolving accounts, Figures 1 and 2 show clearly that interest charges are the predominant share of consumer cost.

On the general purpose side, after remaining broadly stable over 2015 and 2016, TCC on revolving accounts increased in 2017 and 2018. Figure 1 shows the relevant trends. Even as TCC has been increasing, however, fee costs in every credit tier have been flat or declining. From 2015 to 2018, the prime rate has increased a total of 2 percentage points, which helps to explain

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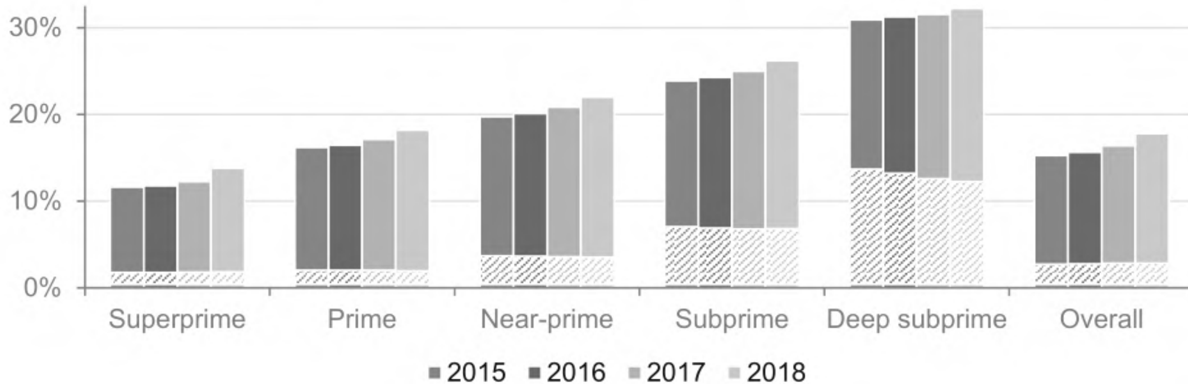
[74] Cost data are from the Y-14, augmented by summary data that the Bureau collected from a range of issuers not included in that source. Y-14 data do not permit consumer-level cost reporting. For more detail on Y-14 data, see Section 1.3.1. Although this report uses broader cost data than previous iterations did, the Bureau does not claim that these data are representative of the market not covered by the data. TCC does not include the cash value of any rewards that may have been earned by the cardholder.

[75] The TCC metric was initially introduced in the 2013 Report, and has since been used in the 2015 Report and 2017 Report. *See* 2013 Report, *supra* note 5, at 19; 2015 Report, *supra* note 5, at 76; 2017 Report, *supra* note 5, at 72.

part of the 2.5 percent rise in TCC, because most consumer credit cards have variable rates that are tied to changes in the prime rate.[76]

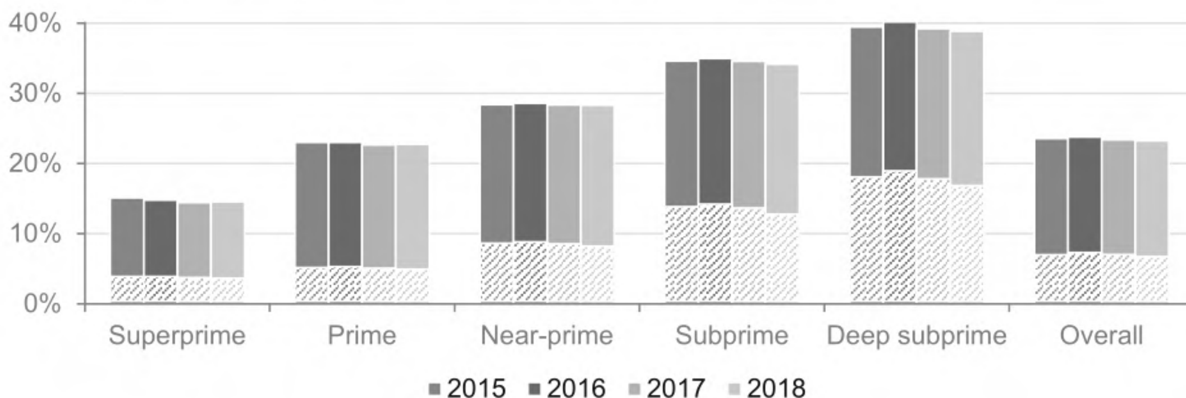
Figure 1: TOTAL COST OF CREDIT, REVOLVING ACCOUNTS, GENERAL PURPOSE (SHADED AREA REPRESENTS FEES, SOLID AREA REPRESENTS INTEREST CHARGES) (Y-14+)



On the private label side, however, TCC on revolving accounts has declined over the last two years, both overall and for every credit tier. As with general purpose cards, fee costs on private label cards have also been roughly stable on net or declining between 2015 and 2018. These trends are shown in Figure 2. Despite some narrowing over the last few years, TCC remains consistently higher, both overall, and within every credit tier, on private label accounts, as compared to general purpose accounts. In 2015, the overall gap in TCC was 8.3 percentage points between the two card types. By 2018, this had fallen to 5.5 percentage points.

[76] For further discussion of variable rates, see Section 3.2.2.

Figure 2: TOTAL COST OF CREDIT, REVOLVING ACCOUNTS, PRIVATE LABEL (SHADED AREA REPRESENTS FEES, SOLID AREA REPRESENTS INTEREST CHARGES) (Y-14+)



3.2 Interest charged

Interest charges have increased in the past few years. Both retail APRs and effective interest rates (EIR) on consumer credit cards have increased.[77] In 2018 the average APR for general purpose and private label cards rose to 20.3 percent and 26.4 percent, respectively.[78] As with TCC, the rise in interest charges is in large part the result of changes in prevailing market interest rates.[79]

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[77] For closed-end loan products, the APR captures certain fees as well as the interest rate. 15 U.S.C. § 1606(a)(1) (2012); 12 C.F.R. § 1026.22(b). However, for open-end credit, including credit cards, the APR is calculated using the periodic rate. 15 U.S.C. § 1637 (a)(4), (b)(5) (2012); 12 C.F.R. § 1026.2(a)(14), (21).

[78] *See* Appendix A, Figures 1 & 2.

[79] "Data from Form FR 2835a indicate that the average credit card interest rate across all accounts increased to a level of about 13 percent, while the two-year Treasury rate--a measure of the baseline, or "risk free," rate--rose to almost 2 percent (figure 1), leaving the spreads unchanged." Bd. of Govs. of the Fed. Reserve System, *Report to the Congress on the Profitability of Credit Card Operations of Depository Institutions - July 2018*, (July 2018), *available at* https://www.federalreserve.gov/publications/2018-july-profitability-credit-card-operations.htm.

3.2.1 Effective interest rates

While APR is a useful barometer of issuer pricing strategies, "effective interest rate" may provide a better measure of the cost of interest to cardholders because EIR incorporates the effect of short-term promotions and cash advances. An EIR is computed by annualizing the total of all interest charges consumers paid divided by those consumers' cycle-ending balances.[80] Figure 3 shows that EIRs for general purpose cards with revolving balances have risen nearly 250 basis points from 13.2 percent in 2015 to 15.6 percent in 2018. Each credit tier experienced similar increases over time.

Figure 3: EFFECTIVE INTEREST RATE, REVOLVING ACCOUNTS, GENERAL PURPOSE (Y-14+)

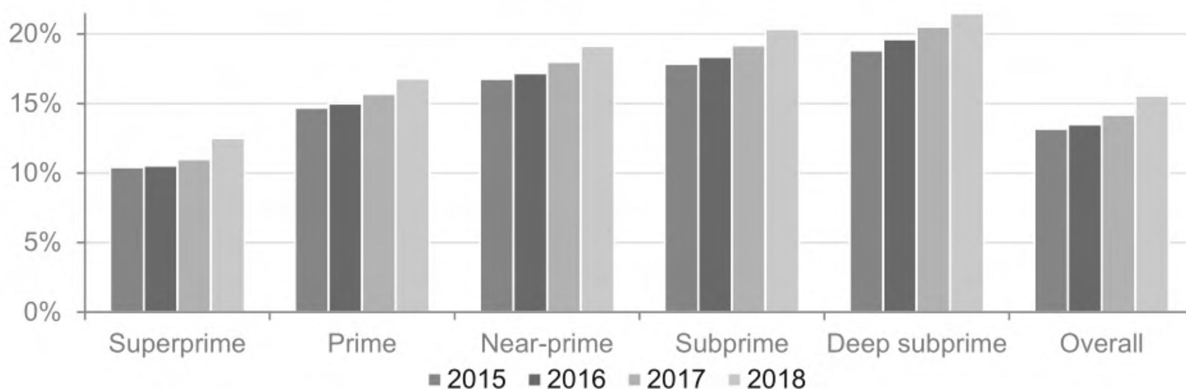
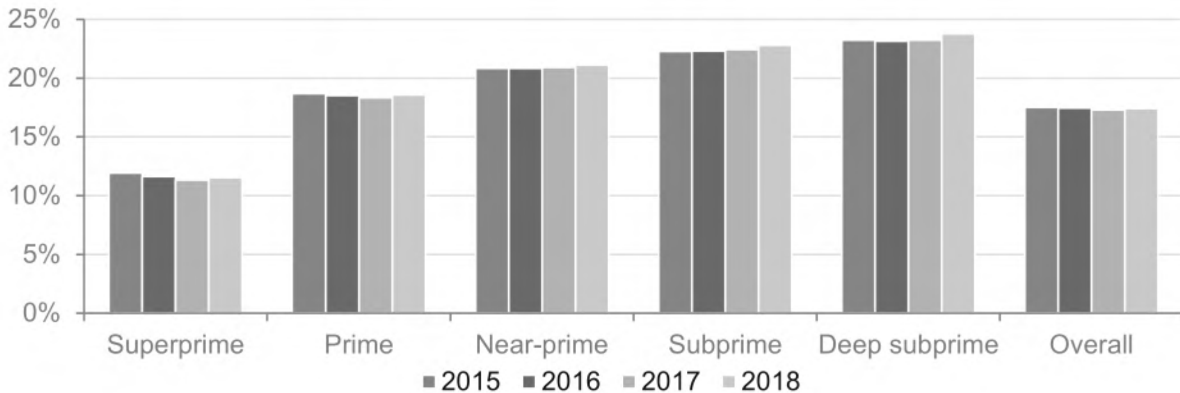


Figure 4 shows that the picture for private label is different, with EIRs across the period staying mostly flat from 2015 to 2018. As the next subsection shows, this contrast is in part due to the fact that fewer private label cards are priced with a variable rate.

[80] EIRs differ from nominal rates for two reasons. First, consumers may have various balances on a single account (such as cash advances and balance transfers), not all of which are subject to the APR typically applied to purchases on that account. Second, consumers may have different patterns of payment and spending within a cycle. Due to the average daily balance method that most credit card issuers use to calculate interest charges, this means that two accounts subject to the same retail APR that conclude a cycle with identical balances may nevertheless properly be assessed different interest charges as a result of differences in the composition and fluctuation of those balances over the course of the cycle.

Figure 4: EFFECTIVE INTEREST RATE, REVOLVING ACCOUNTS, PRIVATE LABEL (Y-14+)



3.2.2 Upward repricing

Credit card account APRs can change, both for new transactions and existing balances, subject to limitations imposed by the CARD Act.[81,82] Perhaps most significantly, upward repricing on existing (and new) balances is allowed if a card's rate is indexed to a market rate and that rate increases.[83] Most general purpose cards are variable rate cards of this kind. As of the end of 2018, more than 90 percent of general purpose accounts in the Y-14 were variable rate cards.[84] In contrast, only about one-half of private label accounts in the Y-14 have variable rates.

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[81] The CARD Act did not prohibit all interest rate changes to existing accounts, but it limited the conditions under which issuers could reprice both new and existing balances and established new procedural steps for permitted rate increases. For more on CARD Act limits on repricing, see the 2013 Report at pages 11, 27-29.

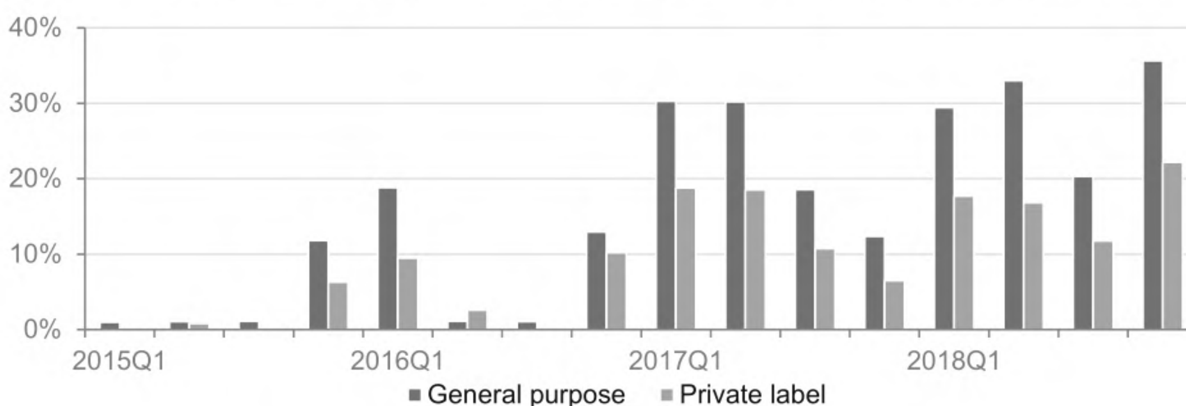
[82] In response to the Bureau's Request for Information a commentator claimed that CARD Act-imposed interest rate restrictions have limited repricing discretion and therefore limited the availability of credit card products for cardholders outside of the prime tier. It argues that these aspects of the CARD Act have limited issuers' ability to accommodate borrowers falling outside of the prime category. *See* Bank Policy Institute (BPI) Comment Letter, at 2.

[83] A card issuer is permitted to increase the APR on a variable rate card when the increase is due to an increase in an index that is outside the issuer's control and available to the general public. 12 C.F.R. § 1026.55(b)(2).

[84] Issuers that use variable rate pricing mostly rely on *The Wall Street Journal*'s U.S. prime rate. A small percentage of the accounts, however, are linked to the London interbank offered rate (LIBOR). The status of LIBOR is in flux,

As Figure 5 shows, upward APR repricing accelerated in 2017 and 2018, as variable rate increases were triggered in most quarters, and were subsequently reflected in changes to APRs for cardholders with variable rate cards.[85] Over 90 percent of the upward repricing account events shown in Figure 5 are for increases of 25 basis points, which is the most common prime rate change over the last few years. As expected, given the higher share of cards that are indexed to a variable rate, general purpose cards show a much higher rate of upwards repricing across this period than private label accounts.

Figure 5: AVERAGE MONTHLY INCIDENCE OF UPWARDS APR REPRICING, ACTIVE ACCOUNTS (Y-14+)



These changes have significantly increased consumer costs. It is difficult to assess precisely how much consumer borrowing patterns may have been affected by increases in underlying interest rates. As a result, it is difficult to state with certainty the full actual impact of such increases on borrowers. The Bureau estimates that the six rate increases by the Federal Reserve from late-

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which creates certain risks for cards linked to LIBOR. One commenter states they "expect LIBOR to be unreliable (and more volatile) by January 1, 2022 (or earlier)." BPI Comment Letter, at 7-8. The Bureau acknowledges this comment and is considering the issue further.

[85] See Appendix A at Figure 3 for a chart showing increases in the federal funds rate and the associated prime rate.

2016 through late-2018 led to a cumulative increase of roughly $11 billion that credit card borrowers paid over that two-year period.[86]

3.3 Fees assessed

Collectively, fees represent just under one-fifth of total consumer costs and for consumers who exclusively transact, fees are the only source of cost. Fees take a variety of forms including annual fees, transactional fees (*e.g.*, for cash advances), and penalty fees (such as late fees or over-limit fees). The CARD Act imposed several substantive pricing controls on both the amounts of penalty fees consumers could be charged and the conditions under which such fees could be imposed.[87]

3.3.1 Total fees

REVOLVING ACCOUNTS

Measured as a share of overall account balances, total fees on revolving accounts did not change materially over 2017 and 2018 on either general purpose or private label accounts. These trends are shown in Figures 6 and 7, which also show that, relative to balances, fees incurred on private label accounts that revolve are higher than on general purpose accounts that do so. For private

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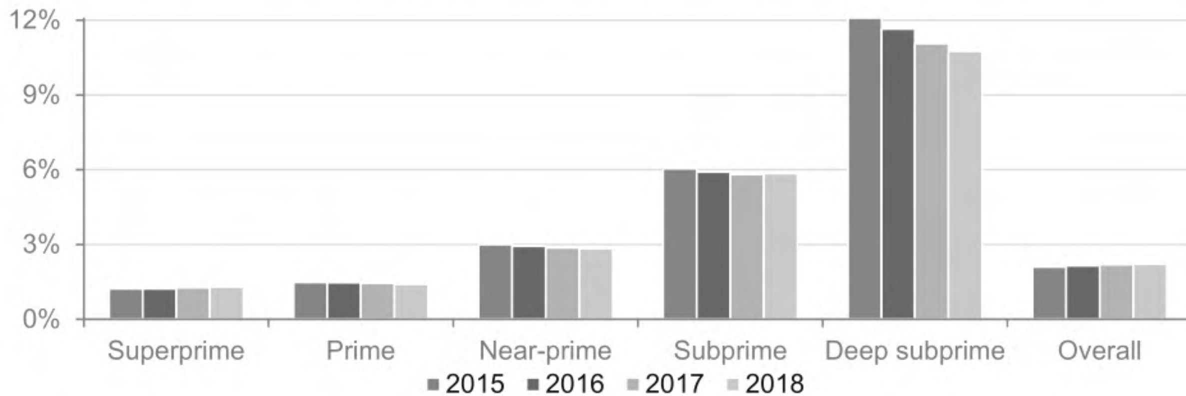
[86] Calculation uses historical quarterly balances multiplied by the cumulative changes in rates from 2016 to 2018. The increase on Dec. 20, 2018, was not included as it was not in effect for an entire quarter during the 2016 to 2018 timeframe.

[87] *See, e.g.*, 15 U.S.C. §§ 1637(k), (n), 1665d (2012). CARD Act pricing restrictions have resulted in a substantial decline in overall fee costs to consumers since the pre-CARD Act period. *See* 2013 Report, *supra* note 5, at 34. CARD Act fee restrictions, of course, may have led to compensating changes in interest rates. For example, one commenter asserts that changes brought about by the CARD Act have resulted in higher interest rate margins "as issuers sought alternative ways to manage portfolio-wide risk." *See* ABA Comment Letter, at 2. Section 6 contains a substantive review of economic scholarship on both the direct and unintended consequences of the CARD Act on interest rate and fee changes.

label accounts, fees comprised 5.8 percent of balances as of the end of 2018; on general purpose, they were 2.2 percent of balances.[88]

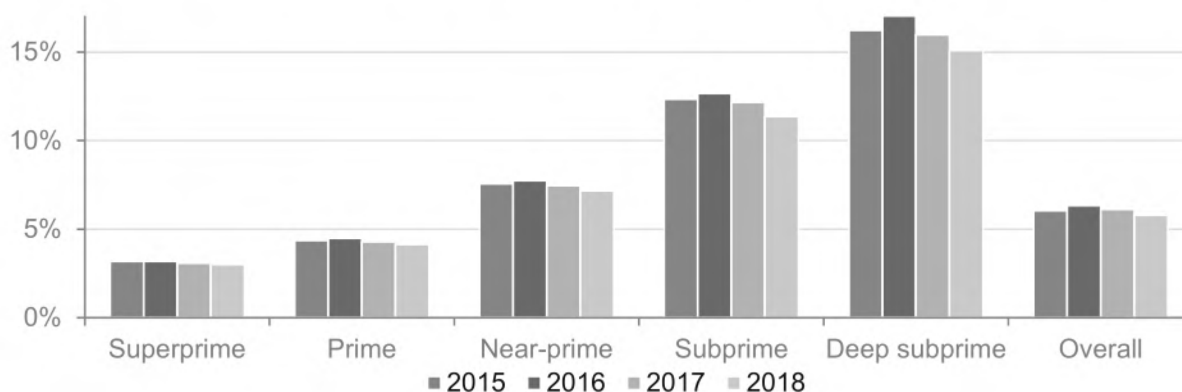
Within certain credit tiers, however, the fee picture is changing. Figure 6 shows that general purpose accounts held by consumers with deep subprime credit scores saw fee-to-balance ratios fall in every year from 2015 through 2018. Even so, these tiers have fee ratios that are several multiples of those for accounts held by consumers with higher credit scores. Figure 7 shows fee-to-balance ratios for private label accounts dropped in 2017 and 2018 for all credit score tiers except superprime. While the volume of fees has increased from 2015 to 2018, fee ratios have declined as a result of rising total balances.

Figure 6: TOTAL FEES INCURRED IN THE YEAR AS A PERCENTAGE OF AVERAGE CYCLE-ENDING BALANCES, REVOLVING ACCOUNTS, GENERAL PURPOSE (Y-14+)



[88] This is in part the product of lower average balances on private label accounts. (Section 2.2.1 contains data on average account balances for different card types, by credit tier.) The Bureau's 2017 Report contains more information on this point. *See* 2017 Report, *supra* note 5, at 87-89.

Figure 7: TOTAL FEES INCURRED IN THE YEAR AS A PERCENTAGE OF AVERAGE CYCLE-ENDING BALANCES, REVOLVING ACCOUNTS, PRIVATE LABEL (Y-14+)



TRANSACTING ACCOUNTS

For transacting accounts, this report calculates total fees as a share of purchase volume.[89] On this cost measure (which has not been used in prior reports), there were no significant overall changes for general purpose or private label accounts from 2015 through 2018. Fee ratios for private label transacting accounts have increased in lower credit tiers, though it should be noted that very few accounts in these tiers transact. This appears to be the result of relatively slow growth in purchase volume for transacting accounts. Purchase volume by transacting cardholders has grown 44 percent on general purpose cards since 2015, but only 3 percent on private label card accounts.

3.3.2 Fee composition

Over the last few years, fee composition has changed relatively little. Figure 8 shows trends for general purpose cards over this period. The largest change is the increase in annual fees as a share of total fees. Annual fee trends are covered in more detail in the next subsection below. This increase comes largely at the expense of debt suspension fees, which continue to decline,

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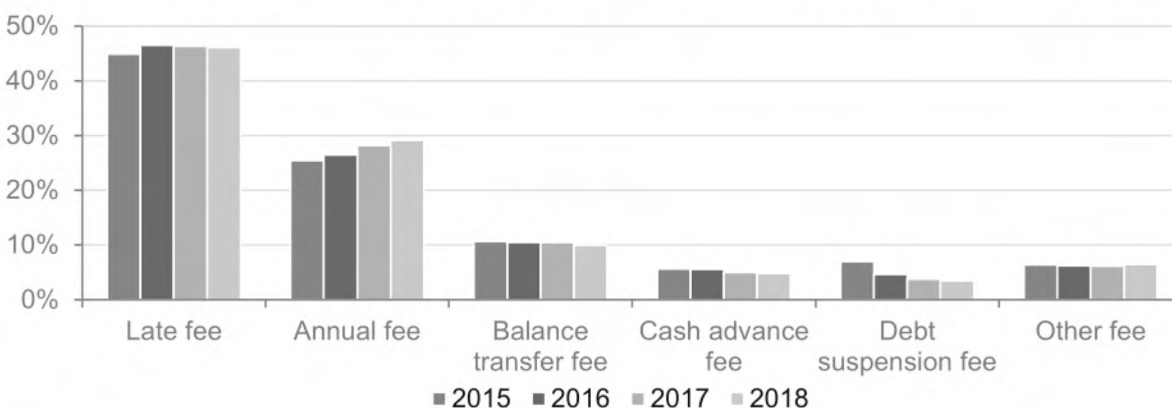
[89] For transacting accounts, cycle-ending balances are not as good a reflection of account use as purchase volume. Thus, this reports looks at fee costs for these accounts relative to purchase volume, not balances.

even as the number and volume of annual fees have increased. Figure 8 also shows that a number of other fees remain prevalent on general purpose cards, including fees for balance transfers and cash advances.[90]

For private label cards, late fees make up the overwhelming majority of all fees assessed—90 percent in 2018. This represents a slight increase over the last four years, from 86 percent in 2015, again in large part at the expense of debt suspension fees.

Figure 8: SHARE OF TOTAL FEES COSTS INCURRED BY TYPE OF FEE, GENERAL PURPOSE (Y-14+)



3.3.3 Annual fees

Annual fee volume has risen significantly over the last few years. For issuers in the data set, annual fee revenue totaled roughly $600 million in the first quarter of 2015. Annual fee revenue topped $1 billion in the first quarter of 2018.[91] As discussed further below, this is a function of increases in the average annual fee for accounts charged a fee, but is also due to steady quarterly increases in the total number of accounts incurring an annual fee, even while the percentage of accounts with such fees has decreased.

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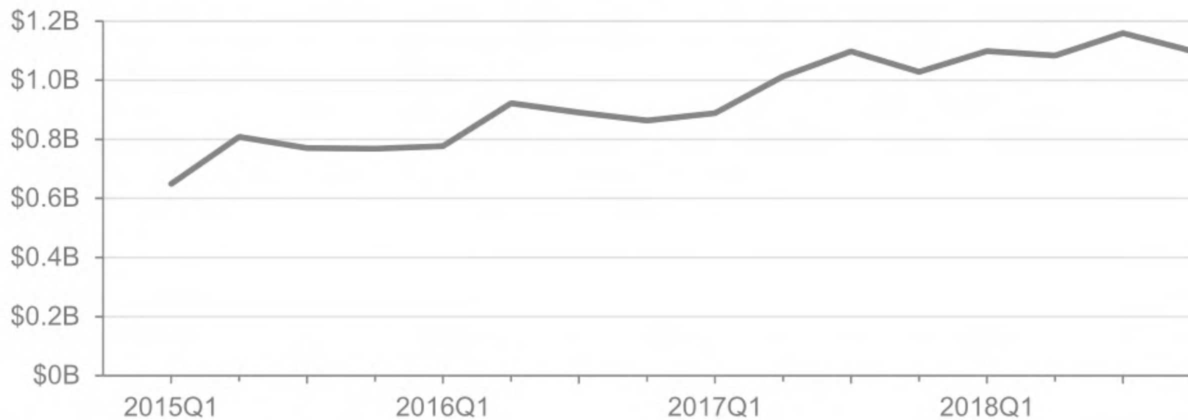
[90] For more information on cash advance and balance transfer trends, see Sections 5.2 and 5.3.

[91] As used in this report, an "annual fee" refers to any general purpose participation or maintenance fee assessed to the consumer as a condition of holding the account, regardless of any pattern of usage.

Figure 9: ANNUAL FEE VOLUME, GENERAL PURPOSE (Y-14+)



Annual fees have garnered significant attention in recent years with the introduction of new annual fee rewards cards marketed to lower-risk and affluent market segments.[92] As shown in Figure 10, annual fees averaged roughly $80 per card with a fee in 2018, and that number has been increasing steadily for all credit score tiers. In particular, annual fee accounts held by superprime consumers averaged nearly $100 in annual fees in 2018, reflecting the increased prevalence in the past two years of richer rewards credit cards that carry higher annual fees. Revenue from these cards is typically returned to cardholders to varying degrees in the form of rewards.[93]

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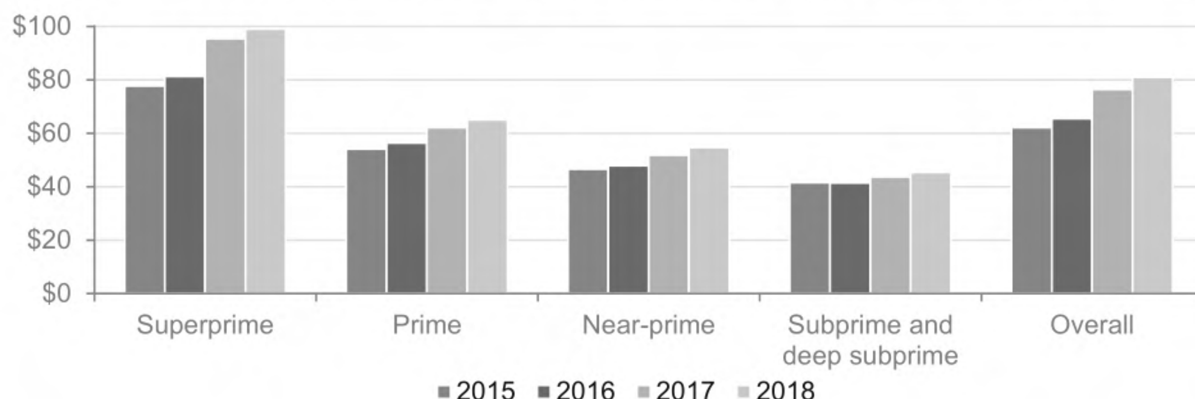
[92] *See, e.g.*, Maria LaMagna, *American Express Launches a New Credit Card for Jet-Setters – With new credit card for jet-setters – with a $450 Annual Fee*, MarketWatch, (Apr. 17, 2018), *available at* https://www.marketwatch.com/story/american-express-launches-a-new-credit-card-for-jet-setters-with-a-450-annual-fee-2018-04-16. *See also* AnnaMaria Andriotis & Emily Glazer, *Rewards Credit Cards Gained a Fanatic Following—Now Banks Are Pulling Back*, Wall St. J. (Jan. 1, 2019), *available at* https://www.wsj.com/articles/rewards-credit-cards-gained-a-fanatic-followingnow-banks-are-pulling-back-11546365926("JPMorgan and Citigroup poached top executives from AmEx, which made premium rewards—with a high annual fee—its calling card for decades, and copied the strategy.").

[93] For more on rewards, see Section 5.1.

Whereas cardholders with superprime scores typically pay an annual fee for rewards—with higher annual fees generally funding richer rewards—cardholders in lower credit tiers may pay annual fees to offset credit risk or higher operating costs relative to revolving balances.[94]

Figure 10: AVERAGE ANNUAL FEE, GENERAL PURPOSE ACCOUNTS CHARGED AN ANNUAL FEE (Y-14)[95]



While average annual fees have been rising in all credit tiers, Figure 11 shows that annual fees have actually become less common for accounts held by cardholders in every credit tier except superprime. One in four general purpose cards held by subprime and deep subprime cardholders carried an annual fee in 2018, compared to more than one in three in 2015. Similarly, in 2018 roughly one in five near-prime cardholders carried an annual fee card, compared to one in four in 2015. In part, the reduction in annual fee prevalence for cardholders with below-prime scores was driven by an increase in the share of no-annual-fee card originations to consumers in these score tiers. Since 2016, however, most of that increase was due to originations of no-annual-fee secured cards which, while they do not charge a fee, still require some money be held as a deposit.

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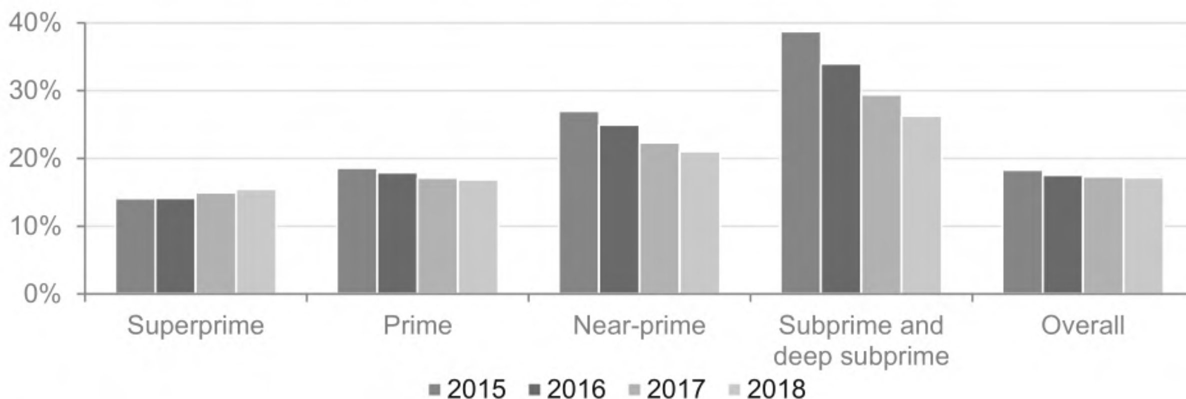
[94] *See* 2017 Report, *supra* note 5, at 91-92.

[95] Average annual fee is calculated as the total number of months in each year and credit tier that an account with an observed annual fee is open times the annual fee observed for those accounts divided by the total number of account months in each year and credit tier that those annual fee-paying accounts are open.

Figure 11: ANNUAL FEE PREVALENCE, GENERAL PURPOSE (Y-14)[96]



3.3.4 Late fees

Since 2015, total late fee volume has increased, as shown in Figure 12. Issuers in the sample assessed nearly $13 billion in late fees in 2018, compared to less than $10 billion in 2015. As discussed further below, this increase in late fee revenue is in part a function of the increase in the total number of accounts and in part a function of increases in the per incidence fee; there does not appear to have been a change in the incidence of late fees on a per account basis. Figure 13 shows that the share of card accounts held by consumers in each credit tier declines steeply with scores, but late fee volumes are relatively similar across these tiers. Superprime consumers hold 59 percent of card accounts but pay only 21 percent of late fee volumes; by contrast, consumers with deep subprime scores hold about 6 percent of card accounts but generate 24 percent of late fee volumes.

[96] Annual fee prevalence is calculated as the total number of months in each year that an account with an observed annual fee is open in a given credit tier divided by the total number of account months in each year that all accounts held by cardholders in that credit tier are open.

Figure 12: LATE FEE VOLUME (Y-14+)

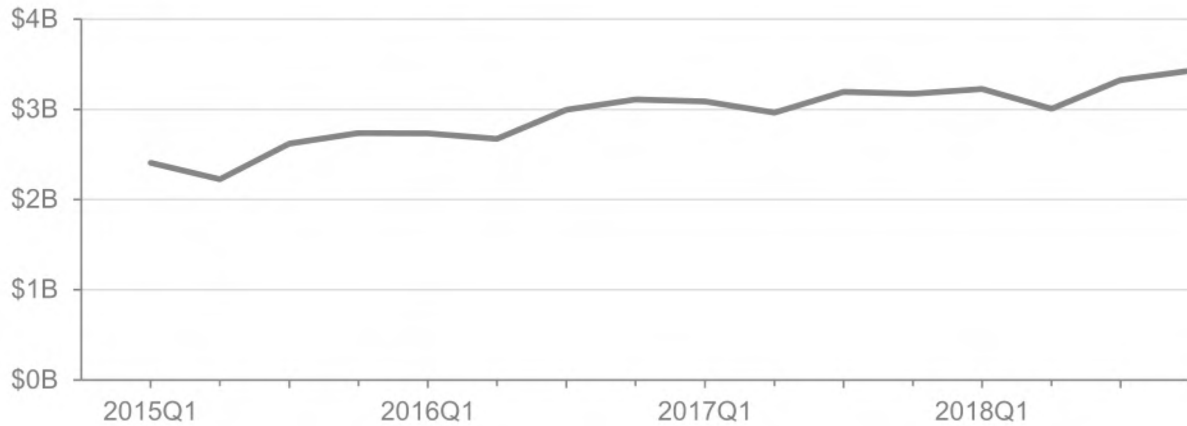
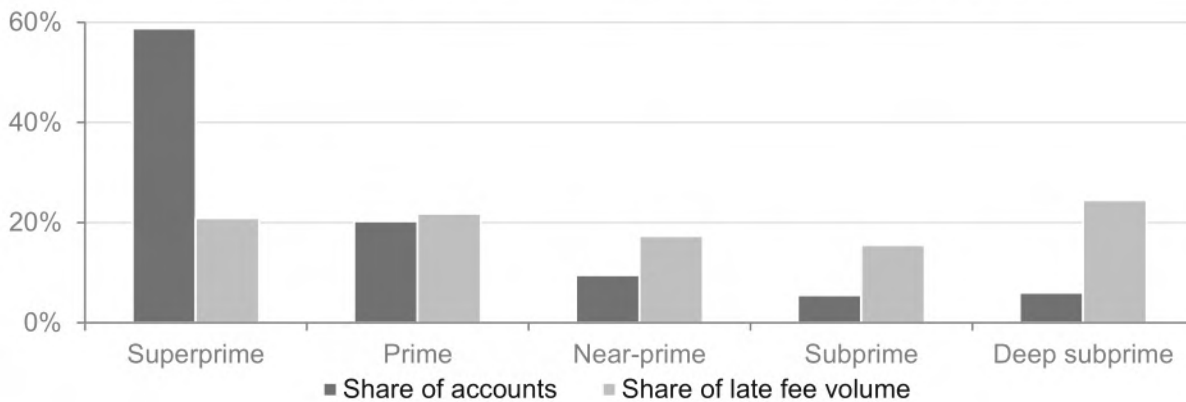


Figure 13: SHARE OF NUMBER OF ACCOUNTS AND SHARE OF LATE FEE VOLUME (Y-14+)



Issuers generally assess a late fee to consumers who do not make at least their minimum payment by the monthly due date. These and other "penalty" fees were targeted by specific CARD Act provisions, and the dollar amounts of such fees are now subject to CARD Act restrictions.[97] In general, these fees have to be "reasonable and proportional."[98] There is a

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[97] 15 U.S.C. § 1665d(a) (2012). For more on this, see Section 6.

[98] *Id.*; 12 C.F.R. § 1026.52(b).

regulatory "safe harbor" for specific fee amounts, which the Bureau adjusts for inflation annually.[99] Initially, the safe harbor was set at $25 for an initial late fee and $35 for a second late fee within six billing cycles of a prior late fee. In 2019, the safe harbors are $28 and $39 respectively.[100]

Since 2015, average late fees have increased slightly, from about $26 to $28 in 2018, as shown in Figure 14. They nevertheless remain substantially below their pre-CARD Act level of $33 in 2008.[101] Since 2014, the first year in which a change from the original penalty fee safe harbors came into effect, most large issuers have taken advantage of the increased safe harbors by increasing their fee amounts. However, issuers appear to vary in the speed and consistency with which they implement increases across their products and portfolios. Additionally, issuers may as a courtesy offer to reverse late fee charges if the cardholder has a history of paying on time, particularly for superprime cardholders. In combination with the two-tier safe harbor (one amount for the first instance, and a different amount for subsequent instances within one of the next six billing cycles), these practices make it challenging to assess what drives changes in average late fee amounts overall.

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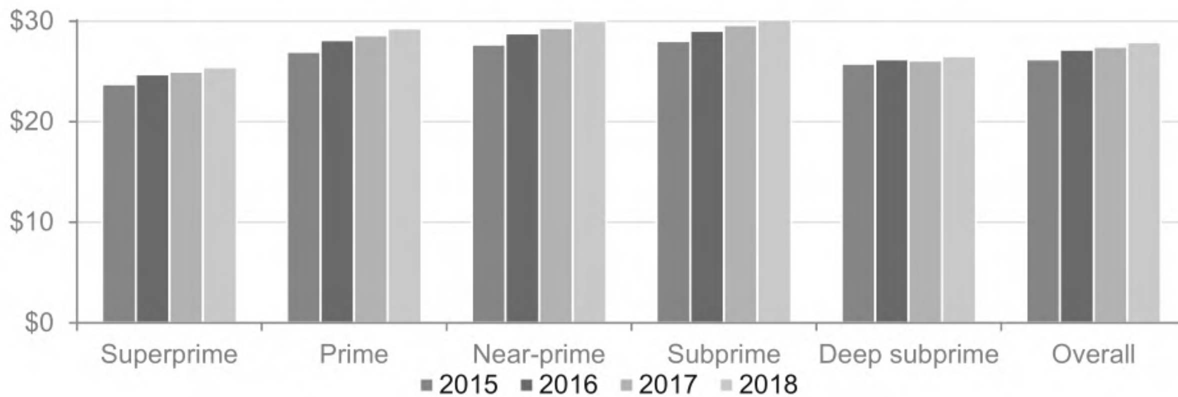
[99] Regulation Z requires the Bureau to annually adjust the safe harbors to reflect changes in the Consumer Price Index. 12 C.F.R. § 1026.52(b)(1)(ii)(D). The Bureau has also introduced a tool to promote transparency in this calculation. Bureau of Consumer Fin. Prot., Office of Compliance & Guidance, *Calculating Adjustments to the Safe Harbor Limits on Credit Card Issuer Fees*, https://www.consumerfinance.gov/policy-compliance/guidance/truth-lending-annual-threshold-adjustments/ (last visited July 15, 2019). The most recent safe harbor amounts went into effect in January 2019. 83 Fed. Reg. 43503 (Aug. 27, 2018).

[100] 12 C.F.R. § 1026.52(b)(1)(ii); Comment 52(b)(1)(ii)-2.i.

[101] *See* 2013 Report, *supra* note 5, at 23.

Figure 14: AVERAGE LATE FEE, NET OF REVERSALS (Y-14+)



To fill the picture out further, the Bureau analyzed the late fee terms of credit card agreements from banks included in the Y-14+ panel. A review of agreements available in 2018 indicates that almost all products (83 percent) contracted to price at the penalty fee cap. Only 16 percent of filed agreements contracted to price, in whole or in part, below that cap. Another 1 percent contracted not to charge late fees. None contracted to price above the safe harbor.

On average, consumers incur less than one late fee per year per general purpose account. This rate has remained steady since 2015. Accounts held by consumers in lower credit score tiers incur more late fees than those in higher tiers. For example, accounts held by consumers with deep subprime credit scores average more than three late fees a year. Accounts held by consumers with superprime or prime scores average less than one. Late fee incidence rates are higher for private label accounts, both overall and within every credit tier. For example, accounts held by consumers with deep subprime scores have an average of more than four late fees per year. But private label late fee incidence has also not changed materially over the last few years.

3.3.5 Other fees

The quarterly volume of other fees issuers collect on credit cards has not changed significantly in recent years. This fee category includes fees for payments returned for insufficient funds (NSF fees) or exceeding the credit limit (over-limit fees); debt suspension fees; balance transfer fees; and cash advance fees, among others. The 2015 Report showed that these fees, considered

collectively, have steadily declined in prevalence since 2008.[102] Over-limit fees that were common prior to the implementation of the CARD Act remained almost nonexistent in 2017 and 2018.[103]

[102] 2015 Report, *supra* note 5, at 71-72.

[103] Section 3.3.5 of the 2017 Report notes that many issuers appear to have simply ceased assessing over-limit fees altogether, rather than maintain an opt-in regime. *See* 2017 Report, *supra* note 5, at 96-97.

4. Availability of credit

As in prior reports, this section examines a number of metrics relating to the availability of card credit. It explores two broad areas: first, new account origination; second, credit limits and line changes after origination.[104] To do so, it tracks the credit card account life cycle. It starts with marketing and consumer applications across a range of channels. Next, it addresses issuer approvals as well as new account and line origination. Finally, this section ends with issuer line management of existing accounts.

4.1 New accounts

U.S. consumers submitted more than 165 million credit card applications in 2018, roughly one-half million per day. Issuers primarily solicit consumer demand for credit cards through broad-based advertising like television commercials, and through targeted marketing, which is increasingly shifting away from direct mail towards digital channels. The analysis below examines patterns of credit card marketing and consumer shopping; consumer applications; approval rates for new accounts; and the volume of new account and line origination. Where possible, the analysis reviews how these metrics vary by credit tier as well as by product and marketing channel.

4.1.1 Marketing and comparison shopping

As consumers spend more time on mobile and other internet-connected devices, issuers have adjusted their marketing and origination practices. The result is a digital ecosystem in which

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[104] Issuers assign a credit line limit to each new account that determines how much a consumer generally is permitted to borrow on the account, at least initially. In subsequent periods issuers may adjust the credit line, as discussed in more detail in Section 4.2.3.

consumers encounter credit card marketing across digital platforms. In-person channels—like bank branches and retail locations—increasingly use digital technology.

Credit card issuers continue to send mail directly to consumers, but the trend away from direct mail solicitation has continued since the Bureau's last report. Issuers sent 341 million direct mail solicitations per month across 2017 and 2018, down 22 percent from 2016 levels. Monthly mail volume remains less than one-half of its pre-recession peak of 892 million pieces in 2005.[105] Pre-screened direct mail offers have declined even faster than direct mail generally. Their 2018 level was 20 percent below 2016 numbers. In 2018, the share of direct mail credit card solicitations that was pre-screened fell to 51.6 percent, its lowest mark since at least 2013, and down 3 percentage points since 2016.[106]

Card issuer spending on digital forms of marketing remains small compared to physical mail, but it has been growing significantly.[107] Credit card advertising on social media sites, such as Twitter, Facebook, and Instagram, is becoming more prominent. Issuers increasingly buy digital advertising targeted to specific demographics and pay social media influencers to make and distribute content.[108]

Once a consumer is actively looking for a new credit card, third-party comparison sites (TPC sites) offer information intended to make it easier for consumers to compare credit cards.[109]

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105 Data made available to the Bureau by Mintel Comperemedia.

106 *Id.*

107 Several of the largest credit card issuers report more than doubling their paid Facebook advertising for acquisitions from 2017 to 2018, based on data provided to the Bureau by Mintel. *See also* AnnaMaria Andriotis, *Credit-Card Issuers Boost Spending on Social-Media Ads*, Wall St. J. (Apr. 23, 2019), *available at* https://www.wsj.com/articles/credit-card-issuers-boost-spending-on-social-media-ads-11556011801.

108 *Id.*

109 In response to the Bureau's Request for Information, a commentator responding on behalf of consumers argued that these websites vary in the independence of their advice. This commenter suggested that regulators can require conspicuous disclosure of arrangements between websites and card issuers. *See* National Consumer Law Center (NCLC) Comment Letter, at 12.

Some sites let consumers personalize the card offerings shown by using data provided by the consumer or third-party information authorized by the consumer. While that information helps personalize recommendations, some consumers may ultimately find their application does not get approved for a site-listed card for which they apply. To address this issue, one TPC site now offers to check if a consumer shopping for a specific card would be pre-qualified for that card based on internal underwriting criteria that certain credit card issuers have agreed to share with the site.[110] TPC sites are not owned or operated by issuers, but many are funded primarily by issuer payments for sourcing new card accounts.[111]

4.1.2 Applications

To apply for a card, consumers submit an application through one of several channels, such as going online, using a mobile app, calling the issuer, or by walking into a bank branch or retail store to fill out a paper or digital application in-person. The issuer then decides whether or not to issue a credit card based on its internal underwriting process.[112] Issuers may choose to loosen or tighten underwriting standards to be more or less approving of new card applications. The Federal Reserve Board's quarterly Senior Loan Officer Survey shows that credit card underwriting standards have generally tightened over 2017 and 2018, after easing from 2012 through 2016.[113]

[110] Peter Rudegeair & AnnaMaria Andriotis, *Lenders Share Their Underwriting Secrets with Credit Karma,* Wall St. J. (Oct. 22, 2018), *available at* https://www.wsj.com/articles/lenders-share-their-underwriting-secrets-with-credit-karma-1540206000.

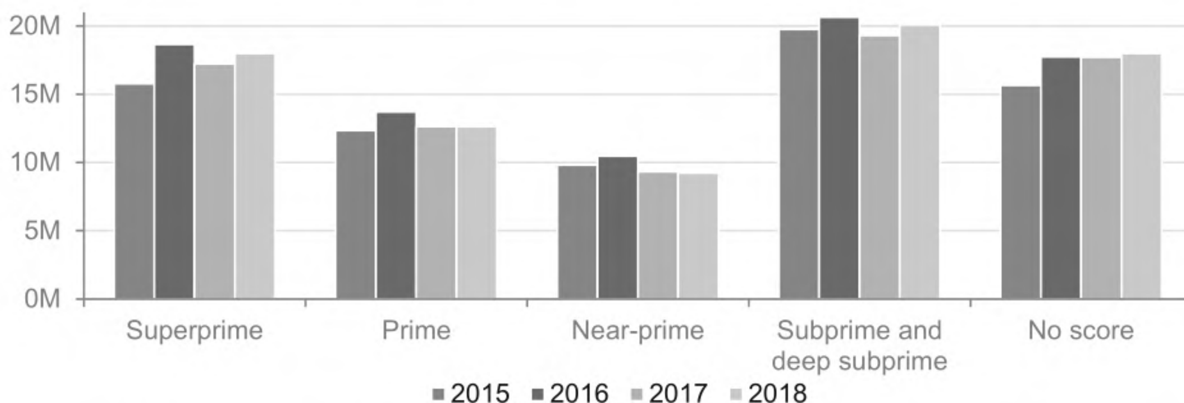
[111] For more on third-party comparison sites, see 2017 Report at page 265.

[112] In addition to an issuer's internal processes, issuers are required to consider an applicant's ability to pay the minimum monthly payment on an account prior to opening a credit card account under an open-end (not home-secured) consumer credit plan or increasing a credit line on such an account. 12 C.F.R. § 1026.51(a)(1)(i) (2019).

[113] Bd. of Govs. of the Fed. Reserve Board, *Senior Loan Officer Opinion Survey on Bank Lending Practices* (Feb. 4, 2019), *available at* https://www.federalreserve.gov/data/sloos/sloos-201901-chart-data.htm. *See also* Bureau of Consumer Fin. Prot., *Credit Tightness Index*, https://www.consumerfinance.gov/data-research/consumer-credit-trends/credit-cards/inquiry-activity/ (last visited June 13, 2019).

Figure 1 shows that general purpose application volume increased noticeably in 2016 for mass market issuers.[114] Since then, however, applications from consumers in prime, near-prime, and subprime and deep subprime tiers have more or less returned to lower 2015 levels.[115] Only application volume from consumers with no score remained higher than its 2016 level in 2018.

Figure 1: APPLICATION VOLUME FOR MASS MARKET ISSUERS, GENERAL PURPOSE (MMI)



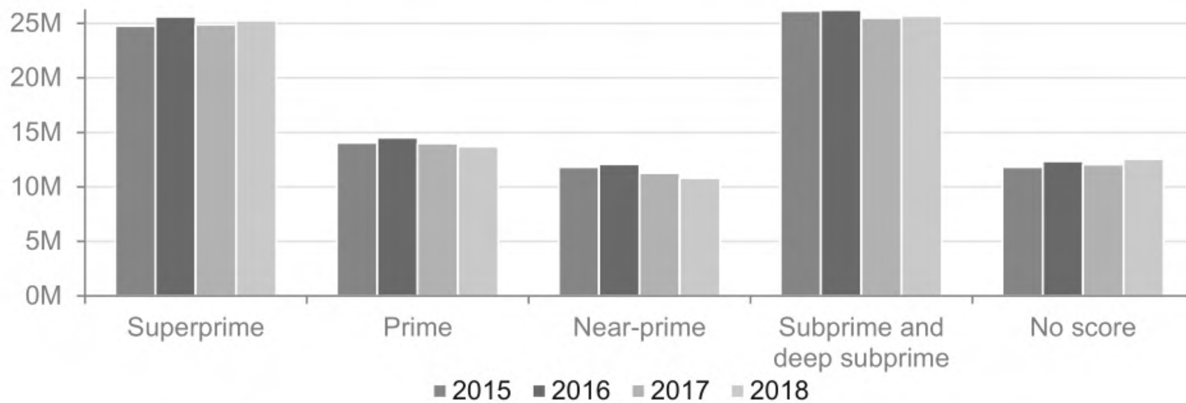
Retail cards show a similar pattern, with applications over 2017 and 2018 dropping from their 2016 peak back to 2015 levels, as shown in Figure 2.[116] A slight majority of credit card applications in 2018 were for retail accounts both overall and in every credit score tier. Only consumers with no score submitted more general purpose than retail applications.

[114] "MMI" data is provided by a set of larger issuers that make up the substantial majority of the credit card market. Even so, these issuers may not be representative of other issuers.

[115] MMI data account for a smaller share of the overall market as they reach deeper into the credit spectrum. Accordingly, we have combined approval rate data in the two lowest score tiers.

[116] Sections 4.1.2 and 4.1.3 divide the market into "general purpose" and "retail," which is slightly different from the "general purpose" and "private label" categorization used elsewhere in the report. See Section 1.3 for more information on these differences.

Figure 2: APPLICATION VOLUME FOR MASS MARKET ISSUERS, RETAIL (MMI)

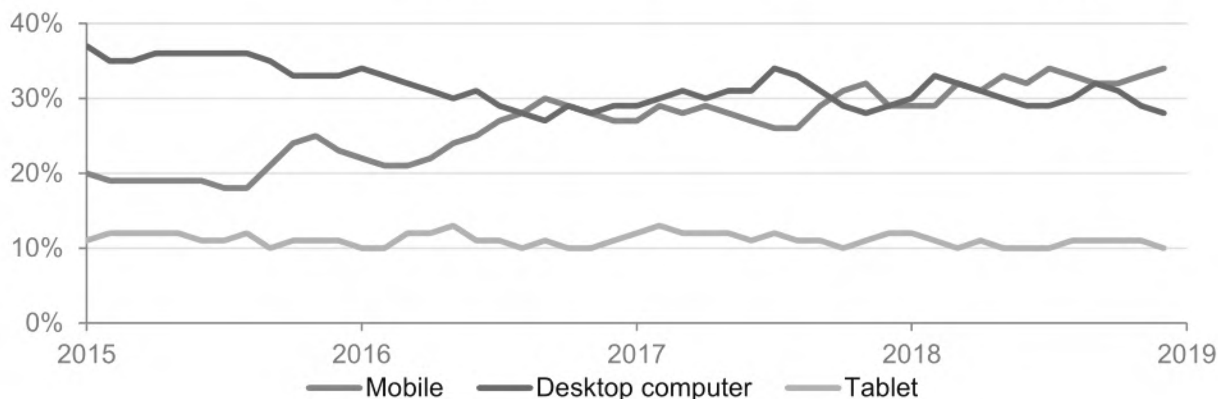


Applications can be submitted via a number of channels, though importantly there is some overlap (for example, a consumer may apply for a card digitally in response to a pre-screened offer received in the mail). In 2018, 78 percent of general purpose card applications were submitted digitally, with one-half of those coming via mobile device. In-person, mail, and pre-screen accounted, respectively, for 11 percent, 7 percent, and 8 percent of 2018 general purpose applications. In stark contrast, 62 percent of 2018 retail card applications were submitted in-person, with digital channels accounting for another 36 percent. However, digital channel volume grew 17 percent year-over-year for retail applications, driven entirely by the increase in mobile channel application volume, which was up 39 percent. Over the same period, in-person retail applications actually fell 7 percent.

DIGITAL APPLICATIONS

Digital channels account for roughly three-fourths of all applications. Although that share has not changed significantly over the last few years, Figure 3 reflects that the channel composition of digital applications has changed markedly over that period. Mintel reports that since 2014, mobile's share of all applications has grown by 14 percentage points to 34 percent, while online applications submitted via desktop computer have declined 8 percentage points to account for 28 percent of applications. Meanwhile, consumer use of tablets to apply for cards has stayed the same at around 10 percent of all applications.

Figure 3: APPLICATIONS SUBMITTED VIA DIGITAL DEVICES AS A SHARE OF APPLICATIONS (MINTEL)



MOBILE APPLICATIONS

For general purpose cards, the share of applications submitted via mobile devices has risen steadily in the last few years and in 2018 surpasses that of online applications. As shown in Figure 4, 43 percent of all general purpose mass market issuer applications are submitted by consumers using mobile devices, up from under 20 percent in 2015.[117] That overall number conceals significant variation across credit tiers, as the mobile share of superprime applications is less than one-half of those for the lowest credit tiers. In fact, the majority of general purpose card applications by consumers with subprime and deep subprime scores now come from mobile devices. The most significant growth in mobile penetration was in 2017, especially for applicants with subprime and deep subprime scores and applicants with no credit score. That year coincided with an increased emphasis on mobile applications by several of the large bank issuers in the sample.[118]

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[117] Figures 4 through 13 rely on MMI data. The Bureau's MMI survey grouped mobile phones and tablets as "mobile devices."

[118] For more information on digital servicing, see Section 2.4.

Figure 4: APPLICATIONS SUBMITTED VIA MOBILE DEVICES AS A SHARE OF APPLICATIONS, GENERAL PURPOSE (MMI)

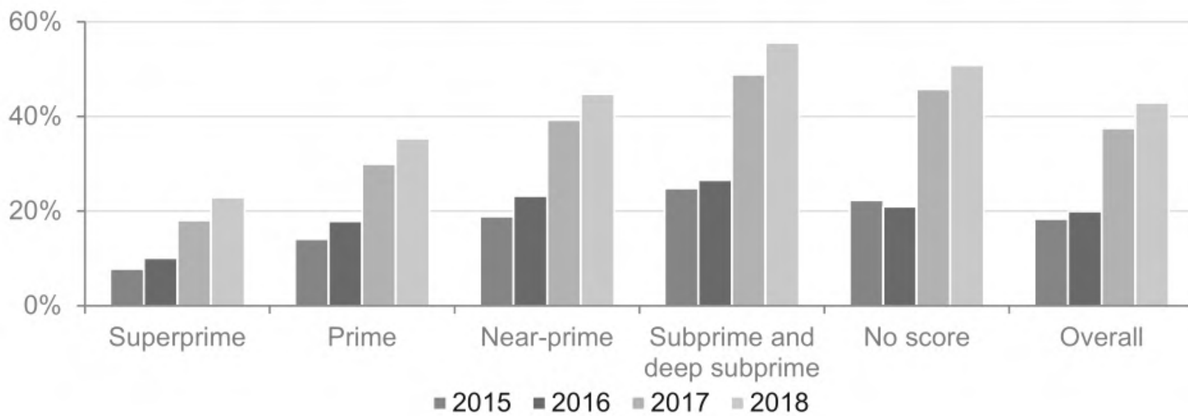
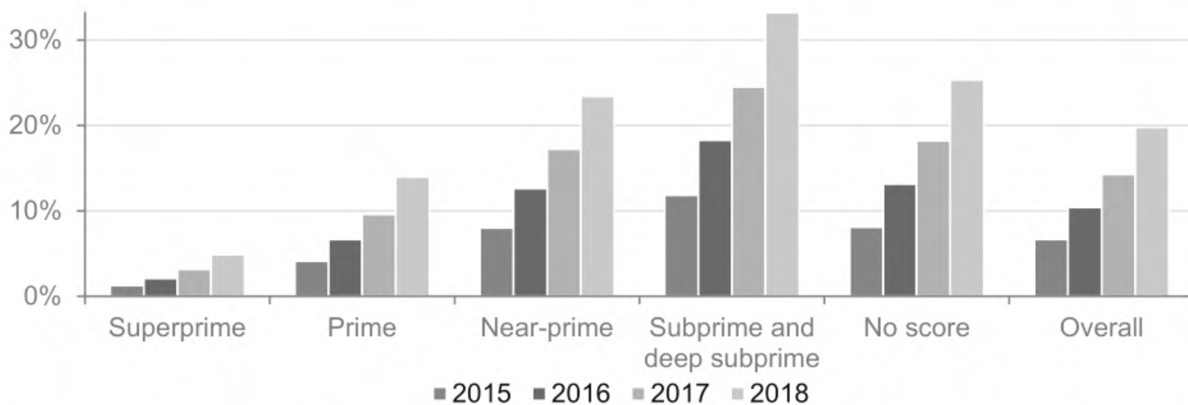


Figure 5: APPLICATIONS SUBMITTED VIA MOBILE DEVICES AS A SHARE OF APPLICATIONS, RETAIL (MMI)



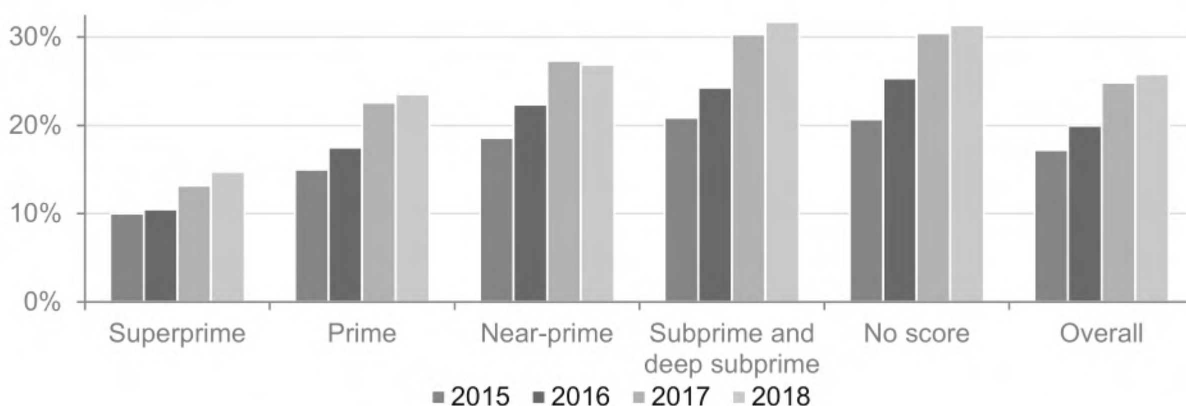
For retail cards, the trend toward mobile channels has been as significant as it has for general purpose cards. However, growth in the share of retail mobile applications has been smoother and levels of mobile penetration remain lower than for general purpose cards. As with general purpose cards, growth in mobile penetration has been most significant for consumers in lower score tiers, though no tier has yet surpassed 50 percent of applications submitted via the mobile channel. The lower penetration for retail may reflect the continued importance of the point-of-

sale channel for retail cards and the fact that some retailers may not have card application functionality for their mobile app or offer a mobile app at all.[119]

TPC SITE APPLICATIONS

TPC sites continue to account for an increasing share of general purpose applications. Figure 6 reflects that by 2018, more than one in four consumer applications for mass market general purpose cards were routed from TPC sites.[120] Consumers with lower scores were more likely to apply via a TPC site than consumers with higher scores. One explanation may be that higher score consumers receive more card offers directly, whereas consumers with lower scores are forced to seek out credit when they need it. It is also possible that consumers with lower scores are more actively seeking, via TPC sites, information that would help them find a card for which they would have a better chance of approval.

Figure 6: SHARE OF CREDIT CARD APPLICATIONS SUBMITTED VIA TPC SITES, GENERAL PURPOSE (MMI)



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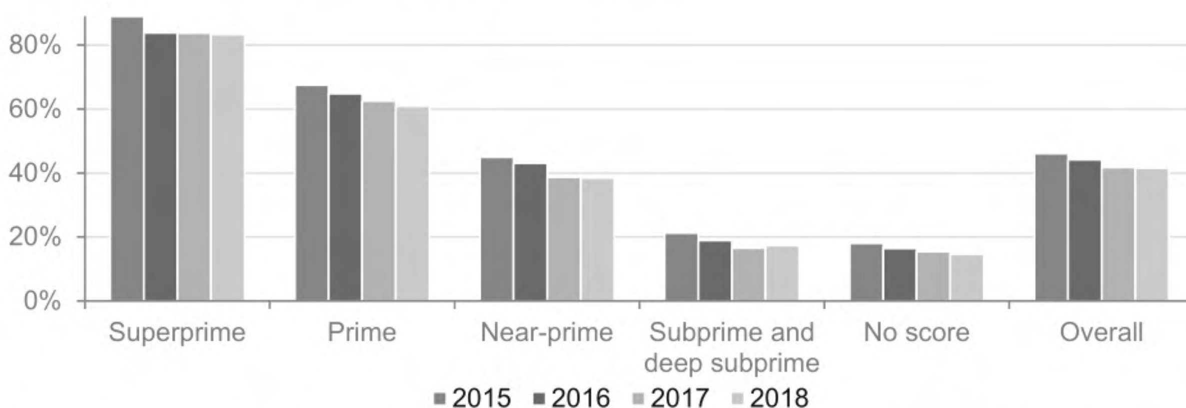
[119] Some merchants do have apps that allow for card applications from within the app, but this remains relatively rare at this point.

[120] An additional number of consumers review TPC sites before applying directly with the issuer. Those applications are not reflected in the TPC data above.

4.1.3 Approvals

Since 2015, approval rates on general purpose cards have declined.[121] As shown in Figure 7, this is true both overall and within every credit tier. For consumers with near-prime or higher credit scores, Figure 8 shows that approval rates are higher for retail cards than general purpose cards. For the lower credit tiers, however, general purpose applications have significantly higher approval rates. The same is true for applications from consumers without scores.

Figure 7: APPROVAL RATE, GENERAL PURPOSE (MMI)



For retail card applications submitted by consumers with superprime and prime scores, approval rates remained steady in 2017 and 2018. For consumers with superprime scores, for example, the approval rate for retail card applications was more than 90 percent, unchanged since 2015. For consumers with lower scores, however, retail approval rates declined slightly. Consumers with near-prime scores experienced the largest decline, dropping from 64 percent in 2016 to 58 percent in 2018.[122]

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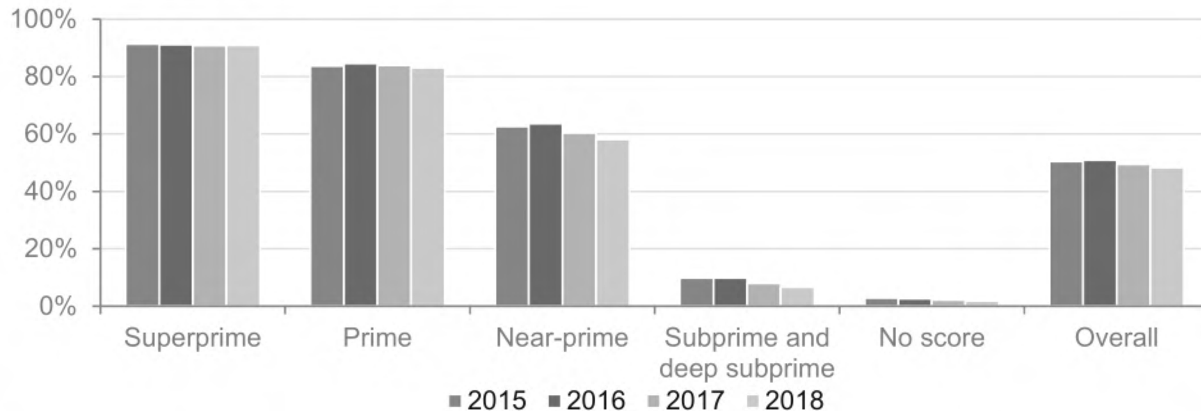
[121] This decline is consistent with the credit tightening reported by the Board. *See infra* footnote 113.

[122] This was in part the result of select retail card issuers tightening credit terms in the wake of elevated credit losses. The Wall Street Journal reported in late 2017 on surprising increases in delinquency at three issuers, including two "specializing in store-branded, private label cards." Aaron Beck, *A Surprise Bump in Bad Card Loans*, Wall St. J. (Sept. 20, 2017), *available at* https://www.wsj.com/articles/a-surprise-bump-in-bad-card-loans-1505899800?mod=article_inline.

Figure 8: APPROVAL RATE, RETAIL (MMI)



As shown in Figures 9 and 10, approval rates vary substantially by application channel. For general purpose card applicants in the higher credit tiers, the highest approval rates are for applications based on pre-screened solicitations. Mail and in-person channels also have high approval rates in these higher tiers, perhaps due to the prevalence of pre-screen offers in these channels. In the lower score tiers, mail becomes the highest approval rate channel for general purpose cards, while pre-screen becomes the highest approval rate channel for retail cards.

Interestingly, TPC site approval rates are the second highest for consumers with the lowest scores; even for near-prime applications, they have the highest approval rates of any digital channel. Applications from consumers with no score fare best when submitted in person, perhaps because of the risk of synthetic fraud in other channels.[123]

[123] Synthetic fraud is where someone illegally applies for a credit card using a "synthetic" identity constructed from pieces of legitimate consumer data, then uses that card to extract monetary value from credit card issuers. For more information, see Section 8.3.2.

Figure 9: APPROVAL RATE BY CHANNEL, GENERAL PURPOSE, 2018 (MMI)

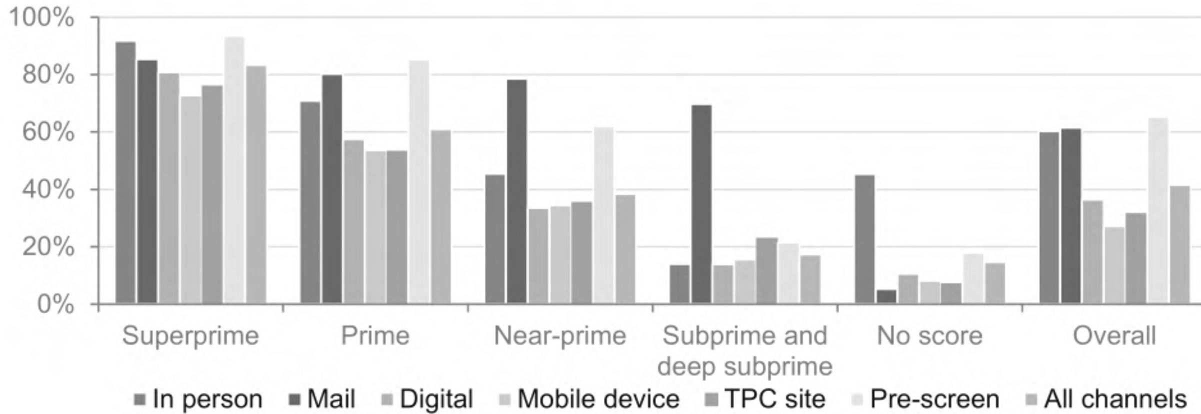
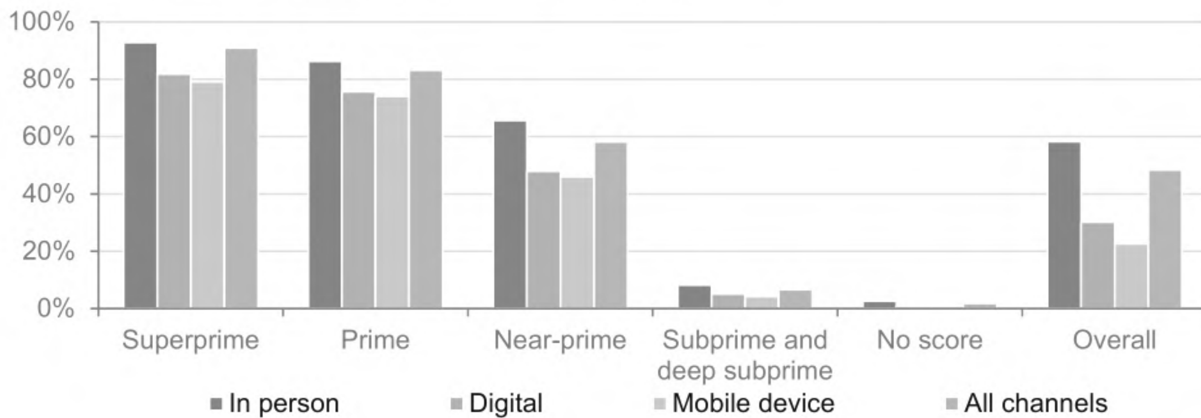


Figure 10: APPROVAL RATE BY CHANNEL, RETAIL, 2018 (MMI)[124]



MOBILE APPROVALS

As discussed above, mobile applications grew significantly for both general purpose and retail cards across all credit score tiers between 2015 and 2018. Approval rate trends associated with those applications are less uniform. As a comparison of Figures 11 and 12 shows, mobile approval rates for general purpose card applications submitted by consumers with superprime, prime and near-prime scores all decreased from 2015 to 2018. In the lower credit tiers, they

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[124] Retail card applications submitted in response to direct mail or pre-screened offers did not show sufficient volume to depict in this figure.

were steadier, and consumers with no score even saw marginal increases in each year from 2015 through 2018. On the retail side, by contrast, approval rates for applications submitted from a mobile device increased across this period for consumers in higher credit tiers and decreased for consumers in lower tiers. Overall, as Figures 9 and 10 reflect, mobile has the lowest approval rate of any channel for both card types, although it runs close to digital and sometimes TPC site approval rates for most credit tiers. Except in the subprime and deep subprime and no score tiers, mobile approval rates remain higher for retail than for general purpose card applications.

Figure 11: APPROVAL RATE FOR APPLICATIONS SUBMITTED VIA MOBILE DEVICES, GENERAL PURPOSE, 2018 (MMI)

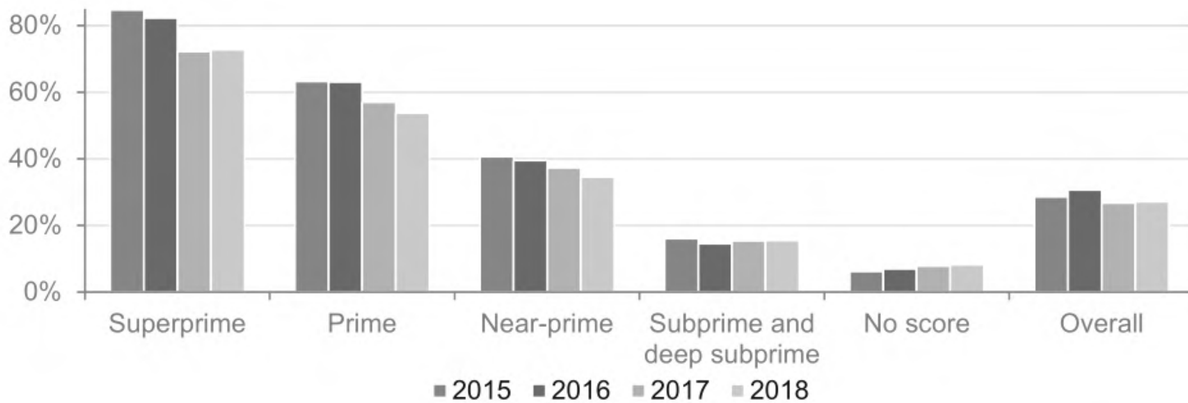
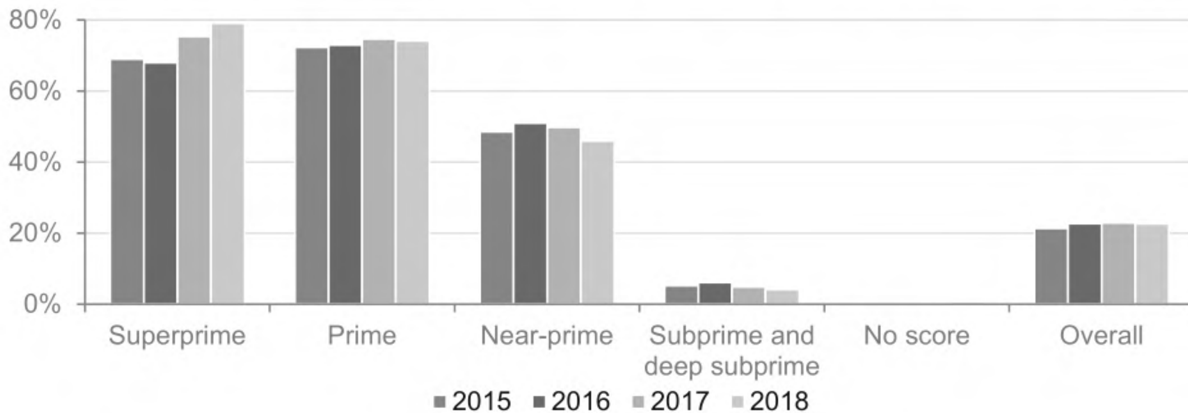


Figure 12: APPROVAL RATE FOR APPLICATIONS SUBMITTED VIA MOBILE DEVICES, RETAIL, 2018 (MMI)



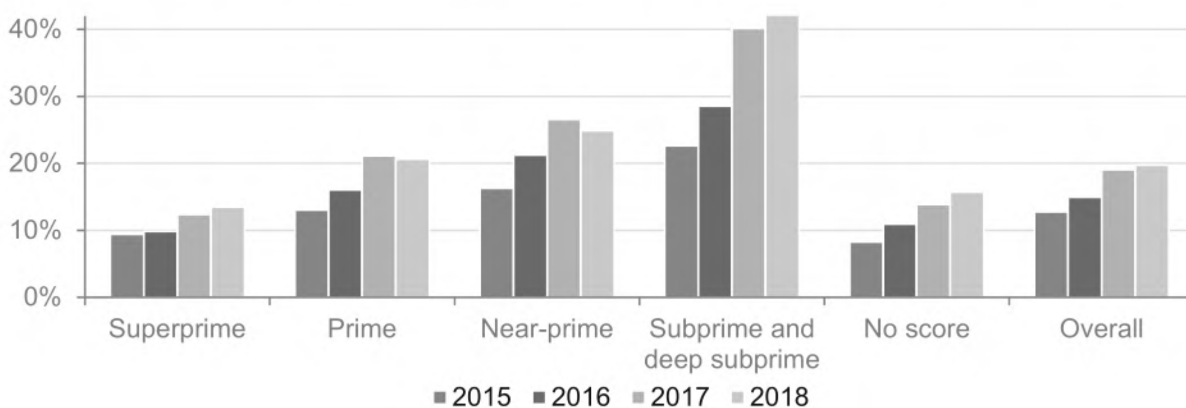
TPC SITE APPROVALS

Despite the relatively high level of TPC site channel approvals in lower tiers, the approval rate for TPC site channel approvals overall is 32 percent, which lags the general approval rate for all

applications by about 10 percent. One possible explanation may be the credit-seeking nature of the consumers who visit those sites. If TPC site innovations help consumers align more closely with cards for which they will qualify the approval rates for this channel may increase.

TPC sites directly facilitated more than 6 million mass market approvals in 2018, up 48 percent since 2015. In 2015, TPC sites were responsible for one in every eight approved applications for general purpose cards, but by 2018 that reached one in five. That approval share growth was particularly strong for the subprime and deep subprime combined credit tier; TPC sites facilitated over 40 percent of approved applications in that tier in 2017 and 2018.

Figure 13: SHARE OF CREDIT CARD APPROVALS FACILITATED BY TPC SITES, GENERAL PURPOSE (MMI)



4.1.4 Account origination

In 2018, consumers opened roughly 106 million new credit card accounts.[125] As Figure 14 shows, that is significantly lower for every credit tier than the highs seen before the recession. It is also somewhat lower than the post-recession high reached overall and by every credit tier in 2016. Only near-prime consumers have re-attained pre-recession levels of account origination, and then only in 2016. Originations remain well above levels seen during the recession for all credit

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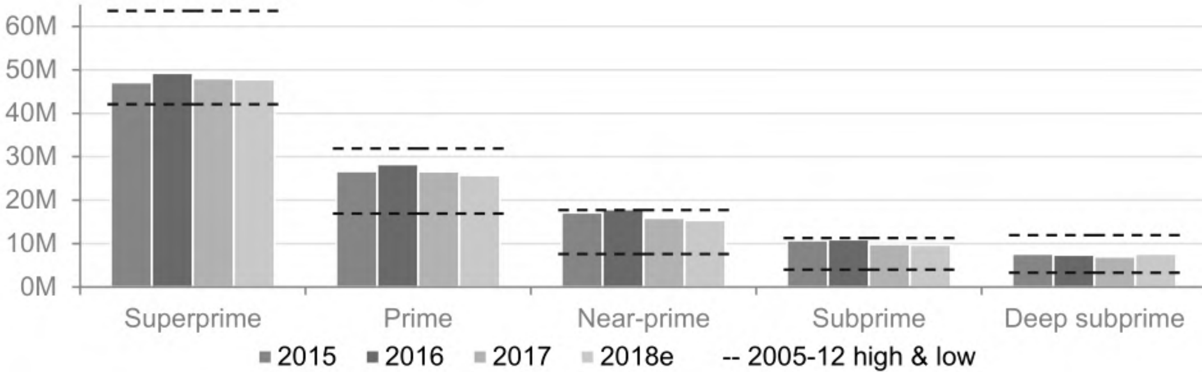
[125] The data source used in this subsection is the CCP, which offers a broader view of the market but does not allow the Bureau to identify all "retail" cards. As a result, this subsection uses "private label" as it does in other sections that reference the CCP. See Section 1.3 for more on the data sources used in this report.

tiers, however, consumers with superprime scores have stayed closer to their recession-era low than consumers in any other tier.

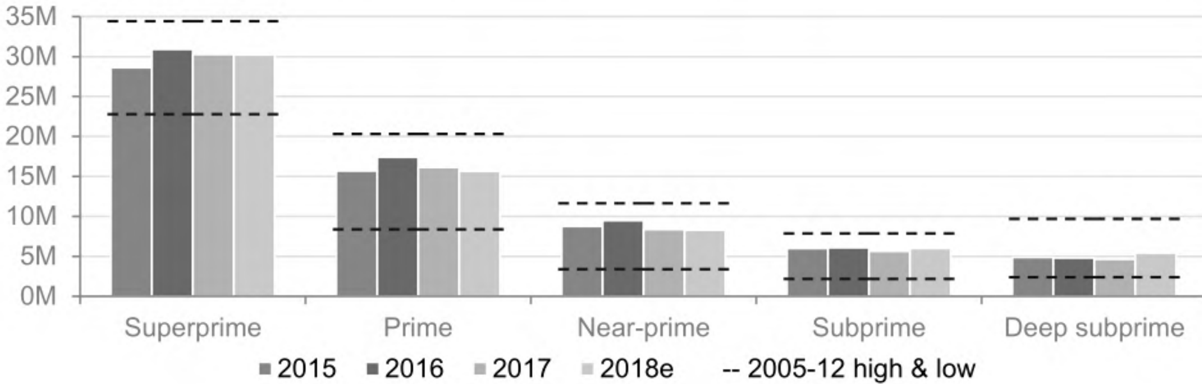
Figure 14: ANNUAL NEW ACCOUNT VOLUME (CCP)[126]



General purpose origination trends are very similar. Figure 15 shows the same slight decline in account growth since 2016 highs and most tiers show origination levels well above levels seen during the recession. Superprime consumers have moved closer to their pre-recession high level of general purpose origination than they have for originations overall. Conversely, consumers in the lower credit tiers have stayed closer to their recession low levels of general purpose origination than they have for originations overall. Roughly 65 million general purpose cards were opened in 2018. About 30 million were issued to consumers with superprime credit scores, 16 million to prime, eight million to near-prime, six million to subprime, and five million to consumers with deep subprime scores.

[126] The CCP, the data source used in this subsection, consists of credit records. Because new accounts may be reported to NCRAs with some delay, the data may not immediately reflect new accounts. As a result, an estimate is used for the final months of 2018, as denoted by the legend entry "2018e" where appropriate.

Figure 15: ANNUAL NEW ACCOUNT VOLUME, GENERAL PURPOSE (CCP)



Private label origination trends are quite different from the trends for general purpose cards and overall for all but prime cardholders. Figure 16 shows that, in lower credit tiers, originations exceed pre-recession levels, despite some fall-off since 2016. Originations to consumers with superprime scores remain below their recession levels.

Figure 16: ANNUAL NEW ACCOUNT VOLUME, PRIVATE LABEL (CCP)

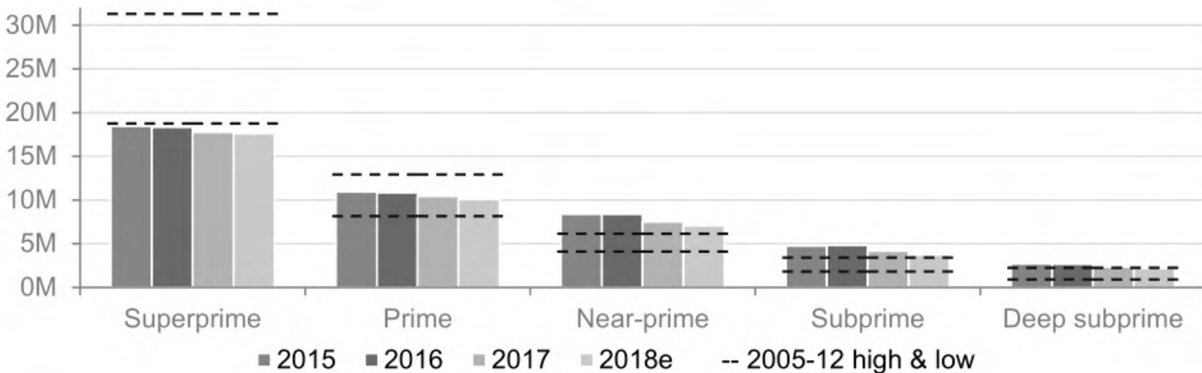
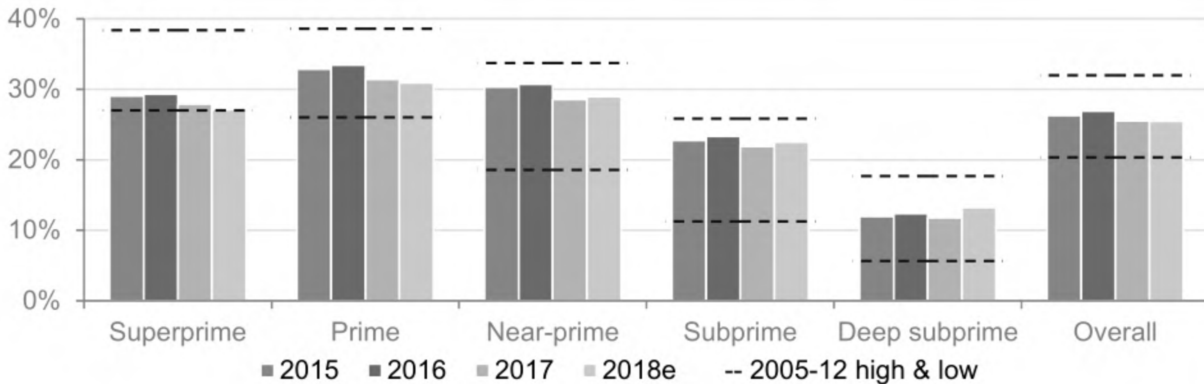


Figure 17 shows that the overall share of consumers originating cards annually has declined since 2016. In 2018, 25 percent of consumers in the CCP originated a credit card, compared to 27 percent in 2016. For superprime, this share is as low as recession levels. The share is highest for consumers with prime scores, followed by those with near-prime scores. Consumers with deep subprime scores originated at a substantially lower rate than other consumers with scores, but deep subprime is the only tier to see growth since 2016 in the share of consumers opening a new card in a given year.

Figure 17: ANNUAL SHARE OF CONSUMERS WITH A CREDIT RECORD ORIGINATING A CREDIT CARD (CCP)[127]

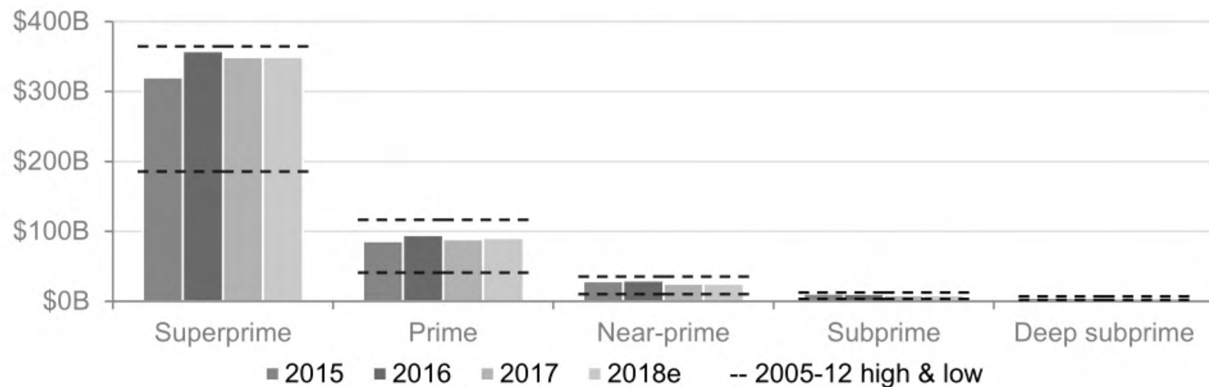


4.1.5 New account credit line

Total credit line on new accounts, both overall and within every credit tier, is down from its 2016 high point. After five years of growth from its recession low in 2010, total new line neared $500 billion in 2016, which was still below its 2007 high of $536 billion. It has since leveled off at roughly $475 billion in 2017 and 2018. Although all credit tiers have seen growth in new line since 2010, Figure 18 reflects that the total remains below pre-recession highs in all tiers.

[127] Methodology has been refined in this Report to better account for cardholders with a record but no score and become scored or cardholders that move between score tiers during the year. Results from the Bureau's 2017 Report stated that the share of subprime consumers originating a card exceeded superprime from 2014 to 2016, in a reversal of historic trends. Under the new methodology, the Bureau notes no such reversal.

Figure 18: ANNUAL INITIAL CREDIT LINE ORIGINATED (CCP)

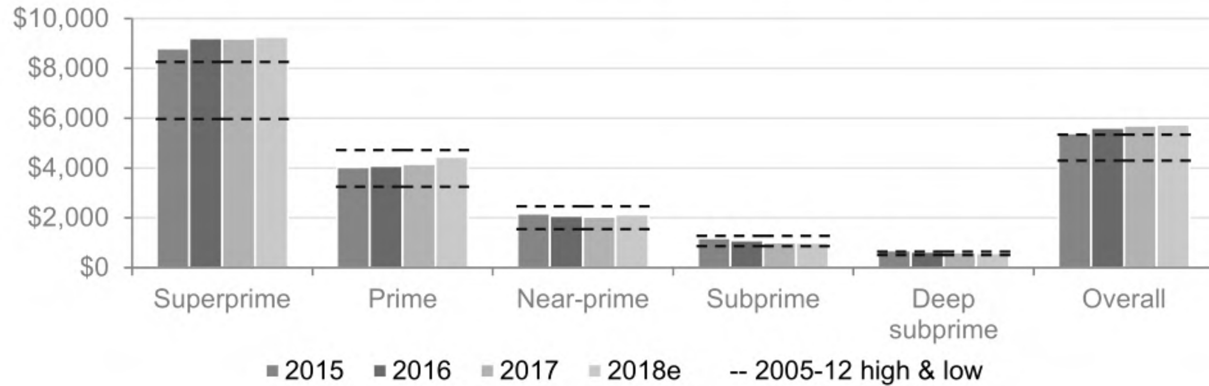


GENERAL PURPOSE

New general purpose account line represented just under four-fifths of all new line in 2018. Unsurprisingly, therefore, it shows similar trends to overall new line, hitting a post-recession high in 2016, then falling back marginally, both overall and across every credit tier. The majority of the growth in initial general purpose line since its low point during the recession has been in superprime accounts. Total new general purpose credit account line reached its highest level in 2016, surpassing its pre-recession high, but has since slipped back below that level. So far, superprime is the only tier to reach pre-recession levels of new line.

In overall terms, *average* credit line on new general purpose accounts has remained relatively steady over the last few years. That overall trend, however, masks a number of differences across credit tiers, as reflected in Figure 19. Consumers with subprime and deep subprime scores have seen average new line per general purpose account decline every year since 2015. The average new general purpose card issued to a deep subprime consumer had an initial line of $576 in 2018, down 17 percent since 2015. Consumers with prime and superprime scores have experienced the opposite trend. Initial line for prime cardholders, for example, was $4,440 in 2018, up 10 percent since 2015. Superprime consumers in 2018 had average initial general purpose lines above pre-recession levels. That has driven the overall average above pre-recession levels as well. Deep subprime is the only other tier to have reached pre-recession levels of average new general purpose line, a result that has not been sustained over the last two years.

Figure 19: AVERAGE CREDIT LINE ON NEW ACCOUNTS, GENERAL PURPOSE (CCP)

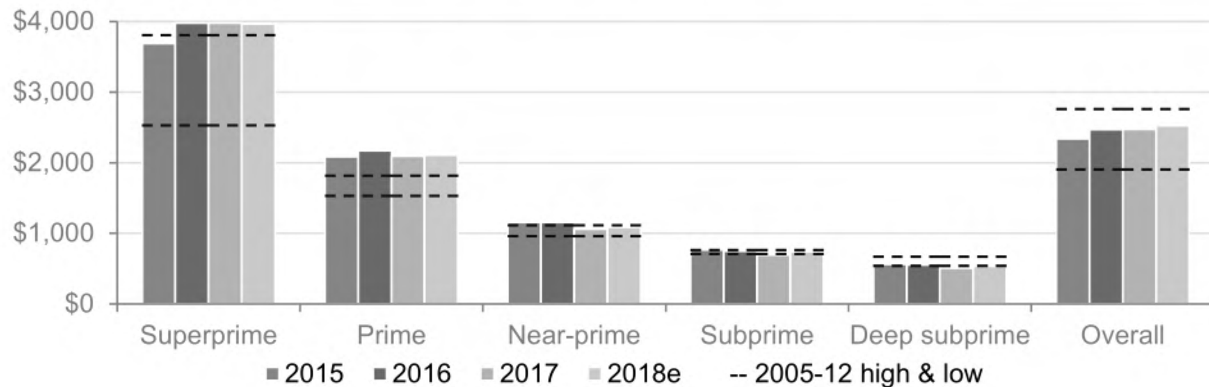


PRIVATE LABEL

Once again, private label accounts show a different picture. Their highest annual level of new line came in 2005, well before the recession. Their post-recession high came in 2016, but at a level significantly below that 2005 high. That difference was mostly the result of a decline in aggregate line issued to superprime cardholders. The prime, near-prime, and subprime tiers recovered pre-recession levels of aggregate line relatively rapidly after the recession, and remain above their pre-recession levels even after some fall-off in total line levels since 2016.

As Figure 20 shows, average new line on private label cards has continued to increase slightly and reached $2,525 in 2018. This increase reflects compositional change because average line in each credit tier has been flat or declining since 2016. In contrast to general purpose line averages, overall average for new private label line remained below pre-recession levels. Average line has been above pre-recession levels in both the subprime and prime tiers in 2017 and 2018.

Figure 20: AVERAGE CREDIT LINE ON NEW ACCOUNTS, PRIVATE LABEL (CCP)



4.2 Existing accounts

Total credit line across all consumer credit cards surpassed $4 trillion in 2017 for the first time since the onset of the recession. In 2018, it reached $4.3 trillion, which was almost equal to its pre-recession high. Despite this overall picture of increasing credit availability, most of that is accounted for by *unused* line on accounts held by consumers with superprime scores. There are indications that issuers are becoming more active in altering line allocations to control risk in lower credit tiers.[128] The present subsection examines this issue in more detail by looking at a range of account-level and cardholder-level metrics on existing accounts for each score tier and card type.

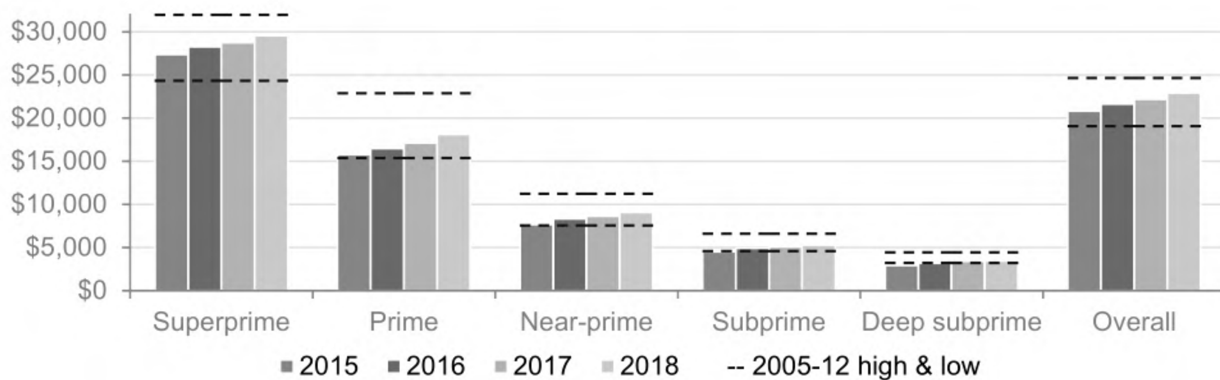
4.2.1 Average credit line

In 2018, after a series of steady increases, average general purpose credit line *per account* exceeded its pre-recession high to reach more than $8,200. These increases were almost entirely driven by increases on superprime accounts. Despite recent growth across all tiers, no other credit tier has an average line exceeding its pre-recession level. In fact, other credit tiers recorded average line lows in 2014 and 2015, and have only recently exceeded the levels reached

[128] Unused line on superprime accounts totaled more than $3 trillion in 2018. Almost all of that was on general purpose cards.

in the immediate aftermath of the recession. Average general purpose line *per cardholder* tells a broadly similar story of recent growth, but as Figure 21 shows, this metric remains below pre-recession high levels, both overall and for every credit tier.

Figure 21: AVERAGE CREDIT LINE PER CARDHOLDER, GENERAL PURPOSE (CCP)



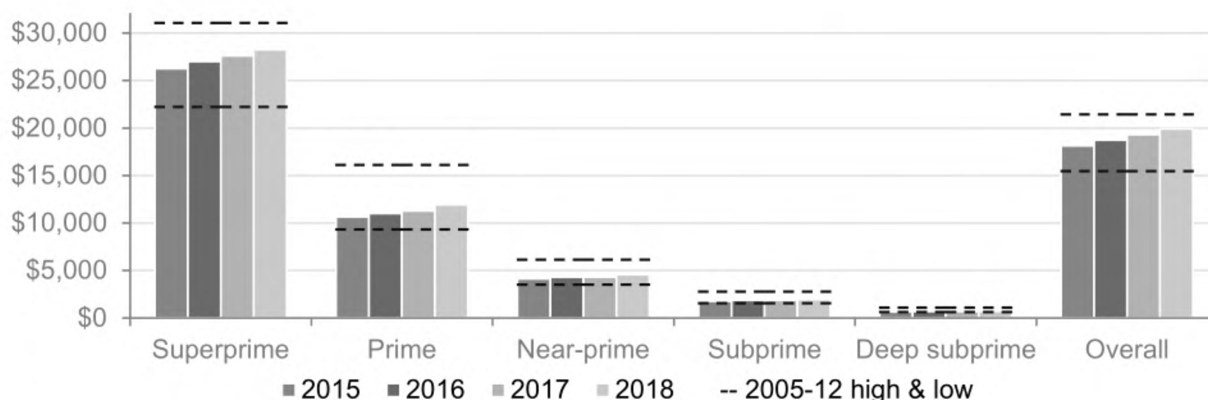
The private label picture is very different. At the account level, average line rebounded very quickly post-recession and as of 2018 significantly exceeds pre-recession levels both overall and for most credit tiers. The average private label card has one-third more line now than in 2008. Accounts held by consumers in lower credit tiers show slower growth over the same period, but no tier remains below its pre-recession high. At the cardholder level, growth has been more marked. Average private label line hit a post-recession low in 2011, but has since rebounded in every tier, and overall, by 59 percent or more.

4.2.2 Utilization

As average line per cardholder has increased, so has average *unused* line per cardholder. That is true for the market overall, as well as for general purpose and private label viewed separately. Superprime consumers account for almost all unused line. In 2018, the average cardholder with a superprime score had over $32,000 in credit line across both card types, but more than

$28,000 of that was unused.[129] Average unused line is significantly lower for other credit tiers, as Figure 22 reflects, but has been increasing in recent years. Since 2015, average unused line per cardholder has risen between 8 percent and 12 percent for cardholders in score tiers below superprime. Even so, it remains significantly below pre-recession high levels in every credit tier, and in the lowest two tiers it remains relatively close to post-recession lows.

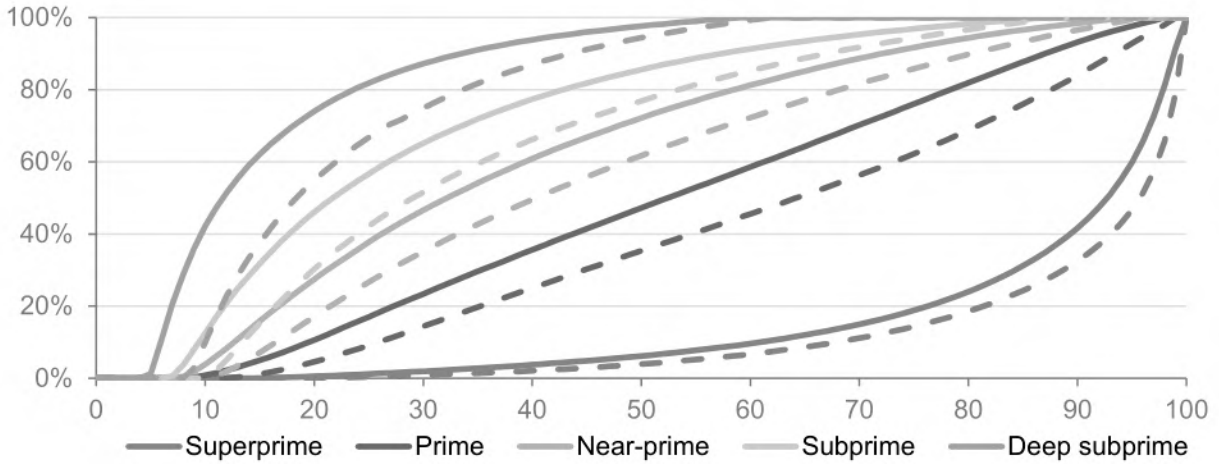
Figure 22: AVERAGE UNUSED CREDIT LINE PER CARDHOLDER (CCP)



Despite recent increases in average cardholder line and unused line, 2018 general purpose card utilization still looks very different from pre-recession utilization. Figure 23 shows the distribution of general purpose card utilization rates for cardholders in each credit tier in 2007 and in 2018. Utilization at the *cardholder* level is on the y-axis, and the share of cardholders in a given tier is shown on the x-axis. In every credit tier, utilization rates have increased. For example, median utilization was 47 percent for prime cardholders in 2018 but only 35 percent in 2007. In fact, 2018's near-prime utilization distribution is quite close to the distribution for subprime consumers in 2007. In terms of utilization alone, therefore, today's near-prime cardholders look more like pre-recession subprime cardholders.

[129] That low rate of usage is part of what contributes to a superprime score. The same balance held on lower line accounts issued to consumers with lower scores would result in a different utilization rate—and different credit score implications.

Figure 23: DISTRIBUTION OF UTILIZATION RATE BY CREDIT SCORE TIER IN 2007 (DASHED) AND 2018 (SOLID), GENERAL PURPOSE (CCP)



To explore utilization further, Figure 24 compares median general purpose cardholder utilization across all of their general purpose credit cards for the various credit tiers for 2007, 2010, and 2018, and Figure 24 shows increases in median cardholder utilization across tiers over time, especially for consumers in lower tiers. Median utilization rates are noticeably higher in 2018 than in 2010, immediately following the recession for consumers in all credit tiers except prime.

Figure 24: MEDIAN CARDHOLDER UTILIZATION BY CREDIT SCORE TIER, GENERAL PURPOSE (CCP)

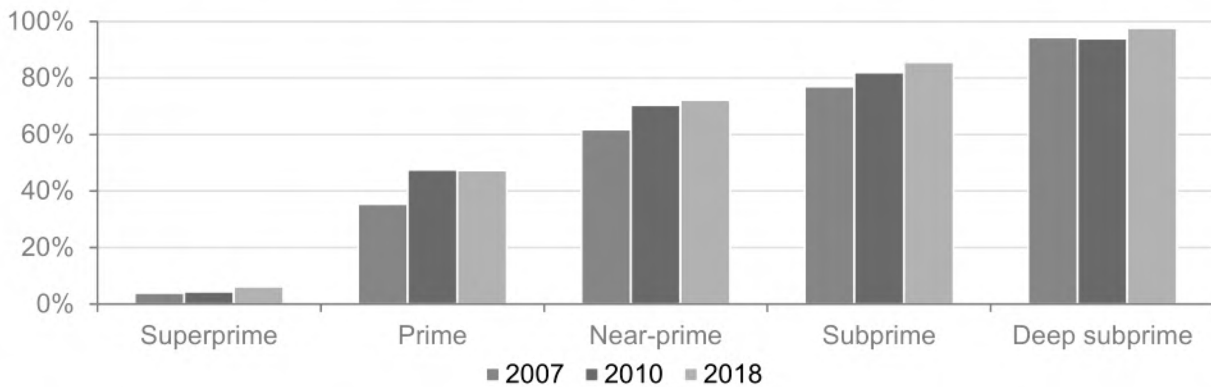
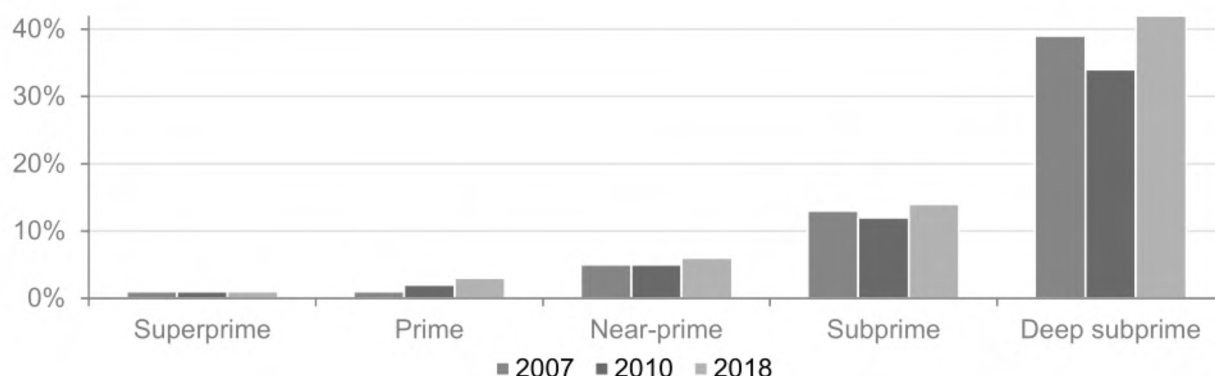


Figure 25 shows the share of consumers with 100 percent utilization across all general purpose credit cards for these same years. As shown, a higher proportion of cardholders were "maxed out" in the different credit tiers in 2018 than before or during the recession. About 42 percent of

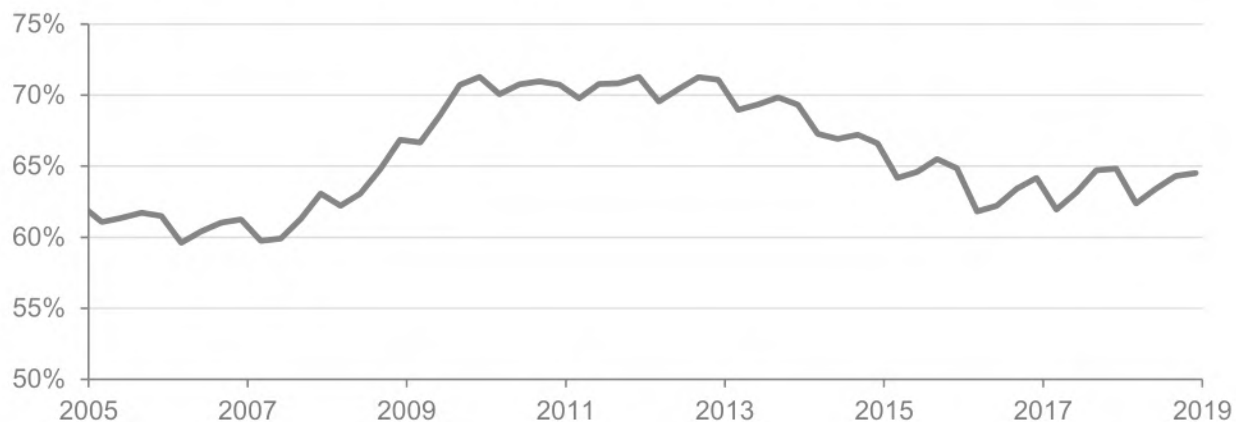
deep subprime consumers have reached 100 percent utilization. Cardholders in this situation will find it difficult to make credit card transactions.

Figure 25: SHARE OF CARDHOLDERS WITH 100 PERCENT UTILIZATION BY CREDIT SCORE TIER, GENERAL PURPOSE (CCP)



Finally, Figure 26 tracks the share of consumers with below-prime scores that have used 90 percent or more of their general purpose credit line. It shows a slight increase since 2016, reaching around 65 percent by the end of 2018. Even so, that remains below the levels in the wake of the recession. In fact, the share exceeded 70 percent from late 2009 through the end of 2012. Before the recession, however, this metric fell to as low as 60 percent in 2006. Rising balances suggest that the improvement in this metric from 2012 is the result of increases in credit line offered to cardholders with below-prime scores.

Figure 26: QUARTERLY SHARE OF BELOW-PRIME CARDHOLDERS WITH AT LEAST 90 PERCENT UTILIZATION ACROSS ALL CARDS, GENERAL PURPOSE (CCP)



4.2.3 Credit line changes

Credit lines on existing accounts are not static. Issuers can increase or decrease them without consumer consent. Credit line increases are somewhat restricted by the CARD Act's ability-to-pay requirements, but issuers confront a range of more substantial regulatory restrictions on repricing existing balances.[130] As a result, the Bureau's 2017 Report reviewed evidence that suggested that issuers might be using line management, in place of repricing balances, as a means of responding to revealed risk post-origination.[131] In that respect, the 2017 Report looked at metrics to assess whether issuers were extending smaller credit lines to borrowers at origination and then increasing those lines over time as borrowers demonstrated good payment behavior.[132]

As shown in Figure 27 and 28, quarterly CLI incidence in 2018 was around 4 percent for both card types. That is closer to a historic norm for private label but represents a significant drop from pre-recession levels for general purpose. CLDs spiked in the recession—very significantly for private label cards—but are now stable at under 1 percent for general purpose and around 2 percent for private label.[133]

For both general purpose and private label, average quarterly CLI incidence remains relatively high for consumers with prime, near-prime, and subprime scores. Recent declines in CLI incidence for these tiers are notable for private label, in particular, although for general purpose cards near-prime and subprime tiers have also seen some fall-off since 2016. With those recent

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[130] The ability-to-pay rules require that issuers consider an applicant's ability to pay the minimum monthly payment on an account prior to opening a credit card account under an open-end (not home-secured) consumer credit plan or increasing a credit line on such an account. 12 C.F.R. § 1026.51(a)(1)(i). *See also* 15 U.S.C. § 1665e (2012). Repricing of existing balance is only allowed under a set of relatively narrow circumstances. *See* 12 C.F.R. § 1026.55(b).

[131] In response to the Bureau's Request for Information, a commentator claimed that issuers have adopted a strategy of extending smaller initial credit lines which can rise over time as the borrower demonstrates good payment behavior. The comment noted that this practice allowed issuers to expand access to credit while managing risk. *See* American Bankers Association (ABA) Comment Letter, at 4.

[132] 2017 Report, *supra* note 5, at 158-162.

[133] *See id.* at 154.

changes, only subprime private label cardholders showed a CLI incidence that exceeds pre-recession levels in 2018.

Figure 27: AVERAGE QUARTERLY CREDIT LINE INCREASE INCIDENCE, GENERAL PURPOSE (CCP)

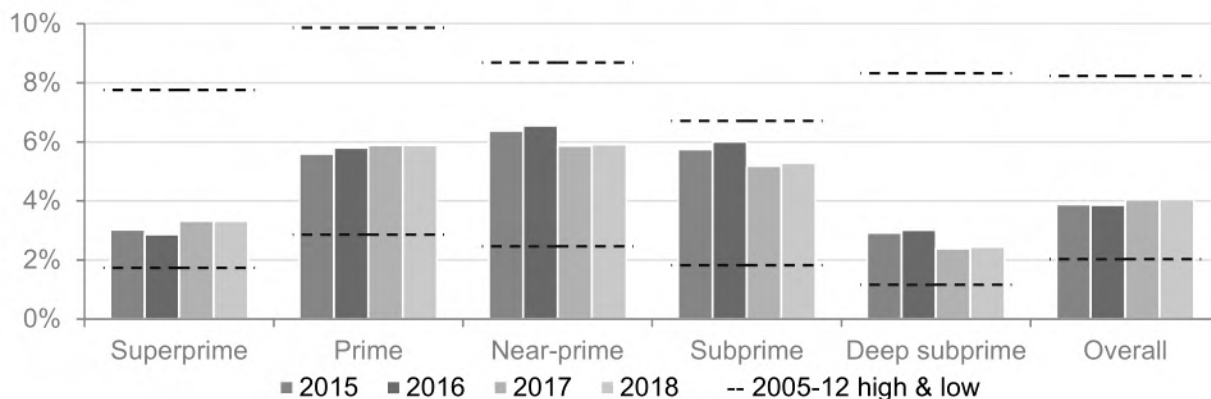
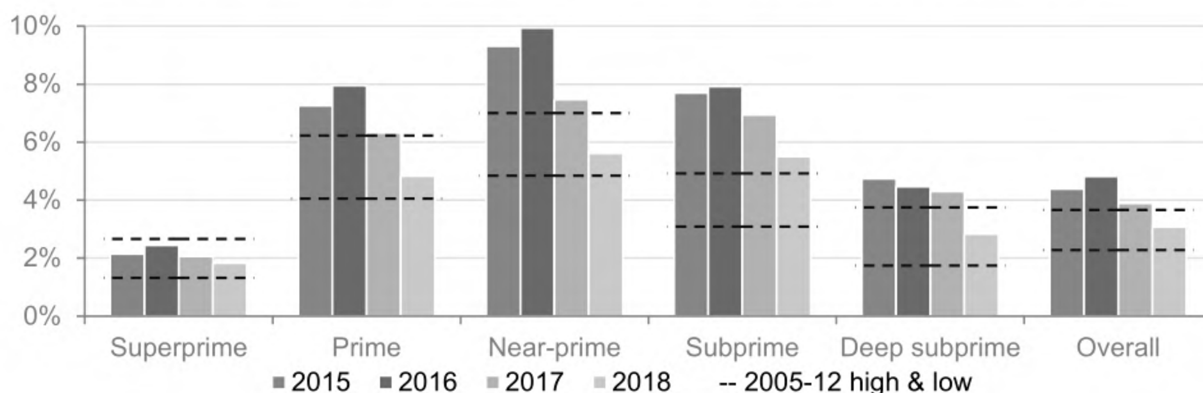


Figure 28: AVERAGE QUARTERLY CREDIT LINE INCREASE INCIDENCE, PRIVATE LABEL (CCP)



Recent trends in median credit line change amounts suggest that even as issuers may be using line changes more sparingly than in the pre-CARD Act era, the size of median CLIs have been increasing in recent years and in 2018 exceeded pre-recession highs overall and for the superprime tier. Figure 29 shows that for general purpose accounts, this increase resulted from greater median increases for cardholders with higher scores, although median CLIs for prime cardholders are now at $1,500, the same median size achieved before the recession. Consumers with lower scores actually saw a drop in median CLI over the last few years. In fact, in the lowest-score tiers, the median fell to the lows reached in 2010. This suggests general purpose

card issuers may be reluctant to extend additional credit line to cardholders with lower scores in the current economic environment.

Figure 29: MEDIAN CREDIT LINE INCREASE AMOUNT, GENERAL PURPOSE (CCP)

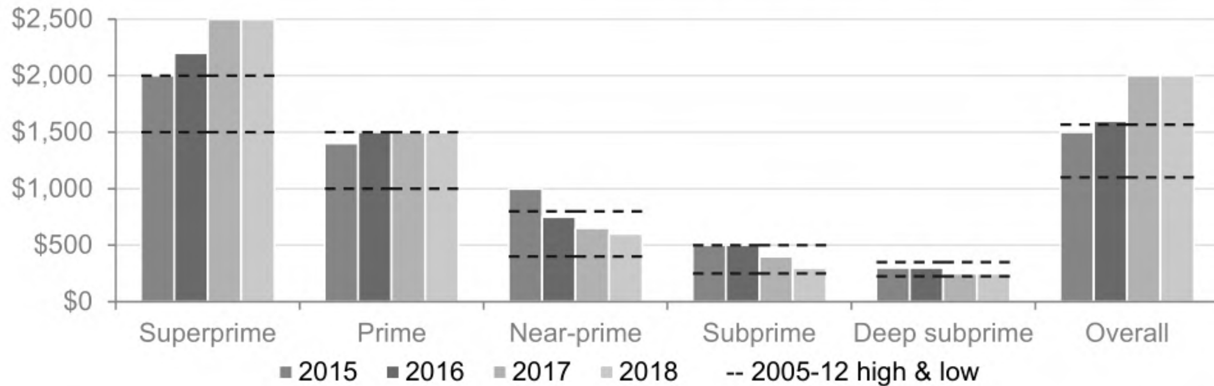


Figure 30 shows median CLI amounts have increased for private label cards, despite the lower incidence of CLIs in this period. Again, this masks tier differences. Superprime consumers were the only tier to show any significant increase in median CLI between 2017 and 2018. Median CLI amounts remained flat or fell slightly in other tiers. In every tier, however, the median CLI amount remains at or above pre-recession highs. Along with higher lines on new private label accounts, larger CLIs have contributed to the strong rebound in credit availability for private label cardholders of all credit score tiers.[134]

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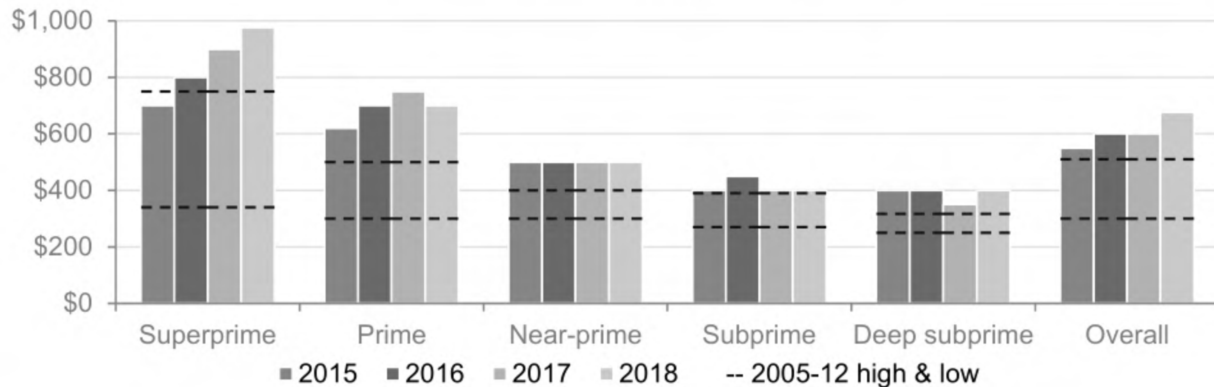
[134] *See* Section 4.2.1.

Figure 30: MEDIAN CREDIT LINE INCREASE AMOUNT, PRIVATE LABEL (CCP)



The CLD record is more uniform and stable, with the notable exception that CLD incidence has increased markedly for lower credit tiers in private label.[135] By 2018, CLD incidence for deep subprime private label accounts was more than 9 percent, the highest level recorded since the 2005 start of the data period used in this report, and significantly higher than the less than 2 percent recorded for deep subprime general purpose accounts. Subprime private label accounts have also seen run-ups in CLD incidence in the last few years and in 2018 had an incidence rate of around 5 percent, as compared to less than 2 percent for general purpose accounts. Similarly, CLI incidence for private label accounts has fallen for cardholders in all tiers, but particularly for cardholders in below-superprime tiers. This evidence suggests that private label card issuers may be reacting to heightened risk in those portfolios by limiting their exposure.

[135] Graphical depictions of CLD trends by tier are in Appendix A at Figures 4 through 7.

5. Practices of credit card issuers

This section describes trends and developments in issuer practices related to three common credit card features: credit card rewards, balance transfers, and cash advances. For each feature, it discusses its take-up or prevalence in the market, costs associated with providing or utilizing the feature, and any changes issuers or third parties have made in provisioning or supporting consumers who choose to use them.

5.1 Rewards

Credit cards offering points, miles, cash back, or exclusive experiences remain popular with cardholders. This section reviews recent rewards trends.

5.1.1 Prevalence

The share of credit card spending accounted for by rewards cards has continued to increase over the last few years. That is true both overall and for each of the main credit tiers, with growth particularly notable for consumers with lower credit scores. By the end of 2018, even consumers with deep subprime scores put more than one-half of their credit card purchase volume on rewards cards, and consumers with near-prime scores put more than two-thirds of their spending on rewards cards.[136] Trends in reward-card purchase volume as a share of total spending are shown in Figure 1.

[136] In an interesting survey result, J.D. Power reported in 2018 that consumers who self-report as "fully understanding how to earn and redeem points" have an average spend that is nearly one-third higher than the average spend of consumers who self-report as not fully understanding their rewards programs. *See* J.D. Power Satisfaction Study, *supra* note 1 (reporting that overall about 64 percent of credit cardholders say that they fully understand the rewards available to them).

While rewards cards continue to account for a larger share of spending, their share of originations is falling. Figure 2 shows the share of originations accounted for by rewards cards over the last few years. For all credit score tiers and overall, that share declined in 2018. In fact, by the end of 2018, rewards originations for every credit tier were below their share of total originations at the end of 2015, in some cases quite markedly so. As explored in the next subsection, the popularity of rewards and other factors have driven rewards costs higher. The resulting cost pressure, rather than any loss of demand, may account for the results in Figure 2.

Figure 1: SHARE OF PURCHASE VOLUME ON A REWARDS CARD, GENERAL PURPOSE (Y-14+)

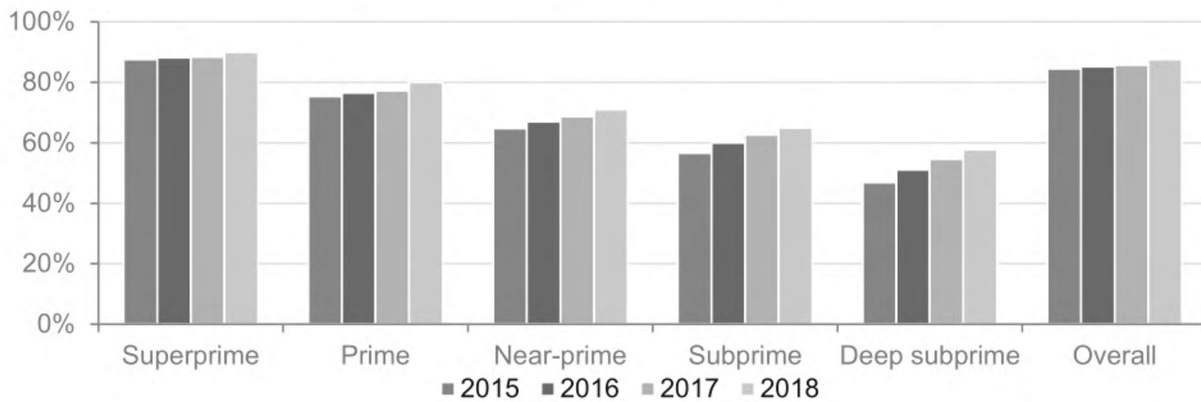
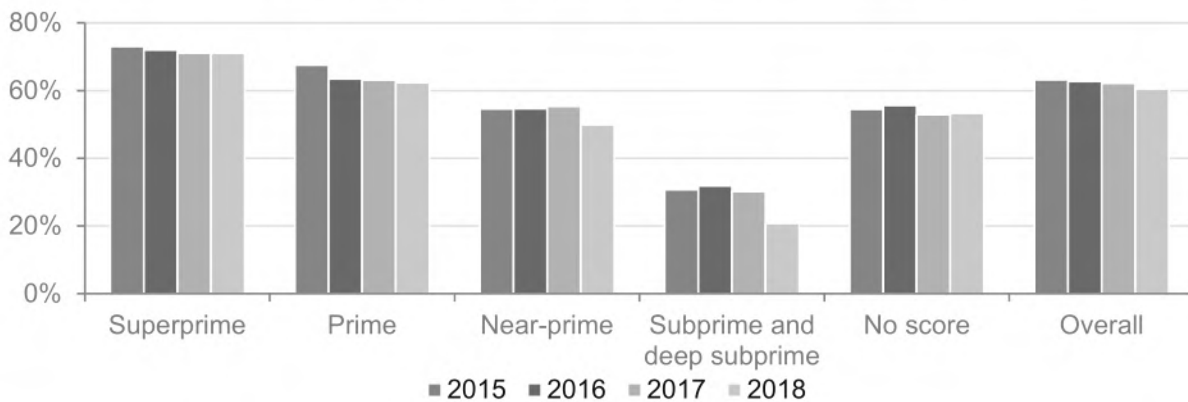


Figure 2: SHARE OF NEW ACCOUNTS WITH REWARDS, GENERAL PURPOSE (Y-14)



Given the predominance of cards at the higher end of the credit spectrum, rewards cards still account for over 60 percent of all originations. That result roughly aligns with survey findings

that show rewards as the predominant factor in choosing a card.[137] Despite a relatively low share of new accounts with rewards for general purpose cardholders with subprime and deep subprime scores, these cardholders still put more than one-half of their credit card spending on rewards cards, as shown in Figure 1.

Cardholders continue to prefer cash rewards, despite the sometimes-higher redemption value of other types of rewards like points or miles, possibly due to the simplicity and flexibility of cash rewards programs.[138] More than one-quarter of all originations in the Y-14 sample for 2018 were for cashback rewards cards. Although the share of originations accounted for by these cards has declined slightly over the last few years, no other rewards category accounted for a larger share of originations. Cards that earned miles continued to account for less than 10 percent of all originations in 2018.

5.1.2 Cost

The cost of offering rewards has risen over the past several years as issuers compete for cardholders with richer rewards offers—and cardholders take greater advantage of the rewards that are offered. Since the first quarter of 2015, the data available to the Bureau show a roughly 84 percent increase in overall rewards expense.[139] Given the increase in the overall number of

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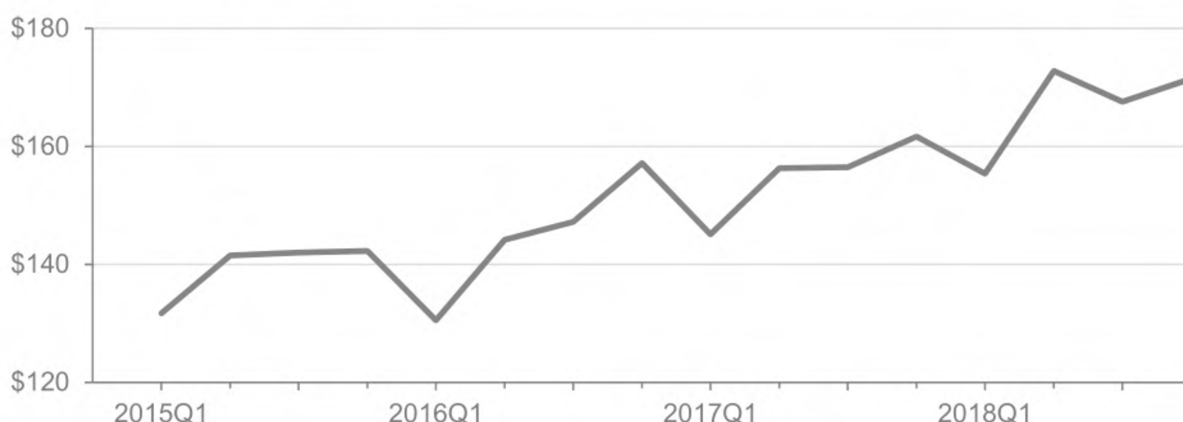
[137] One recent survey reported that "[r]ewards continue to be the number one factor for why consumers use one credit card over another. This was true again this year, with 79 percent claiming it influenced their choice…" TSYS, *2018 TSYS U.S. Consumer Payment Study*, at 23 (Apr. 2019), http://tsys.com/Assets/TSYS/downloads/rs_2018-us-consumer-payment-study.pdf. Similarly, J.D. Power's 2018 survey found that 47 percent of credit card customers who switched to a new card within the past 12 months did so for a better rewards program. *See* J.D. Power Satisfaction Study, *supra* note 1. In its 2013 Report, the Bureau references a 2011 Mercator Customer Monitor Survey showing rewards were the number one reason to apply for a selected card at that time as well. 2013 Report, *supra* note 5, at 82 n.94.

[138] *See* Claire Tsosie, *Cash Back vs. Travel: How to Choose Credit Card Rewards*, Nerdwallet: Blog (Nov. 3, 2017), *available at* https://www.nerdwallet.com/blog/credit-cards/cash-back-vs-travel-how-to-choose-your-credit-card-rewards/.

[139] "Rewards expense" refers to "Total Non-Interest Expense – Rewards/Rebates Expense," defined as "rewards/rebates expenses associated with reward and rebate programs for credit cards." Fed. Reserve System,

rewards accounts across the same period, the average rewards expense per account has not risen as fast, but it has still seen significant increase. In 2018, each rewards card cost issuers an average of $167 in rewards-related expense, up from $139 in 2015. This increase has been driven, in part, by an increased prevalence of high-cost high-rewards cards—with high sign-on bonuses—in the affluent market segment.[140] Intense rewards cards competition has pushed up not only expenses but issuers' reserved liabilities for rewards benefits accrued but not redeemed by cardholders.[141]

Figure 3: AVERAGE ISSUER REWARDS EXPENSE PER REWARDS ACCOUNT PER YEAR, GENERAL PURPOSE (Y-14,Y-14P)



One way issuers have sought to reduce costs on rewards products is by reducing the redemption value, placing restrictions on rewards earning, or eliminating ancillary benefits. Issuers have also sought to restructure rewards programs in ways that may reduce the value of the cards to some users, such as lowering sign-on bonuses or limiting eligibility for bonuses to some

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Instructions for the Capital Assessments and Stress Testing Information Collection, at 201-02, https://www.federalreserve.gov/reportforms/forms/FR_Y-14M20180331_f.zip (last modified Mar. 20, 2018).

[140] *See, e.g.*, Andriotis & Glazer, *supra* note 92.

[141] "As of the third quarter, JPMorgan's credit-card holders had accrued $5.8 billion in rewards they had not yet redeemed, up 53% from the end of 2016, according to securities filings." *Id.* The Bureau is unable to assess whether this trend is similar for other issuers because most issuers do not specifically report credit card rewards liability and instead include the figure in accounts payable and other liabilities on the balance sheet.

customers.[142] Some issuers are increasing the number of points or miles required to purchase items since there are currently no regulations specifically governing the devaluation or annulment of non-cash rewards such as points or miles.[143] In fact, credit card agreements may include a clause that explicitly allows them to do so.[144] Issuers with higher rewards earn rates often limit their exposure by placing restrictions on rewards earning in some categories, such as limiting high rewards rates to the first $1,500 of spend in a specific merchant category in a given quarter or requiring the cardholder take the extra step of going online to "activate" the higher rate every quarter.[145] While an indirect cost to issuers, it is also notable that some non-rewards benefits are also being reduced.[146] Some examples of the sorts of benefits that select card issuers

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[142] *See* Andriotis & Glazer, *supra* note 92. *See also* Nick Ewen, *The Ultimate Guide to Credit Card Application Restrictions*, thepointsguy.com (June 26, 2018), *available at* https://thepointsguy.com/guide/credit-card-application-restrictions/.

[143] *See, e.g.*, Jacob Passy, *Capital One Quietly Changed Some of its Credit-Card Rewards — Why You Should Care*, MarketWatch (Apr. 13, 2019), *available at* https://www.marketwatch.com/story/capital-one-quietly-changed-the-rewards-program-for-some-of-its-popular-credit-cards-why-all-consumers-should-pay-attention-2019-04-09. For rewards programs with a merchant partner (such as an airline), the merchant partner often controls the redemption value. *See, e.g.*, Spencer Howard, *Chase Hit Hard by United Devaluation, Needs to Step Up Its Game*, godsavethepoints.com (Apr. 8, 2019), *available at* https://www.godsavethepoints.com/2019/04/08/chase-hurt-by-united-devaluation/.

[144] Several agreements reviewed had such clauses. *See, e.g.*, Citigroup Inc., *Card Agreement Guide*, https://www.citicards.com/cards/wv/pdf/CMA_PID410.pdf; American Express Nat'l Bank, *Blue Cash Everyday Card Cardmember Agreement*, https://www.americanexpress.com/content/dam/amex/us/staticassets/pdf/cardmember-agreements/blue-cash-everyday/Blue_Cash_Everyday_03-31-2019.pdf; Wells Fargo, *Summary of the Go Far Rewards Program Terms and Conditions and Addendum*, and https://www.wellsfargo.com/credit-cards/rewards/terms#rewardssummary.

[145] *See, e.g.*, Chase Bank, *Here's Your 5% Cash Back Calendar*, https://creditcards.chase.com/freedom-credit-cards/calendar (last visited July 15, 2019); Discover Bank, *The New 5% Calendar is Here*, https://www.discover.com/credit-cards/cashback-bonus/cashback-calendar.html (last visited July 15, 2019).

[146] "Profitability and managing costs remain top of mind, with some issuers considering changes in card benefits. For example, Chase and Citi, among others, are removing or decreasing price protection, while Discover will no longer offer extended product warranty, return guarantee, purchase protection, auto rental insurance, and flight accident insurance." J.D. Power Studies, *U.S. Credit Card Satisfaction Study—Executive Briefing*, J.D. Power (Aug. 14, 2018).

or card networks have stopped providing include: purchase protection, return protection, auto rental insurance, or lost baggage protection.[147]

There are also signs that issuers are working to increase their fee revenue from rewards products. Since 2015, nearly one in four new rewards cards has carried an annual fee, compared to 16 percent on existing rewards cards in 2015. As new cards have been issued, the share of rewards cards with an annual fee has grown to 18 percent in 2018. Rewards cards typically carry significantly higher annual fees than non-rewards cards. In part, increased demand from cardholders for high-annual-fee rewards cards with high benefits is driving the increased fee revenues for rewards cards. However, at least two issuers did increase the annual fee on some cards for both new and existing cardholders.[148] The Bureau has not detected an analogous effort to raise interest rate revenue from rewards products.

5.1.3 Digital developments

The easy availability of digital tools to consumers is affecting rewards use, just as it has affected other aspects of the card market.[149] Issuers are offering digital tools to make the use of rewards easier and to make the process of earning and redeeming rewards more transparent. For example, some online tools offer potential cardholders the ability to determine whether they

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[147] *See, e.g.*, Herb Weisbaum, *Major Credit Card Companies are Cutting Their Perks. Here's What You Need to Know*, NBC News (June 18, 2018), *available at* https://www.nbcnews.com/better/business/major-credit-card-companies-are-cutting-their-perks-here-s-ncna884406. In most cases, an issuer reducing card benefits sends cardholders an updated "Guide to Benefits" that indicates what changes are being made to their card. Under current Regulation Z, cardholders do not have the right to reject changes in ancillary benefits in the same way they are able for changes to other credit card terms. For more information on circumstances in which the consumer does have the right to reject changes, see 12 C.F.R. 1026.9(c)(2)(iv)(B).

[148] *See, e.g.*, Sara Rathner, *Citi Prestige Updates to Include Elevated Rewards, Higher Fee*, Nerdwallet: Blog (Mar. 8, 2019), *available at* https://www.nerdwallet.com/blog/credit-cards/citi-prestige-elevated-rewards-higher-annual-fee/; Maria Lamagna, *Yielding to Critics, American Express Boosts its Sign-Up Bonus for the Platinum Card*, Marketwatch (Apr. 1, 2017), *available at* https://www.marketwatch.com/story/is-the-new-american-express-platinum-card-worth-it-2017-03-03.

[149] For other impacts from digital developments, see Section 8 and Section 4.1.

would qualify for a sign-up bonus *before* applying.[150] Other new digital tools let cardholders monitor their progress toward meeting minimum spending thresholds to receive the sign-up bonus.[151] Additional online tools let cardholders track how much they are earning in rewards across various accounts.[152]

Third parties are also working to deliver digital information about efficient reward use to consumers. For example, one TPC site offers a mobile app that guides cardholders to pay with the credit card in the user's digital wallet that offers the most rewards points, minimizes interest charges, or maximizes cash flow.[153] Another mobile app operates similarly, while also offering a summary of card rewards and benefits.[154] The same dynamic applies for ancillary benefits as well. In fact, one reason some issuers are reducing benefits may be the emergence of apps that enable consumers to take more advantage of such benefits, causing a spike in usage and

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[150] *See, e.g.*, JT Genter, *American Express Launches New Welcome Bonus Qualification Tool*, The Points Guy, (June 13, 2018), *available at* https://thepointsguy.com/news/amex-new-welcome-bonus-qualification-tool/. Many new cardholders apply for cards on the basis of a sign-up incentive that offers a bonus amount of points for meeting some minimum spending threshold in the first few months of use. In recent years, as the costs associated with introductory reward offers have increased, issuers have also restricted eligibility requirements for these offers. For example, an issuer may only permit a consumer to earn one intro bonus per card for the life of the consumer.

[151] *See, e.g.*, Katherine Fan, *New Chase Tool Shows Your Sign-Up Bonus Spending Progress*, The Points Guy (Mar. 20, 2019), *available at* https://thepointsguy.com/news/chase-sign-up-bonus-spend-tracker/.

[152] *See, e.g.*, Press Release, Bank of America, *Bank of America Introduces My Rewards* (Sept. 27, 2018), *available at* https://newsroom.bankofamerica.com/press-releases/consumer-banking/bank-america-introduces-my-rewards.

[153] *See* creditcards.com, *Wallet—Pay with the Right Card Every Time. Maximize Your Rewards When You Shop*, https://www.creditcards.com/mobile/wallet/ (last visited July 15, 2019).

[154] Abhinav Dubey, *How We Unlock Automatic Rebates from Price Drops and Other Hidden Credit Card Benefits*, (May 31, 2017), Sift: Blog Sift, https://www.siftwallet.com/blog/2017/03/12/this-is-sift/.

therefore also the cost to issuers of providing them.[155] At least one mobile app lets cardholders take greater advantage of price protection benefits without requiring action by the cardholder.[156]

Digital technology also holds the potential of improving cardholder understanding of rewards programs. J.D. Power has tracked rewards understanding over its last few surveys, and reports that 36 percent of consumers self-report as not fully understanding their rewards products.[157] Another study by TPC site NerdWallet found that almost one-half of U.S. consumers overestimate how much their points, miles and sign-up bonuses are worth.[158] However, in its 2017 Report, J.D. Power noted that "customers who embrace technology and use both their issuer's website and mobile offerings have a greater understanding of their card terms, benefits, and rewards."[159]

5.2 Balance transfers

Balance transfers enable the consumer, in return for an upfront fee, to pay off debt at a lower interest rate for a fixed period. Some credit cards offer introductory rate balance transfers to incentivize consumers to apply for the card and, if successful, shift existing balances from other cards onto the new one in exchange for potentially lower costs. In addition to transfers of debt from another credit card, most balance transfer offers allow consumers to pay off debt related to

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[155] *See* Jessica Puckett, *Explosion in Claims Force Changes to Credit Card Price Protection Policies*, The Points Guy (May 25, 2018), *available at* https://thepointsguy.com/news/higher-claims-force-price-protection-changes/.

[156] Earny, *Get Money Back After Your Purchases Drop in Price*, https://www.earny.co/home (last visited May 31, 2019).

[157] J.D. Power Studies, *U.S. Credit Card Satisfaction Study—Executive Briefing*, J.D. Power (Aug. 14, 2018).

[158] Erin El Issa, *NerdWallet's 2019 Travel Credit Card Study*, Nerdwallet: Blog (Apr. 10, 2019), *available at* https://www.nerdwallet.com/blog/credit-card-data/travel-credit-cards-study/.

[159] Jim Miller, *Analyst Briefing – 2017 Credit Card Satisfaction Study*, J.D. Power (Aug. 2017).

other loans and bills.[160] Upon conclusion of the promotional period, if the consumer does not execute another balance transfer or take steps to repay the balance at the lower rate, the remainder of the balance becomes subject to the higher credit card "go to" interest rates.

5.2.1 Prevalence

In 2018, total balance transfer volume of $54 billion accounted for around 9 percent of credit card balances in the Y-14+ data. It rose roughly 38 percent from 2015 to 2018, significantly outpacing 21 percent growth in balances overall and modestly outpacing 34 percent growth in purchase volume.

Balance transfer volume and its growth remain almost entirely concentrated in the superprime and prime segments. As a percentage of total balance transfer volume in 2018, superprime and prime cardholders made up 72 percent and 25 percent respectively. Their collective share has not changed significantly over the past four years, with consumers in lower credit tiers receiving very few balance transfer offers. But 2018 was the first year since at least 2015 that saw a decline in total balance transfer volume for either superprime or prime segments, with prime consumers seeing a 1.7 percent drop in balance transfer volume from 2017.

That same drop shows up in the average incidence of balance transfers, with prime accounts' decline in incidence from 2017 to 2018 the largest change in incidence for any tier over the last few years. In fact, incidence has remained flat for most tiers in this period. Overall, for each quarter of 2018, an average of 1.6 percent of open accounts held by consumers with prime scores, and 1 percent of accounts held by consumers with superprime scores, took out a balance transfer. Balance transfer incidence across credit tiers is shown in Figure 4.

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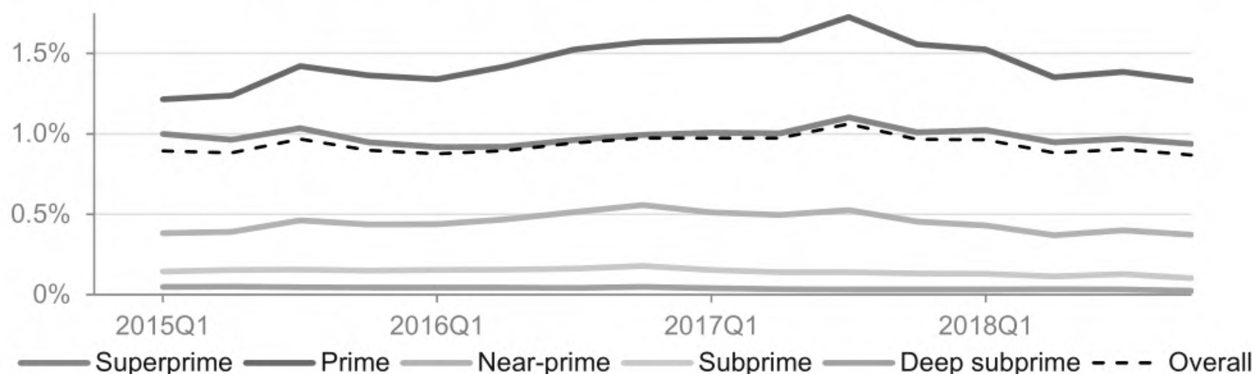
[160] Many transactions effectuated using a "convenience check" may also be treated as balance transfers by issuers. However, not all such transactions are so treated; depending on how it is used, some may be treated similarly to cash advances. The Bureau therefore excludes convenience check transactions from this analysis (and from its analysis of cash advances in Section 5.3), acknowledging that this likely excludes at least some volume that may be identical or near-identical from the consumer perspective.

Figure 4: QUARTERLY BALANCE TRANSFER INCIDENCE, GENERAL PURPOSE (Y-14+)



In contrast to average balance transfer incidence, the average size of balance transfers has risen markedly. Balance transfers for prime cardholders rose from an average $3,656 in 2015 to $4,136, a 13 percent increase. Near-prime cardholder balance transfers increased about 23 percent to $2,845 over the same period. Superprime consumers had the largest average balance transfer size in 2018 at $5,453, representing 8 percent growth since 2015.

5.2.2 Cost

Balance transfers generally charge an initial fee, followed by a low interest rate on the transferred balance for a set period of time or until the balance is repaid. There may also be a cost associated with the loss of a grace period, which can cause an increase in interest charges on other purchases.[161] Measured as a percentage of the amount that cardholders transfer, the average fee for balance transfers has been declining in recent years. Since 2015, the average balance transfer fee has fallen from 3.2 to 2.8 percent in 2018. Some issuers offer introductory no fee balance transfers for new cards, but this does not appear to be a common practice in the industry.[162] With respect to grace period impacts on interest charges, some issuers now permit

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[161] Issuers are required to provide certain disclosures to consumers which include information regarding the potential loss of a grace period when balances are not paid in full. 12 C.F.R. § 1026.6(b)(2)(v).

[162] *See, e.g.*, Chase Bank Credit Cards, *Chase Slate Credit Card*, https://creditcards.chase.com/balance-transfer-credit-cards/chase-slate (last visited July 15, 2019). *See also* Edward Jones, *Two Valuable Card Options. Exclusively for Edward Jones Clients*, https://www.edwardjones.com/investments-services/cash-credit/credit-cards/credit-cards.html (last visited July 15, 2019).

consumers to continue to enjoy a grace period on new purchases even while revolving a transferred balance during the promotional period. The prevailing practice, however, appears to be that revolving balance transfers does eliminate the grace period on regular purchases, thereby driving up the cost of those other purchases to consumers.

5.3 Cash advances

The cash advance feature, offered on many general purpose credit cards, allows consumers to obtain cash or cash equivalents using a portion of their card's credit line (20 percent of the line is common), sometimes called the "cash line."[163] Consumers can effect cash advances through a variety of means; ATM withdrawals may be the most well-known form of cash advance, but they are not the only one. Issuers may treat certain credit card usage, such as chips at a casino or gold at a bank, as cash advances. The purchase of foreign currency, traveler's checks, gift cards, prepaid cards, convenience checks, and virtual currencies may also be treated as cash advances.[164] Cash advances can be incurred, too, if the credit line is used to cover shortfalls on a linked deposit account.

5.3.1 Prevalence

Cash advance volume has only increased 2 percent since 2015, far behind the growth in balances and purchase volume over the same period. As of 2018, cash advance balances accounted for about 2 percent of balances overall. Cash advance volume is a bit seasonal, typically showing slightly higher volumes in the third quarter of each year, but averages over $3 billion per quarter.

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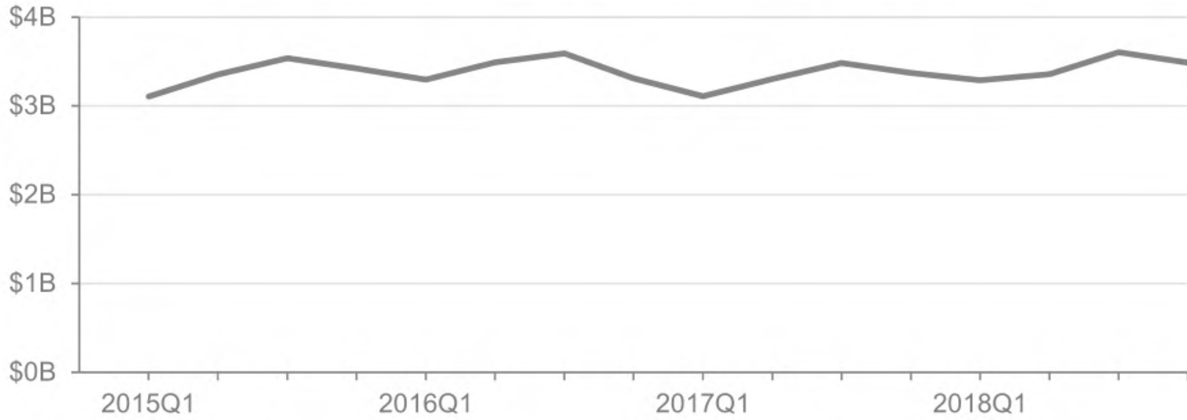
[163] To the Bureau's knowledge, some private label cards provide a cash advance feature at the point of sale, but the practice is not common and does not fall within the scope of this section.

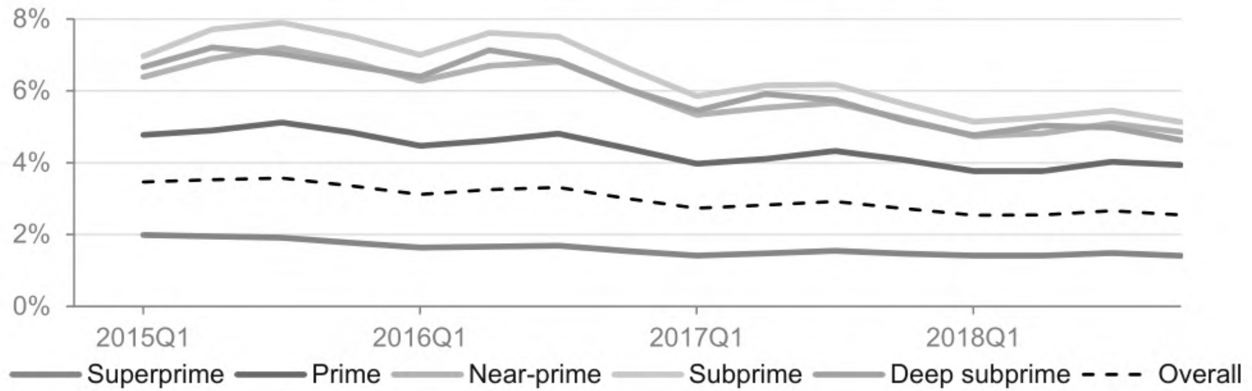
[164] Many transactions effectuated using a "convenience check" may also be treated as cash advances by issuers. However, not all such transactions are so treated; depending on how it is used, some may be treated similarly to balance transfers. The Bureau therefore excludes convenience check transactions from this analysis (and from its analysis of balance transfers in Section 5.2), acknowledging that this likely excludes at least some volume that may be identical or near-identical from the consumer perspective.

Figure 5: QUARTERLY CASH ADVANCE VOLUME, GENERAL PURPOSE (Y-14+)



Unlike balance transfers, cash advances are available to any cardholder with sufficient available cash credit line on a card that has the feature. Cash advance incidence is relatively uniform across credit score tiers, with the exception of superprime consumers who use cash advances markedly less than all other cardholders. Cash advance incidence has declined over the last few years, particularly in the below-prime market segment.

Figure 6: QUARTERLY CASH ADVANCE INCIDENCE, GENERAL PURPOSE (Y-14+)



5.3.2 Cost

Cash advances typically have two cost components: upfront fees and interest.[165] Fee structures can be relatively complex, with some card agreements stipulating different cash advance fee percentages and minimum fee amounts for different cash advance transactions, such as lower fees for ATM transactions and higher fees for cash equivalents like casino chips.[166] Cash advance APRs are typically higher than purchase APRs, and these transactions are not usually subject to any kind of grace period, meaning they begin accruing interest at that higher APR at the point that the cash advance is taken, even if the cardholder pays their balance in full every month.[167]

Cash advance fees have been stable in recent years, totaling just under $1.5 billion for each of the last three years for issuers in the Y-14+ data. As a share of volume, cash advance fees averaged 5.3 percent in 2018, roughly the same ratio as in 2016 and 2017. Cash advance fee ratios are noticeably higher for cardholders in lower score tiers, as shown in Figure 7. Minimum fixed fee amounts for cash advances in a two-way pricing structure, such as "$10 or 5%", can translate to high cash advance fee ratios for cardholders in need of a cash advance, which may be unavoidable for cardholders with little remaining available credit on their cards as is common for cardholders with lower credit scores.

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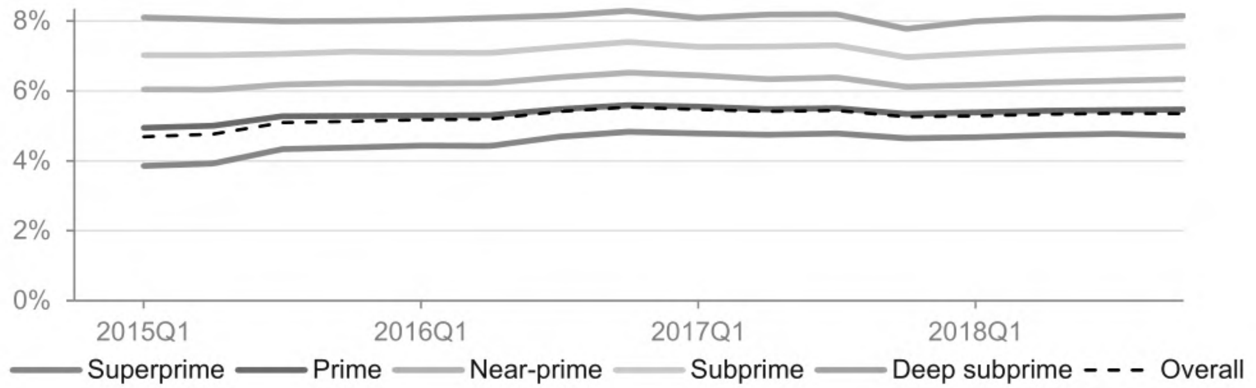
[165] Some credit cards do not charge an upfront fee for cash advances. *See, e.g.*, Brynne Conroy, *20 Credit Cards with No Cash Advance Fees*, magnifymoney.com (July 1, 2019), *available at* https://www.magnifymoney.com/blog/best-of/20-credit-cards-no-cash-advance-fees189115277/.

[166] *See, e.g.*, U.S.Bank, *Cardmember Agreement for U.S. Bank National Association Visa Signature and World MasterCard Accounts*, https://applications.usbank.com/oad/teamsite/usbank/docs/FR006213482_04_USBSIG.pdf.

[167] Indirect costs to cardholders such as interest on balances from purchases that would otherwise be treated as interest free due to a grace period are not included in calculations of cash advance fee costs, but remain an important consideration.

Figure 7: QUARTERLY CASH ADVANCE FEES RELATIVE TO CASH ADVANCE VOLUME, GENERAL PURPOSE ACCOUNTS (Y-14+)



6. Scholarship on CARD Act effects

Previous biennial card market reports examined the extent to which trends in the price and availability of card credit might be attributable to the CARD Act or to other factors, such as the onset of the Great Recession.[168] In some cases, the effect of the CARD Act was relatively easily discerned. The CARD Act's late payment fee regulations, for instance, had an obvious direct effect on consumer late fee costs.[169]

In other contexts, however, the Bureau consistently noted the difficulty of separating regulatory effects from other effects. This difficulty was apparent for specific regulatory provisions, such as the effect of the CARD Act's minimum payment disclosures on payment behavior, or the effect of the Act's card issuance and marketing restrictions for young consumers on cardholding by that population.[170] But this difficulty was even more apparent with respect to the *overall* effect of the Act on the credit card market, including aspects of the market indirectly affected by the Act, such as credit line assignments or purchase APRs.[171] As a result, the Bureau's first comprehensive report, which it released in 2013, called for more research into the causal effects

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[168] Over time, this biennial report has focused less on quantifying these direct effects and more on changes in the market since the report's last iteration.

[169] *See* 2013 Report, *supra* note 5, at 23.

[170] *See id.* at 43-44, 60-61. *See also* 2015 Report, *supra* note 5, at 49-52.

[171] *See* 2013 Report, *supra* note 5, at 69-71. *See also* 2017 Report, *supra* note 5, at 158-162.

of the Act—including the effects of specific provisions as well as the overall effect of the Act on price and availability.[172]

In the intervening period, social science researchers in economics, psychology, and other disciplines have conducted a number of studies of the CARD Act. Such research comes from universities as well as the Bureau and other federal agencies. This section reviews that work. The review focuses on social science research that has either begun or completed the peer-review process at leading academic journals and research that presents novel theoretical or empirical analyses of the CARD Act. Legal scholarship on the CARD Act is beyond the scope of this review, as are policy-oriented papers that largely summarize others' research in defense of particular policy changes.[173] This review necessarily is illustrative rather than exhaustive of the available literature, though it aims to be as representative as possible, especially among the most actively cited research papers in this area.[174] Additionally, the views in these research papers do not necessarily represent the views of the Bureau, and inclusion of a research paper in this section is not meant to imply that the Bureau has validated that research paper's findings.

Subsection 6.1 considers evidence on the direct effects of the CARD Act, including effects on certain aspects of credit card pricing, on the prevalence of credit card-holding among young consumers and on consumers' credit card repayment behavior. That section includes research

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[172] *See* 2013 Report, *supra* note 5, at 37 ("There clearly was an increase in interest rates and in the TCC during the year leading up to the date that most of the CARD Act provisions became effective (February 2010) and a decline since then, with a net reduction in the Total Cost of Credit of approximately 190 basis points. Further research is required to assess how much of that decrease can be attributable to the Act.").

[173] This iteration of the Bureau's biennial card market report covers social science research. The Bureau may consider a review of legal scholarship in the future.

[174] For example, a Google Scholar search for "CARD Act" recovers several thousand possible articles to include in this review. Bureau staff reviewed these search results with an aim to include all studies, regardless of their findings, that were at some stage of the peer review process, that made a novel theoretical or empirical contribution to social science research on the CARD Act, and that were actively cited by other research in the social sciences.

papers by Sumit Agarwal et al. (Agarwal et al. (2015))[175], Scott Nelson (2018)[176], Thomas Durkin et al. (Durkin et al. (2014))[177], Lauren Jones et al. (Jones et al. (2015))[178], Hal Hershfield & Neal Roese (Hershfield & Roese (2014))[179], Linda Salisbury & Min Zhao (2018) (Salisbury & Zhao (2018))[180], Linda Court Salisbury (Salisbury (2014))[181], Daniel Navarro-Martinez et al. (Navarro-Martinez et al. (2011))[182], Jack Soll et al. (Soll et al. (2013))[183], and Peter Debbaut et al. (Debbaut et al. (2016)).[184]

Subsection 6.2 reviews research on the overall effect of the Act, including potentially unintended consequences that take account of parts of the credit card market not as directly regulated by the Act, such as the Act's impact on credit line assignments or purchase APRs. That section includes

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[175] Sumit Agarwal et al., *Regulating Consumer Financial Products: Evidence from Credit Cards*, 130 Q. J. of Econ. 1, at 111-164, (2015).

[176] Scott Nelson, *Private Information and Price Regulation in the US Credit Card Market*, (MIT Working Paper, 2018)).

[177] Thomas Durkin et al., *An Assessment of Behavioral Law and Economics Contentions and What we Know Empirically about Credit card use by Consumers*, 22 S. Ct. Econ. Rev. 1 (2014).

[178] Lauren Jones et al., *Effects of informational nudges on consumer debt repayment behaviors*, 51 J. of Econ. Psychol. 1, at 16-33 (2015).

[179] Hal Hershfield & Neal Roese, *Dual Payoff Scenario Warnings on Credit Card Statements Elicit Suboptimal Payoff Decisions*, 25 J. of Consumer Psychol. 1, at 15-27 (2014).

[180] Linda Court Salisbury & Min Zhao, *Active Choice Format and Minimum Payment Warnings in Credit Card Repayment Decisions*, (forthcoming J. of Pub. Pol'y & Mktg. (2018).

[181] Linda Court Salisbury, *Minimum Payment Warnings and Information Disclosure Effects on Consumer Debt Repayment Decisions*, 33 J. of Pub. Pol'y & Mktg 1, at 49-64 (2014).

[182] Daniel Navarro-Martinez et al., *Minimum Required Payment and Supplemental Information Disclosure Effects on Consumer Debt Repayment Decisions*, 48 J. of Mktg. Res. S1, at S60-S77 (2011).

[183] Jack Soll et al., *Consumer Misunderstanding of Credit Card Use, Payments, and Debt: Causes and Solutions*, 32 J. of Pub. Pol'y & Mktg. 1, at 66-81 (2013).

[184] Peter Debbaut at al., *The CARD Act and Young Borrowers: The Effects and the Affected*, 48 J. of Money, Credit and Banking 1, at 1495-1513 (2016).

research papers by Tiago Pinheiro & Joshua Ronen (Pinheiro & Ronen (2016))[185], Sutling Hong (Hong et al. (2018))[186], Agarwal et al. (2015), Nelson (2018), Song Han et al. (Han et al. (2018))[187], Vikram Jambulapati & Joanna Stavins (Jambulapati & Stavins (2014))[188], Gregory Elliehausen & Simona Hannon (Elliehausen & Hannon (2018))[189], Larry Santucci (Santucci (2015))[190], and Yiwei Dou et al. (Dou et al. (2019)).[191]

This review of overall effects is in two parts. First, it covers research that uses theoretical analyses or economic models to predict and explain the potential overall effects of the Act. Second, this review identifies empirical analyses that evaluate which of these theoretical effects appear to have transpired, and how large these overall effects have been.

6.1 Direct effects

Studies that examine direct effects of the CARD Act have focused on three areas: penalty fee pricing and incidence; repayment behavior; and cardholding among young consumers. These

[185] Tiago Pinheiro & Joshua Ronen, *Unintended Consequences of the Credit Card Act*, 1 J. of L., Fin. and Acct., 1, at 93-138 (2016).

[186] Sutling Hong et al., *Dynamic Pricing of Credit Cards and the Effects of Regulation* (Fed. Res. Bank of Philadelphia Working Paper No. 18-23 (2018)).

[187] Song Han et al., *Unsecured Credit Supply, Credit Cycles, and Regulation*, 31 The Rev. of Fin. Stud. 3, at 1184-1217 (2018).

[188] Vikram Jambulapati et al., *The Credit CARD Act of 2009: What Did Banks Do?*, (Fed. Res. Bank of Boston, Public Policy Discussion Paper Series 2015-103, (2014)).

[189] Gregory Elliehausen & Simona M. Hannon, *The Credit Card Act and consumer finance company lending*, 34 J. of Fin. Intermediation, 1, 109-119, (2018).

[190] Larry Santucci, *A Tale of Two Vintages: Credit Limit Management Before and After the CARD Act and Great Recession*, (Fed Res. Board of Philadelphia, Payment Cards Center Discussion Paper No. 15-01, (2015)).

[191] Yiwei Dou et al., *Does Price Regulation Affect Competition? Evidence from Credit Card Solicitations*, (Fed. Res. Board, FEDS Working Paper No. 2019-018 (2019)).

areas do not exhaust direct effects of CARD Act regulation, so there is room for future research to shed light on other important areas affected by the Act. These might include, for example, direct effects of the ability to pay (ATP) requirements on application approvals and credit limit increases, and direct effects of the "fee-harvester" restrictions for first-year account fees on the terms of affected accounts.[192] Nevertheless, the available research considers several important areas in which the Act has had a measureable direct effect.

6.1.1 Credit card pricing

The CARD Act restricted multiple dimensions of credit card pricing, including requirements that: (1) consumers not pay a fee for incurring balances in excess of their credit limit unless they opt in to have such fees charged; (2) penalty fees, such as late payment fees, be "reasonable and proportional," which can be satisfied by charging fees at or below a specified safe harbor threshold; and (3) interest rates not be increased on outstanding balances except in limited circumstances.[193] In its 2013 Report, the Bureau called for further academic research to connect these restrictions to changes in the market.[194] In the years since that report, a number of academic studies have attempted to do just that.

OVER-LIMIT FEES

First, several studies have worked to quantify the CARD Act's direct effects on over-limit fees. Agarwal et al. (2015) estimate that the CARD Act led to a 3.3 percentage point reduction in over-limit fees as a share of balances for consumers with below-prime credit scores. These 3.3 percentage points are approximately 20 percent of total pre-CARD Act fee costs that the authors estimate such consumers paid, or roughly $36 in over-limit fee savings for each subprime

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[192] *See, e.g.*, 12 C.F.R. 1026.51(a)(1)(i), 52(a)(1).

[193] 15 U.S.C. §§ 1637(i)(1), 1637(k), 1665d, 1666i-1, 1666i-2 (2012); *see* 2013 Report, *supra* note 5, at 10-13 (for further discussion of these and other particular provisions in the CARD Act).

[194] *See supra* note 172.

account on average per year.[195] For consumers with higher credit scores, the reduction in over-limit fees as a share of outstanding balances was a more modest 0.3 percentage points. This difference reflects both the lower prevalence of over-limit transactions among consumers with higher credit scores and the higher average balances on these consumers' accounts.

To estimate these effects, the Agarwal et al. (2015) study compares changes over time for general purpose consumer credit cards, which are subject to the CARD Act rules, to changes for small business credit cards, which are not. This comparison uses small business cards to help identify the market changes that would have been seen for consumer credit cards in the absence of the CARD Act rules. While a similar analysis appeared in the Bureau's first biennial credit card market report,[196] the Agarwal et al. (2015) study additionally shows the robustness of its results in the framework of a difference-in-differences regression analysis. Furthermore, that analysis controls statistically for differences across cardholder credit scores and differences across credit card issuers, which could otherwise potentially confound such an analysis. This regression analysis also verifies that small business cards are likely to provide a statistically valid comparison group for general purpose consumer cards after the CARD Act, by illustrating that the two groups of cards broadly exhibited similar—in particular, parallel—trends in the period *prior* to the CARD Act.[197]

Nevertheless, there are also important caveats to any such comparison of pre- and post-CARD Act outcomes. For one, the comparison relies on pre-CARD Act data that may have been influenced in one way or another by other important factors for which the studies potentially could not fully control. One of these factors could be the credit card industry's anticipation of CARD Act implementation, and also the industry's anticipation of changes to credit card

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[195] This 20 percent is estimated using the statistics in Agarwal et al., (2015) at Table III.

[196] 2013 Report, *supra* note 5, at 35-36.

[197] The effects of over-limit fee restrictions are studied in other analyses as well. Nelson (2018) finds that the share of consumer accounts that incurred an over-limit fee each month dropped from roughly 7 percent of accounts per month on average before the CARD Act to nearly zero after the Act. Similar results on the share of accounts incurring over-limit fees appeared in the Bureau's first biennial credit card market report. *See* 2013 Report, *supra* note 5, at 20-23.

regulations that, while superseded by the CARD Act, were proposed and finalized by the Federal Reserve Board over the course of 2007 through 2009.[198] Indeed, commentators on the Agarwal et al. (2015) study have emphasized the importance of such effects (*e.g.,* Durkin et al. (2014)).[199] A second potentially confounding factor is the Great Recession. In difference-in-differences analyses it is difficult to know with certainty whether small business cards and consumer cards would have evolved differently in the absence of the CARD Act because of recession-related changes.

LATE PAYMENT FEES

The Agarwal et al. (2015) and Nelson (2018) research examines other prominent dimensions of credit card pricing. Agarwal et al. (2015) estimate that the CARD Act's restrictions on late payment fees led to a 1.4 percentage point reduction in late fees as a share of balances for consumers with below-prime credit scores. The restrictions once again had a more modest effect, roughly 0.3 percentage points as a share of outstanding balances, for consumers with higher scores.

As before, the Agarwal et al. (2015) study uses regression analysis to show the robustness of its results while controlling for differences across cardholder credit scores and across credit card issuers. After accounting for these factors, the study's results are derived from a comparison between general purpose consumer credit cards and small business credit cards. As in the case of over-limit fees, the study illustrates that late payment fees on consumer and small business cards exhibited similar trends prior to the CARD Act, supporting the validity of small business cards as a comparison group for consumer cards. However, also as before, the study relies on

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[198] In February 2010, the Board withdrew the final rule amending Regulation Z adopted in January 2009 and amended Regulation AA to remove the substantive requirements adopted in January 2009 before these final rules became effective. 75 Fed. Reg. 7925 (Feb. 22, 2010). At the same time, the Board issued a new final rule amending Regulation Z in order to implement the provisions of the CARD Act. 75 Fed. Reg. 7658 (Feb. 22, 2010). The requirements of the January 2009 Regulation Z final rule were revised for consistency with the CARD Act and incorporated into the new final rule. The provisions in the January 2009 Regulation AA final rule never took effect; they were superseded by provisions of the CARD Act.

[199] These features of the pre-CARD Act period have also been consistently noted in the Bureau's previous biennial credit card market reports. *See, e.g.*, 2013 Report, *supra* note 5, at 73.

data from a pre-CARD Act period that may have been influenced by anticipation of regulatory changes or by the onset of the Great Recession.

These decreases in late payment fees largely reflect the lower average dollar amount of late fees following implementation of the CARD Act's "reasonable and proportional" standard in August 2010.[200] Nelson (2018) also finds that the share of revolving accounts incurring late fees on a monthly basis dropped by roughly 3 percentage points, from 14 to 11 percent, at an earlier date in February 2010, immediately following the implementation of other CARD Act restrictions. This earlier drop could reflect other provisions that took effect in February, including the CARD Act's standardization of the days and times of day at which payments could be due,[201] or the CARD Act's mandated new minimum payment warning, or other changes in the market following the financial crisis.[202]

INTEREST RATE INCREASES

The Agarwal et al. (2015) and Nelson (2018) research also examines the CARD Act's restrictions on a third dimension of credit card pricing, the upward repricing of interest rates on outstanding balances.[203] Nelson (2018) documents that, in the pre-CARD Act period, roughly 50 percent of accounts experienced such an upward repricing at least once a year. After the CARD Act repricing restrictions took effect, the annual incidence of such repricing dropped immediately to less than 10 percent. To focus on types of APR repricing that were restricted by the Act, these estimates exclude APR changes associated with the expiration of a promotional rate, with a delinquency of 60 days or more, or with an increase in an index rate that may determine some credit cards' variable APRs. Estimates of the share of accounts experiencing repricing also appear in Agarwal et al. (2015)[204] although without an emphasis on the share of accounts experiencing such a repricing at an annual frequency; the Nelson (2018) analysis indicates that,

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[200] 15 U.S.C. § 1665d (2012); 12 C.F.R. § 1026.52(b)(1); Comment 52(b)(1)(ii)-2.

[201] 15 U.S.C. §§ 1637(b)(12)(c), 1637(o), 1666c(a) (2012); 12 C.F.R. §§ 1026.7(b)(11)(i)(A); *see generally* 1026.10(b), (d).

[202] 15 U.S.C. § 1637 (b)(11) (2012); 12 C.F.R. § 1026.7(b)(12).

[203] 15 U.S.C. § 1666i-1, 1666i-2 (2012); 12 C.F.R. § 1026.55.

[204] *See also* 2013 Report, *supra* note 5, at 29.

when accounts are viewed over the course of an entire year, such repricing affected roughly one-half of revolving accounts. However, as already emphasized above, the pre-CARD Act period studied in both the Nelson (2018) and the Agarwal et al. (2015) analyses may have exhibited above-average rates of repricing relative to earlier time periods, *e.g.*, due to the onset of the Great Recession or issuers' anticipation of regulatory changes that were proposed prior to the CARD Act.

The Nelson (2018) analysis also examines how the CARD Act's repricing restrictions may have affected the responsiveness of interest rates to credit risk. With issuers now generally restricted from increasing the interest rate on outstanding balances on accounts with worsening default risk over time, the study examines how that change has affected the degree to which price changes reflect changes in underlying default risk. It finds that whereas APRs in the pre-CARD Act period increased on average by 26 basis points for every 10 points decrease in credit score after origination, this gradient of pricing with respect to changes in risk declined post-CARD Act to an average of 7 basis points increase in APR for every 10 points decrease in credit score. The CARD Act's restrictions on interest rate increases on outstanding balances, therefore, affected not just changes in interest rates on average, but also the degree to which interest rates responded to changes in particular account characteristics such as credit score.

6.1.2 Credit card payments

Separate from the CARD Act's restrictions on credit card pricing, the Act and its implementing regulation also introduced new disclosure requirements. Some academic research has focused on one of these disclosures in particular: mandated monthly statement information about the total cost of paying only the minimum payment and about the amount of time required to repay the entire current balance when making only minimum payments. This disclosure also includes information about the size of the monthly payment necessary to pay the outstanding balance in 36 months, referred to below as the "36-month payment amount," and how the total interest cost of repaying the outstanding balance by paying the 36-month payment amount would

compare to the cost of repaying the outstanding balance by paying only the minimum payment.[205]

The available research provides somewhat conflicting evidence on how these disclosures affect repayment behavior. Differences across studies also indicate there may be variation in how different consumers respond to these disclosures. There is evidence that these disclosures may encourage faster debt repayment for some consumers while leading some other consumers, who would otherwise choose to repay their balance more quickly, to reduce their rate of repayment.

Jones et al. (2015) compare changes in credit card payment over time for two groups that plausibly were differentially affected by the CARD Act's disclosure requirements. The first group, consumers who pay their bills online, is presumed to be less likely to see the new CARD Act-mandated disclosures because these disclosures are not required to appear in an online bill-pay interface. The second group, consumers who do not use electronic bill payment, may be more likely to see the new disclosures because the disclosures are included on billing statements sent by mail.[206]

Jones et al. (2015) estimate that the second group—those plausibly more exposed to the new disclosures by virtue of paper bill pay—became 6.5 percentage points more likely to pay their credit card bill in full relative to those who use online bill pay.[207] This effect is estimated in a difference-in-differences regression analysis that also controls for demographic, geographic, and seasonal differences that could otherwise confound the results. Reinforcing the validity of online bill pay users as a comparison group for paper bill pay users, the study also notes that these

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[205] 15 U.S.C. § 1637(b)(11)(B) (2012). In cases where the 36-month payment amount is less than the minimum monthly payment, no information about 36-month repayment is shown. 12 C.F.R. § 1026.7(b)(12)(F)(2)(ii).

[206] The disclosures are also included in electronic copies of billing statements, and these electronic statements indeed may be seen by consumers who use online bill pay. Furthermore, consumers who *pay* their bills online may nevertheless receive paper copies of their bills by mail. However, past Bureau work has indicated that at least one-half of consumers who use online bill pay also view their statement document at any point in a given quarter. *See* 2015 Report, *supra* note 5, at 134. This finding at least in part supports the premise that the two groups studied in Jones et al. (2015) could be differentially affected by the CARD Act's disclosure requirements.

[207] This increase in the prevalence of payment in full may reflect decreases in either the prevalence of late payments, or the prevalence of timely payments of less than the total balance on the card, and the authors do not distinguish between these two possible mechanisms.

groups exhibited similar trends in repayment behavior in the pre-CARD Act period, while the divergence in these two groups' behavior occurred tightly around the month when the new disclosure requirements took effect.

One important caveat to this study's results is that the survey is asked of new respondents each month, so changes over time in average responses could potentially be the result of changes in the *composition* of consumers who choose to respond to the survey, rather than changes to consumer behavior; techniques to correct for non-response over time may be unable to completely correct for such issues. Additionally, to interpret the February 2010 divergence between online bill-pay users and paper bill-pay users as the effect of the CARD Act *disclosures* per se, the authors rely on there being no other substantial differences between these two groups' responses to other CARD-Act provisions implemented at the same time. Such an assumption is difficult to test in practice.

Several other studies have examined the effects of the CARD Act's minimum payment disclosure requirements by experimentally showing different disclosure formats to survey respondents and then asking respondents how much they would choose to repay under a hypothetical scenario for credit card usage. For example, respondents could be asked to imagine that they have a certain credit card balance at a certain interest rate, then be shown one of several minimum payment disclosures, and be asked to choose a hypothetical repayment amount.

In one such study, Hershfield & Roese (2014) reach different conclusions about the CARD Act's minimum payment disclosures relative to Jones et al. (2015) and highlight the potential for these disclosures to induce slower debt repayment by "anchoring" consumers to smaller payment amounts than they otherwise would have chosen. Based on survey respondents' answers to such hypothetical scenarios and disclosures, the authors conclude that one feature of the CARD Act's new disclosures—in particular the disclosure of the 36-month payment amount—leads some consumers to repay more slowly than they otherwise would. Consistent with this effect appearing only for some consumers and not for others, the authors find in their series of surveys that this effect is statistically significant only when the payment suggested by the 36-month disclosure is small relative to the payment amount consumers would have otherwise chosen.

Other studies by Salisbury and co-authors (Salisbury & Zhao (2018); Salisbury (2014); Navarro-Martinez et al. (2011) and by Soll et al. (2013)) also provide survey respondents with hypothetical scenarios for credit card usage and experimentally vary the disclosures shown to

respondents. The earliest of these studies, by Navarro-Martinez et al. (2011) finds that providing any minimum payment requirement tends to lower the amount that survey respondents choose. They attribute this to an "anchoring" effect whereby presenting the minimum payment amount causes consumers to focus on a lower number (*i.e.*, the minimum payment amount) than they otherwise do when shown only the hypothetical outstanding balance on the account. However, the study also finds that adding the 36-month payment amount to the disclosure, as required in the CARD Act, partially offsets this effect and raises repayment amounts.[208] Consistent with this effect, Soll et al. (2013) likewise find that adding the 36-month payment amount increases some consumers' ability to accurately predict how long it may take to repay a credit card balance. These findings are thus somewhat in tension with the results in Hershfield & Roese (2014), which had found that adding the 36-month payment amount decreases some consumers' repayment speed.

The most recent two of these studies, by Salisbury (2014) and Salisbury & Zhao (2018), find results that are intermediate between the Navarro-Martinez et al. (2011) results and the Hershfield & Roese (2014) results. Again using survey respondents' answers to hypothetical credit card repayment scenarios, Salisbury (2014) and Salisbury & Zhao (2018) generally find that disclosing the 36-month payment amount both increases *and* decreases consumers' payment rates: that is, some consumers pay less when faced with the 36-month payment amount than they otherwise would, and other consumers pay more than they otherwise would. Across the two studies, roughly an equal share of consumers increase their payment amount and decrease their payment amount.

An important caveat to many of these studies is that the use of hypothetical questions in survey research may capture different behaviors and responses than "real world" consumers exhibit when facing the CARD Act's actual disclosures. For example, the effect of anchoring to repayment amounts shown in hypothetical disclosure statements may be different when consumers face real-world financial incentives to choose the repayment amount that is best for their own actual circumstances. These hypothetical studies' methodologies are thus in contrast

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[208] One caveat to this latter result is that it is only marginally statistically significant, perhaps due to small sample sizes available in the study.

with the Jones et al. (2015) study discussed above, which did use such "real world" data to examine the CARD Act disclosures' effects.

The Agarwal et al. (2015) study also examined the effect of the CARD Act's 36-month disclosure in "real world" data, finding that the share of accounts paying exactly the 36-month payment amount increased by 0.4 percentage points for general-purpose consumer cards at the time the new disclosure requirement took effect; this estimate is markedly smaller than the corresponding share in many of the studies above that used hypothetical scenarios to examine consumer behavior. As in the analyses previously discussed from Agarwal et al. (2015), this effect is estimated in a difference-in-differences regression relative to small business credit cards, which were not covered by the CARD Act's new disclosure requirements. However, perhaps reflecting the divergence in results among other research studies in this area, Agarwal et al. (2015) note that it is difficult to discern statistically whether this 0.4 percentage-point difference is due to consumers who would have paid larger amounts then choosing to pay less, or due to consumers who would have paid smaller amounts then choosing to pay more, or perhaps both.

In sum, existing research appears split on the question of whether the CARD Act's minimum payment disclosures led to faster debt repayment, and for whom. Further research appears necessary to answer this question more definitively and to analyze other outcomes not examined in the studies available to date.

6.1.3 Credit card-holding among young consumers

Another focus of academic research has been the CARD Act's effects on credit card-holding among young consumers. This focus reflects the CARD Act's requirement, as implemented by Regulation Z, that in order for an issuer to open a credit card account for a young consumer—defined as being 20 years old or younger—the consumer must either demonstrate her independent ability to pay for the charges they could incur on the card, or have a co-signer who is at least 21 years old and either can demonstrate the independent ability to repay or can

demonstrate a reasonable expectation of access to the necessary income or assets to repay.[209] The CARD Act also has several other provisions that may affect credit card-holding among the young, such as restrictions on credit card marketing activities near college campuses.[210]

Debbaut et al. (2016) estimate the direct effects of these young-borrower restrictions by comparing consumers who were affected by the CARD Act's young-consumer rule at slightly different ages. By measuring how card-holding rates for these cohorts changed over time as the CARD Act restrictions took effect, the authors estimate that the CARD Act's young consumer-rule reduced rates of credit card-holding among individuals under 21 years old by 8 percentage points in the short term, representing a roughly 15 percent fall from pre-CARD Act levels. Their difference-in-differences analysis also controls for age-specific and year-specific differences in credit card holding rates, which helps address potential confounding factors in the analysis.

Evidence suggests the rule's allowance for co-signers in the young-consumer rule enabled some, but not all, young consumers who otherwise would have been precluded from opening a credit card account to do so through a co-signer. Debbaut et al. (2016) found that, while the overall share of young consumers holding credit cards fell, young consumers who did hold credit cards became more likely to have a co-signer on their credit card. As shown in Figure 1, among various age cohorts the share of co-signed cardholding among credit card holders was roughly constant at about 8 percent between 2000 and 2008. When the CARD Act's young-consumer rule took effect in 2010, the rate of co-signed cardholding increased for exactly the three age groups covered by the young-consumer rule—those aged 18, 19, and 20 years old.[211] This short-run effect is apparent in Figure 1 below. The decrease seen thereafter, however, suggests the need for further research on the longer-run effects of these restrictions.

Debbaut et al. (2016) acknowledge that their estimates may be sensitive to several confounding factors. These include recession-related labor market disruptions that may affect specific cohorts in specific years, changes in the population of consumers included in credit bureau data,

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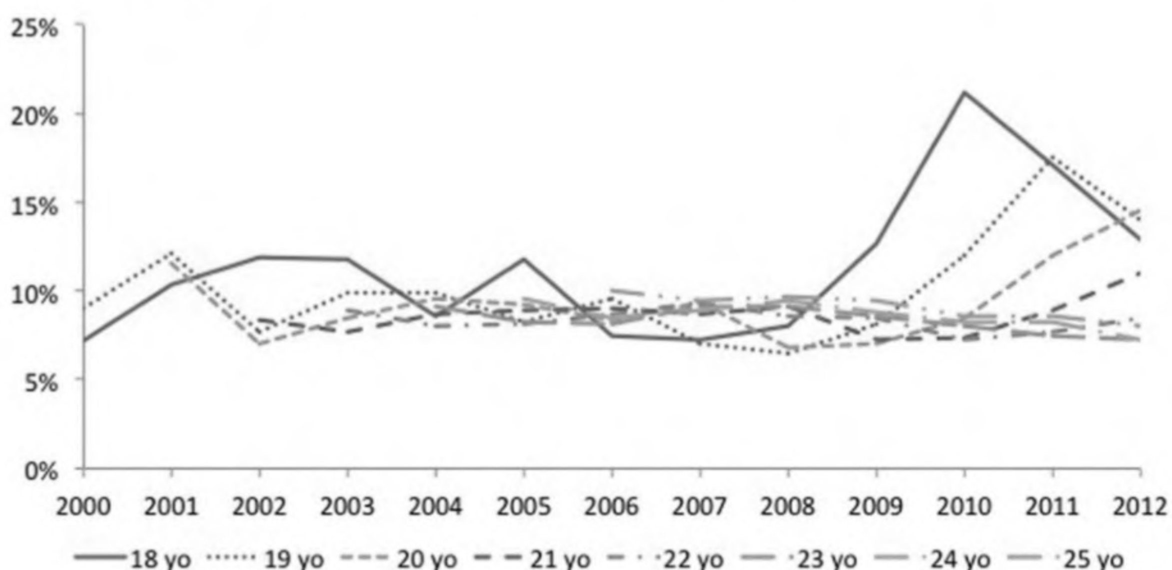
[209] 15 U.S.C. § 1637(c)(8) (2012); 12 C.F.R. § 1026.51(b)(1).

[210] 15 U.S.C. § 1650(f)(2) (2012).

[211] The increases appear sharpest for those aged 18, though this group also exhibited some increase in the period prior to the young-consumer rule taking effect, perhaps related to the onset of the Great Recession.

and the influence of potential anticipatory behavior by consumers or credit card issuers in 2009 in the period between the CARD Act's passage and its implementation. Closer examination of the role of authorized users in extending credit card access to young consumers—for example, an older person such as a parent may make a young consumer an authorized user of their card—may also help with interpreting Debbaut et al.'s results.

Figure 1: SHARE OF CONSUMERS WITH A CO-SIGNED CREDIT CARD BY AGE AND YEAR (REPRODUCED WITH PERMISSION)[212]



6.2 Overall effects

This section considers research on the overall effects of the CARD Act. As emphasized in academic research on the CARD Act, economic theory on pricing, and in the Bureau's previous biennial card market reports, the Act's effects may include unintended consequences beyond its direct effects, as market participants potentially respond to regulation in one part of the market by changing their behavior in another. To take one example, credit card issuers might adjust APRs offered at account origination in response to the Act's restrictions on increasing APRs on

[212] Figure reproduced with permission from Wiley, in Debbaut et al. (2016).

outstanding balances later; this is an example of an indirect and potentially unintended consequence of the Act because the Act and its implementing regulations do not directly govern the level of the APRs that may be offered at origination.

This review of research on such overall effects is organized into two subsections. The first reviews theoretical analyses and economic modeling that illustrate how and why such consequences may appear in other parts of the market in response to the Act. The second reviews empirical research that assesses, using a variety of data sources, which of these theoretical effects appear to have been realized and to what extent.

6.2.1 Theoretical analyses

A range of studies have used theoretical analyses and economic models to understand the CARD Act's potential overall effects. Reviewing these analyses helps illuminate how the Act's overall effects may emerge in a market like the credit card market, shedding light on the next subsection's review of more empirical, data-driven research.

In particular, these theoretical analyses highlight how the Act's overall effects depend on several underlying features in the credit card market. These features include whether the market is imperfectly competitive, whether credit card issuers have private information about their account holders (and, if so, what type of information), and whether credit card pricing is fully "salient" to consumers. This subsection first reviews research that examines the CARD Act's theoretical effects in a credit card market that is assumed to be perfectly competitive. Second, it reviews research on a market that is assumed to be imperfectly competitive.

PERFECT COMPETITION

In one theoretical analysis of the CARD Act in an assumed perfectly competitive credit card market, Pinheiro & Ronen (2016) emphasize how the CARD Act's overall effects may be influenced by the presence of information asymmetries such as adverse selection. In this setting, the authors show theoretically that the CARD Act's restrictions on increasing the interest rate applied to an outstanding balance can lead to a combination of higher initial interest rates for new cardholders and lower credit limits. The analysis highlights how the CARD Act's restrictions on raising interest rates for outstanding balances can make it more difficult to charge different pricing to consumers who are more or less risky from a lender's perspective, given how information asymmetries can make some of this risk unknown for a credit card issuer around

the time of account origination.[213] The "pooled" pricing that results from these restrictions then leads to market inefficiencies, as some borrowers face pricing that is not commensurate with their risk and then borrow more or less than the efficient amount; for some consumers this increase in pricing is effectively a reduction in credit supply. In Pinheiro & Ronen's (2016) perfectly competitive setting, therefore, the inefficiencies that result from the CARD Act's restrictions emerge in equilibrium as a result of the credit card market's information asymmetries.

Hong et al. (2018) analyze a similar setting with perfect competition, albeit with different information asymmetries. In particular, the authors consider the feature that credit card issuers may have private information about their borrowers that competing credit card issuers may not know, such as non-public indicators of default risk. This informational advantage allows an issuer to charge higher prices to its existing borrowers—in particular to its *low*-risk existing borrowers—than it otherwise could charge those borrowers if its competitors were able to identify which of its existing borrowers had low risk.[214] The prospect of being able to charge these higher prices after learning about borrower risk then entices issuers to offer low prices at account origination *before* learning such information. These low prices on new accounts, understood as promotional introductory interest rates, play a central role in the analysis. Their key finding is that the CARD Act's restrictions on interest rate increases for outstanding balances make it more difficult for credit card issuers to charge higher prices on existing accounts, which reduces issuers' incentives to offer low prices at the time of account origination. The CARD Act, then, has the potential in this setting to lead to higher interest rates for promotional APRs, even though the Act and its implementing regulations do not directly regulate the level of interest rates offered as promotional APRs.

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[213] Asymmetry implies that this information is known on one side of the market and not the other. To be precise, in Pinheiro & Ronen's (2016) model, the asymmetry actually arises shortly after origination: that is, differences in consumer risk become known to the consumer after origination but before the consumer begins borrowing on the card. Of course, in the actual credit card market, information asymmetries may also exist at the time of origination as well.

[214] The mechanism for this higher pricing arises in market equilibrium. Intuitively, while a lender's competitors are unable to set prices that are perfectly tailored to the risk on that lender's accounts, each lender is able to set such tailored prices on its own accounts. Pricing on outside offers then allows each issuer to charge a higher price than it otherwise could to its own lower-risk existing cards.

The results in Hong et al. (2018) echo the findings from Pinheiro & Ronen (2016). An important commonality between the analyses is that the credit card market is assumed to be perfectly competitive. That is, credit card lending is deemed sufficiently "commoditized" for issuer profits to be fully competed away through, for example, discounts on introductory interest rates that serve as a loss leader for later, higher pricing.

Several caveats are relevant in interpreting these analyses. Both analyses illustrate how the credit card market is likely to respond to the CARD Act *given* some premises, such as perfect competition. If the premises that the authors use for their analysis do not accurately describe the market, then the conclusions may change. As is common in theoretical economic work, these analyses also require simplifying assumptions to make the model tractable to analyze. For example, theoretical analyses of credit markets often assume, as these two studies do, that borrowers are of only two "types," each having a different risk of default but an identical demand for credit. In reality, credit markets may be more complex. Further research may be needed to understand the consequences of these complexities.

IMPERFECT COMPETITION

The alternative case of an imperfectly competitive credit card market is studied in Nelson (2018). This analysis considers credit cards as potentially differentiated products, so that credit card issuers have the potential to earn profits because of brand loyalty or because they offer features that competing cards do not. It also allows for credit card issuers to have private information about their existing customers, as in Hong et al. (2018), though this private information can comprise information not just about borrowers' riskiness, but also about their sensitivity to price. Nelson (2018) demonstrates that in such a setting, it is possible for restrictions such as those in the CARD Act to lead to lower prices overall for consumers. The key mechanism for this result is the feature that credit card issuers are considered to potentially have private information about borrowers' price sensitivities that is revealed after origination, which potentially generates market inefficiencies through markups on price-insensitive borrowers.[215] However, whether the CARD Act's restrictions do in fact lead to lower overall

[215] Such price discrimination per se is not necessarily inefficient. However when consumers choose both whether to borrow (extensive margin) and how much to borrow (intensive margin), price discrimination in marginal prices such as APRs can result in inefficient quantities—with outcomes analogous to a reduction in credit supply.

prices in the Nelson (2018) model depends on factors such as how close to perfectly competitive the market is and how much private information credit card issuers acquire over time about their customers' default risk and demand for credit.

Considering different potential features of the credit card market, Agarwal et al. (2015) also show theoretically that the CARD Act can lead to lower pricing in an imperfectly competitive market. Rather than focusing on credit card issuers' private information in such a setting, Agarwal et al. (2015) emphasize the role of pricing that may not be fully salient to consumers. One applied example, the case of over-limit fees, can illustrate this. The authors show theoretically that if over-limit fees are less salient to consumers than other price dimensions, and if the market is imperfectly competitive, then other price dimensions will adjust less than would fully offset the decrease in over-limit fees. In the context of imperfect competition and imperfectly salient fees, restrictions such as those in the CARD Act can indeed lower the all-in cost of credit, as the offsetting effect in other price dimensions such as interest rates would not fully overwhelm the direct effect of lower fees.[216]

Similar caveats apply to Nelson (2018) and Agarwal et al. (2015) as were noted above for Hong et al. (2018) and Pinheiro & Ronen (2016). These analyses only show what effects of the CARD Act are likely to emerge *if* the premises of the models, such as behavioral assumptions[217] or imperfect competition, accurately describe the credit card market. Furthermore, even if these premises are consistent with the reality of the market, economic models frequently need to make simplifying assumptions that may overlook important complexities in the market.

6.2.2 Empirical analyses

The theoretical research reviewed above prompts the empirical question of whether the Act's restrictions *in fact* resulted in unintended offsetting consequences elsewhere in the market, in

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[216] *See* Agarwal et al. (2015)'s online appendix, at 4. The presence of asymmetric information can also affect the amount of offset. If the credit card market is adversely selected with respect to its salient prices, such that consumers willing to borrow at higher salient prices also tend to have higher default risk, then the amount of offset from a restriction on a non-salient price would be greater than it would be without such adverse selection.

[217] *See* Durkin et al. (2014) (discussing salience and the lack of empirical evidence to support it and related behavioral assumptions). *See also* Jonathan Zinman, *Consumer Credit: Too Much or Too Little (or Just Right?)*, J. of Legal Stud. (2014).

particular some combination of increases to other dimensions of pricing or decreases in credit supply. Consequences such as price increases could take many forms, including higher initial APRs, less availability of promotional APRs, or increases in other fees such as annual fees. Similarly, reductions in credit supply could take the form of fewer or smaller credit limit increases, lower initial line assignments, fewer direct mail offers and offers through other marketing channels, and tighter approval criteria. This subsection reviews empirical research on these questions, organized by whether the research pertains to credit card pricing or credit availability.

CREDIT CARD PRICING

This subsection reviews empirical research on the CARD Act's overall effects on credit card pricing. Economic theory predicts that when market prices are prevented by law or regulation from adjusting to market conditions, such restrictions on price typically create unintended consequences such as shortages or surpluses. The central question in the CARD Act research has been whether or not the Act's direct effects on some dimensions of credit card pricing, such as over-limit fees, may have also led to unintended consequences on other price dimensions, e.g., introductory interest rates or annual fees. The extent of such consequences determines the CARD Act's overall effects on the cost of credit card borrowing and ultimately the CARD Act's effect on consumer welfare. Efforts to answer this question help identify the net effect of the Act for consumers and may also provide insight about what mechanisms, such as the competitiveness of the credit card market, led the effects of the Act to play out as they did.

The Agarwal et al. (2015) study focuses on such offsetting effects. In particular, the authors ask whether the CARD Act's direct effects on some price dimensions, such as late fees and over-limit fee restrictions, were offset by changes in other price dimensions, and whether the overall effect of the Act is therefore a net decrease or increase in the cost of card credit for consumers. Again using a difference-in-differences regression analysis that compares general-purpose consumer cards with small business cards, Agarwal et al. (2015) find that the amount of such offset in interest rates for borrowers is on average approximately zero. The authors reject, with a high degree of statistical confidence, the hypothesis that any such offset for subprime consumers was larger than 3.7 percentage points, relative to a total estimated direct effect that saw fees decrease by 5.3 percentage points for this population. The authors find that even smaller offsetting effects can be ruled out statistically for prime accounts, although prime accounts also saw lower estimates of the Act's direct effects on fee costs. However, as noted earlier, an extremely important caveat to this study's empirical findings is that the pre-CARD Act period used as a

baseline for comparison in the study's difference-in-differences strategy may already have shown some of the effects of regulations similar to those in the CARD Act, if credit card issuers changed pricing in anticipation of potential upcoming regulatory changes.[218] If, as some critics have argued, card issuers did change their behavior in anticipation of potential upcoming regulations, then Agarwal et al.'s findings would be less persuasive than otherwise presented.[219]

Nelson (2018) also examines the CARD Act's overall effect on credit card pricing. While the results are largely consistent with the results in Agarwal et al.'s (2015), they also suggest that the CARD Act had a range of different effects for consumers of different types. In particular, the study finds evidence of adverse consequences of the Act for some consumers—for example, some types of *relatively* low-risk subprime consumers may have faced higher pricing as a result of the Act, even as consumers at all credit scores faced, on average, lower prices.

To estimate these differential effects across consumer types, Nelson (2018) develops a quantitative model of the credit card market that includes many of the features discussed in the preceding section's review of theoretical research. After quantifying the importance of these features, such as imperfect competition and issuers' private information, in pre-CARD Act data, the analysis then simulates the CARD Act's pricing restrictions in the model and evaluates the restrictions' overall effects for different types of consumers. Nelson (2018) finds that even for a consumer who faces higher prices after the CARD Act, there is a reasonably high chance that the consumer becomes, at a later date, someone who benefits from lower prices under the Act—for example, a consumer with only modest demand for card credit may later have more intensive credit demand. These consumers benefit under the Act from insurance against higher pricing in the future, so that on net, Nelson's (2018) analysis finds these consumers' surplus in fact rises as a result of the Act. Other consumers who do not face higher prices after the Act have even larger surplus gains. On average across all consumers, the study finds that consumer surplus roughly doubles from the CARD Act pricing restrictions.

[218] For further discussion of these proposed regulatory changes, see footnote 182.

[219] Agarwal et al. (2015) suggests that their empirical findings is consistent with a model in which fees are not salient to consumers. This behavioral model has been the focus of criticism by commentators, such as Durkin et al. (2014).

As before, it is important to caveat these conclusions. In particular, Nelson's (2018) analysis relies on a specific model of credit card demand and market competition in order to understand how the market has responded to the CARD Act's pricing restrictions. This model may not fully capture important aspects of how consumers value various credit card features. As noted earlier, both Nelson's (2018) and Agarwal et al.'s (2015) analyses may also be confounded by issuers' anticipatory behavior in the pre-CARD Act period, or, in Agarwal et al.'s (2015) case, by aspects of the Great Recession that may have affected consumer credit cards differently than small business credit cards during the period that the CARD Act took effect.

Other recent research by Dou et al. (2019) examines how credit card issuers changed their pricing behavior after the CARD Act. Rather than focusing on the *level* of pricing as other analyses have done, Dou et al. (2019) study how credit card issuers respond differently to changes in their competitors' pricing—for example, to what extent one issuer cuts its rates after another issuer does so. The study uses data on interest rates in direct mail offers for new credit card accounts, leveraging the same comparison of consumer credit cards and small business credit cards, before and after the CARD Act, as was used in the Agarwal et al. (2015) study. By examining "local" credit card markets at geographic levels such as the county, the authors conclude that card issuers' pricing has become less responsive to competitors' price changes in the post-CARD Act period. To interpret these results, it is valuable to note that this change in behavior could be consistent with credit card pricing becoming either higher or lower relative to cost; for example, such price responsiveness could fall in an environment where pricing has also fallen relative to cost. Nevertheless, these changes in pricing behavior may point to additional unintended consequences of the CARD Act that may shed light on the Act's overall effects.

CREDIT CARD AVAILABILITY

This subsection considers empirical research on the CARD Act's overall effects on credit card availability. While these effects are considered separately from the pricing effects studied in the preceding subsection, it should be noted that the distinction between pricing effects and availability effects can be difficult to draw. For example, firms may respond to the restrictions imposed by the CARD Act by raising prices for some consumers beyond the level some consumers would be willing to accept or by reducing the amount of credit they offer to some segments by issuing lower credit lines or approving fewer applications.

In work by Han et al. (2018), the authors suggest that the CARD Act may have led to less frequent direct mail offers for new credit cards, in particular for consumers with subprime credit scores. Using an approach similar to the difference-in-differences regression framework in

Agarwal et al. (2015), this study compares credit card offers with offers for similar loan products such as corporate cards, personal loans, and auto loans over time. On net, the authors estimate that the monthly probability of receiving a credit card direct mail offer fell by roughly 6.6 percentage points for consumers with subprime credit scores relative to the probability of receiving an offer for other products and relative to prime consumers, with a discernible and persistent drop in the estimated relative probability of offer receipt that begins around the time of the CARD Act's passage. This result is consistent with the evidence in Nelson (2018) that the Act may have had adverse consequences for some types of subprime consumers.

The Han et al. (2018) results are similar to what would be predicted by some of the theoretical arguments discussed in Section 6.2.1 above, especially theoretical arguments that assume a perfectly competitive credit card market. This study also has the advantage of using multiple comparison groups for subprime card credit and of having data from a longer pre-CARD Act period than has been available in many other studies, thereby mitigating the risk that anticipatory effects may impact the analysis. Nevertheless, similar to other studies reviewed in this section, some caveats also apply in interpreting the Han et al. (2018) results. As discussed in prior iterations of this card market report, direct mail offers for credit cards became less prevalent over the post-CARD Act period relative to other account acquisition channels, such as online marketing. If these trends were more pronounced for subprime than for prime accounts for reasons unrelated to the CARD Act, then such changes could affect the study's estimates; similar issues could arise if comparison groups such as auto loans exhibited divergent trends between subprime and prime direct mail volumes in the post-CARD Act period for reasons particular to these markets.

Other studies have found correlational evidence consistent with the cautionary results in Han et al. (2018). Jambulapati & Stavins (2014) document an increase in credit card account closures that coincided with both the CARD Act and the Great Recession. Santucci (2015) compares different vintages, or origination years, of credit card accounts from one period prior to the CARD Act and prior to the Great Recession, and one period subsequent to the CARD Act and subsequent to the Great Recession. Santucci (2015) finds that the latter vintage had lower initial credit lines and received smaller net increases in credit limits in dollar terms. Elliehausen & Hannon (2018) document that the decrease in the number of open credit card accounts during this time period was more pronounced for consumers with subprime credit scores. When discussing this correlation, Elliehausen & Hannon (2018) argue that a greater decrease in subprime credit in the period around the Great Recession can be interpreted as evidence of the CARD Act's adverse effects.

Agarwal et al. (2015) also examine the CARD Act's effects on measures of credit card availability. Their difference-in-differences regression analysis finds that the Act resulted in small to zero effects on credit limits, for existing accounts, in the short term. The estimates for new accounts are less conclusive. For new accounts issued to consumers with subprime credit scores, the estimates are too statistically imprecise to be conclusive. For consumers with prime credit scores, the available evidence suggests that general purpose consumer cards and small business cards may have exhibited different trends in initial credit lines in the period prior to the Act. These divergent trends make estimates from the difference-in-differences strategy of comparing these two groups over time more difficult to interpret.

Across the methodologies and analyses reviewed in this section, a consistent theme is the challenge of disentangling the *effects* of the CARD Act itself, rather than the effects of other market changes such as the Great Recession. Overall, the scholarship reviewed in this section suggests that the CARD Act's effect on consumer welfare is mixed.

7. Credit card debt collection

As part of its review of the practices of credit card issuers, the Bureau surveyed a number of large issuers in order to better understand practices and trends in credit card debt collection between 2017 and 2018. These same large credit card issuers were also surveyed for the Bureau's 2015 Report and 2017 Report. Findings from the Bureau's current survey (the MMI dataset) are reported throughout this section.

First, this section provides background information on the overall market for consumer debt collection. Second, this section reviews issuer policies and practices with respect to resolving delinquent debt prior to charge-off, including communication practices, use of first-party and third-party collectors, and loss mitigation programs. Third, this section reports on the recovery of debt following charge-off, including metrics on recovery of charged-off debt through various channels, such as third-party agency collections, debt sale, and litigation. Finally, this section highlights selected key topics in credit card debt collection such as the growing number of borrowers engaging with for-profit debt settlement companies.

7.1 Debt collection markets

Most large credit issuers use their own employees and resources to collect some portion of their delinquent debts. Many creditors also engage third parties to collect debts on their behalf or sell uncollected debts to debt buyers, who then collect the debts themselves or through a third party. Debt collection industry revenue has declined in recent years, decreasing from an estimated $13.5 billion in 2013 to $11.5 billion in 2018.[220] The third-party debt collection industry now employs roughly 118,000 workers, representing an overall reduction of nearly 10,000 jobs in the last three years.[221] The number of debt collection firms has also continued to decline as the result of industry consolidation, as can be seen in Figure 1.

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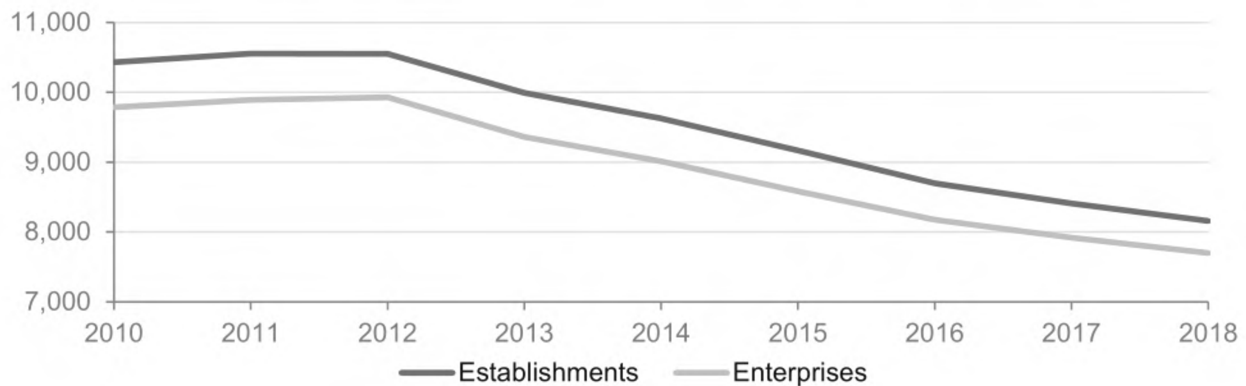
[220] Anna Amir, *Debt Collection Agencies in the US,* IBISWorld (Dec. 2018).

[221] *Id.*

Figure 1: DEBT COLLECTION INDUSTRY SHRINKAGE BY ENTERPRISES AND ESTABLISHMENTS, 2010-2018 (IBISWORLD)[222]



According to a nationally representative survey conducted by the Bureau between December 2014 and March 2015, one-in-three consumers with a credit report reported having been contacted by a debt collector or creditor about a past-due debt in the preceding year. Forty-four percent of these consumers reported being contacted about a credit card debt.[223]

More recent data drawn from the CCP[224] indicate that in 2018 roughly 28 percent of consumers with a credit file had a "collections tradeline" (*i.e.*, an account that appears on a consumer's credit report as a debt in collections) listed for a debt assigned to a third-party collector. Of these

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[222] "Enterprises" refers to the number of debt collection businesses in operation. Each enterprise may have multiple locations, which explains why "establishments" is a larger figure.

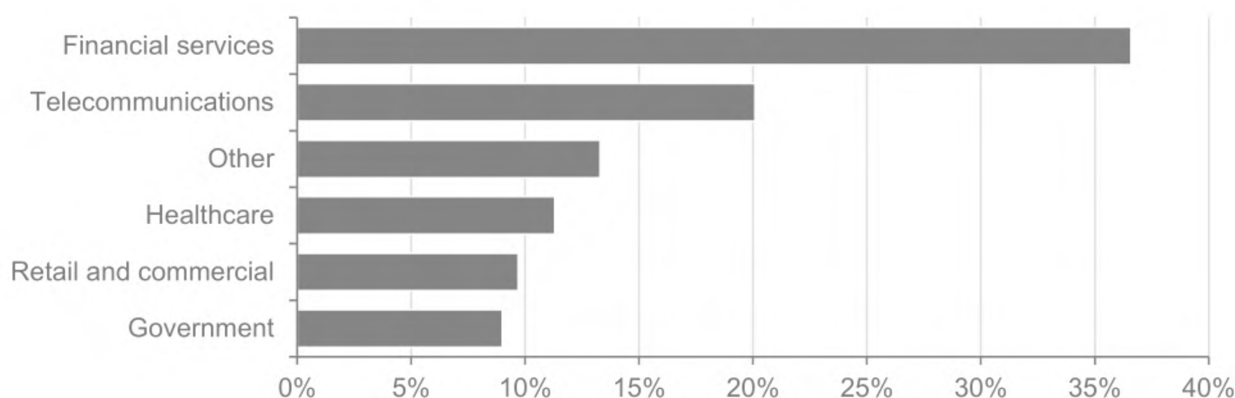
[223] Bureau of Consumer Fin. Prot., *Consumer Experiences with Debt Collection: Findings from the CFPB's Survey on Consumer Views on Debt*, (Jan. 12, 2017), https://www.consumerfinance.gov/documents/2251/201701_cfpb_Debt-Collection-Survey-Report.pdf. The total number of consumers with accounts in collection may be understated because it is based on consumer credit reports, which do not account for utilities, rent, retail, and other debts that are not reported to the three large credit reporting agencies. *See, e.g.*, Bureau of Consumer Fin. Prot., *Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation's Largest Credit Bureaus Manage Consumer Data*, (Dec. 2012), *available at* https://www.consumer finance.gov/ data-research/research-reports/key-dimensions-and-processes-in-the-u-s-credit-reporting-system.

[224] See Section 1.3.1 for more information on the CCP data source.

consumers, roughly 30 percent had at least one credit card tradeline assigned to a third-party debt collector. However, the actual share of consumers with credit card debt in collections may be much higher, as issuers may provide credit reporting data on delinquent consumers directly to credit bureaus rather than allowing their third-party collection agencies to furnish these tradelines.

Consistent with the Bureau's 2017 Report, debt from the financial services segment continues to constitute the largest share of third-party debt collection revenue—nearly 37 percent in 2018.[225] Figure 2 breaks down the $11.5 billion in third-party debt collection revenue by type of debt. Telecommunications, medical, retail, and government debt are also significant drivers of debt collection industry revenue.

Figure 2: DEBT COLLECTION MARKET SEGMENTS BY SHARE OF REVENUE, 2018 (IBISWORLD)



A large majority of debt collection industry revenue is generated by firms contracting with creditors to collect their debts on a contingency fee basis. In contingency fee collections, the creditor and the collector each receive a share of the amount collected. The Bureau's current survey on credit card issuers' debt collection practices found that, on average, respondents placed 28 percent of their overall charged-off inventory with third-party collectors in 2018, with almost all employing a contingency fee model.

[225] 2017 Report, *supra* note 5, at 305.

Another significant source of debt collection revenue is debt sales, where a debt buyer purchases accounts (or portfolios of accounts) from the original creditor or other debt buyers and then generally seeks to collect on the debt, either themselves or through third-party debt collectors. If debt buyers have used third-party debt collectors to recover for them, the debt buyers typically pay a share of the amount collected to the third-party debt collectors.

In May 2019, the Bureau published a Notice of Proposed Rulemaking (NPRM) proposing to amend Regulation F, 12 C.F.R. part 1006, which implements the Fair Debt Collection Practices Act (FDCPA), to prescribe Federal rules governing the activities of debt collectors covered by the FDCPA.[226] The proposal focuses on debt collection communications and disclosures and also addresses related practices by debt collectors.

7.2 Collections prior to charge-off

This section begins with a review of surveyed issuers' policies, procedures, and practices with respect to resolving delinquent debt prior to charge-off. All respondents conducted some collections activities in-house prior to charge-off. An issuer's internal collection efforts may include such methods as calling, texting, emailing, and sending letters to the consumer. Most issuers also supplemented the activities of their in-house agents with the resources of first-party collectors: outside collectors who collect on delinquent debt while working under the name and the direction of the creditor. As an alternative to internal collection and recovery, an issuer may also turn to a third-party agency to collect in the agency's own name. More than one-half of the surveyed issuers worked with third-party collectors prior to charge-off.

In response to the Bureau's current survey, issuers provided information regarding restrictions on contacting consumers, use of electronic communications (*e.g.*, email or SMS), technology and software used as part of their collection strategies, use of first-party collectors, loss

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[226] Debt Collection Practices (Regulation F), 84 Fed. Reg. 23274 (May 21, 2019) (a proposed rule to amend 12 C.F.R. part 1006).

mitigation practices, and the engagement of third-party collectors for collection activities prior to charge-off.[227]

7.2.1 Pre-charge-off communications

Issuers reported having policies in place that specify the frequency with which their collectors can call, leave voicemails, email, text, and otherwise contact a consumer with regard to a delinquent account.[228] Table 1 below provides greater specificity on the ranges of issuers' policy limits on consumer contact via various media and actual average attempts for each of those media. Issuers reported that their call intensity strategies depended on an account's stage of delinquency and risk level, among other factors.

TABLE 1: RANGES OF CONSUMER CONTACT POLICY LIMITS AND ACTUAL AVERAGE ATTEMPTS (MMI)

Policy limit or actual attempts	Phone call attempts per day	Phone calls after right party contact	Voicemails per day	Postal letters per month
Policy limit	2 to 9 per account	No additional calls on contact date	1 per phone number	1 to 8 per account
Actual average attempts[229]	1.42 to 3.50 per account	0 per account on contact date	0.06 to 0.77 per account	0.21 to 2.16 per account

[227] Most issuers use proprietary case management software for their internal collections. Issuers rely on a small number of vendors for their dialer software and hardware, mainly Avaya and Aspect dialers.

[228] In response to the Bureau's Request for Information (RFI) a commenter asserted that limiting consumer contacts via any channel will make it more challenging for creditors to work with delinquent consumers, raising the cost of credit overall, including for consumers who pay their debts in a timely manner. *See* ABA Comment Letter, at 7.

[229] Average attempts via the telephone and voicemail channels were defined as the number of calls made or voicemails left to all accounts that were called divided by the number of unique delinquent accounts that were called in a given period of time. For postal letters sent, average attempts by letter was defined as the number of letters sent to delinquent accounts divided by the number of unique delinquent accounts. The time frames were daily, weekly, or monthly, depending on common practices in that channel.

All surveyed issuers reported that their policies included daily caps per account on phone calls. Daily contact attempt policy limits ranged from two calls to nine calls per account. The high end of this range has decreased from the previous high of 15 calls per account reported in the Bureau's 2017 Report.[230] Some respondents also set a weekly cap on telephone call attempts at 30 calls per week per account, while other issuers set monthly caps, which ranged from 60 to 90 call attempts per month. All issuers surveyed restricted the number of voicemails that can be left for a consumer each day, allowing no more than one voicemail per phone number per day, a decrease from the policy range of one to two voicemails reported in the Bureau's 2017 Report.[231]

In general, issuers' actual average contact attempts remained below stated policy maximums. Issuers averaged between 1.42 and 3.50 contact attempts via telephone per account per day, similar to the range of 1.49 to 3.51 contact attempts reported in the Bureau's 2017 Report. However, no issuer allowed calls to continue within a given day once "right party contact" has been made. Right party contact occurs when the issuer or collector is able to reach and speak with the consumer whom the issuer believes is responsible for the debt via telephone. Right party contact rates typically averaged between 1 percent and 5 percent for in-house and first-party collections and between 0.6 percent and 1 percent for third-party collections over a three month period.[232] The majority of respondents reported that they did not track in-house and first-party contact attempts separately for pre-charge-off collections. Issuers who placed pre-charge-off accounts with third-party collection agencies stated that they often assign "high risk" accounts to third-party collectors, including accounts where no contact had been made with the primary account owner for an extended period of time, reducing right-party contact rates.

Nearly all of the issuers surveyed also reported using email as part of their credit card collection strategy, but the degree to which they used it varied widely. The reported percentage of email-

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[230] 2017 Report, *supra* note 5, at 314.

[231] *Id.*

[232] The survey defined "right party contact rate" as the number of times live contact with the primary or joint account holder or power of attorney of the debt was made during the quarter divided by the total number of outbound dialer attempts made to delinquent accounts in the quarter.

eligible accounts (defined as accounts for which the consumer provided a valid email address and agreed to be contacted at that address) ranged from 10.3 to 92.6 percent. Some issuers reported using email proactively for account servicing (*e.g.*, sending reminders about a pending withdrawal from a consumer's bank account for a recurring payment) as part of their pre-charge-off communication strategy. Other issuers stated that they used email only reactively, such as when a consumer initiated a conversation online or requested that documents be sent by email. Issuers who reported using email typically restricted the number of emails that could be sent to two or three emails per week.

TABLE 2: EMAIL, TEXT, AND WEBCHAT ELIGIBILITY AND ENGAGEMENT RATES, 2018 (MMI)

	Email	Text/SMS message	Web chat
Average percent of accounts eligible for channel[233]	68.3%	59.4%	Not applicable
Average percent of eligible accounts engaged via channel per month	67.0%	50.6%	2.5%

While nearly all issuers reported using email, less than two-thirds of those surveyed said they sent mobile text messages to communicate with delinquent consumers. However, the share of issuers using text as part of their credit card collection strategy has increased since the Bureau's 2017 Report as a number of issuers reported piloting pre-charge-off text message strategies to notify consumers of their delinquent credit cards and repayment options. Two-thirds of issuers surveyed also reported engaging with delinquent consumers via "web chat," where a consumer can click a chat button on the issuer's webpage to communicate about their debt with a collections agent. In fact, some issuers now allow credit card settlements to be negotiated via web chat.

[233] For email and text, the eligibility rate was defined as total number of unique delinquent accounts with a consented email address or a consented mobile phone number divided by the total number of unique delinquent accounts as of the end of each year. There is no eligibility rate for web chat, as the eligible population is all unique pre-charge-off delinquent accounts.

All surveyed credit card issuers had the capacity, within their collections function, to accommodate consumers with Limited English Proficiency or consumers who express the desire to communicate in a language other than English. Some issuers had a special unit of multilingual collectors to communicate with these consumers in their preferred language. Those without a special unit outsourced their translation services. For issuers that tracked consumer language preferences, the share of pre-charge-off delinquent balances owed by consumers who expressed a preference for a language other than English was 2.35 percent in 2018.

Some issuers reported having pre-delinquent collections strategies in place where they pursued collections on accounts that were current (*i.e.,* had not yet become delinquent.) These issuers focused on subsets of current accounts that were identified as high-risk, such as accounts that were chronically above the credit limit.

7.2.2 First-party collections

The majority of issuers supplemented the activities of their in-house agents with resources from first-party collectors, either by directly engaging an entire first-party collection agency or by supplementing their internal agent pool by hiring some collectors from first-party suppliers. Issuers reported that they generally do not track pre-charge-off account placements separately between in-house and first-party collections. Most issuers that used first-party collectors noted that they do not place any specific sub-segments of accounts with first-party agencies. Instead, issuers typically allocated work between in-house and first-party collectors based on availability, requiring that first-party collectors place, receive, and document calls to consumers using the issuers' own case management system and dialer technology.

First-party collection companies were typically paid on a full-time equivalent (FTE) basis, unlike the contingency fee model used to compensate third-party collectors. On average, issuers reported keeping 89 percent of pre-charge-off debt balances to be worked in-house and by first-party collectors, with the remaining 11 percent placed with third-party collectors.[234] The number of unique first-party agencies used across issuers remained relatively stable year-over-year

[234] These figures represent the percentage of pre-charge-off balances that each issuer retained for in-house and first-party collections and placed with third-party collectors, averaged across all issuers.

between 2017 and 2018, with 10 unique agencies in 2017 and 11 in 2018. The issuers that used first-party agencies used three different agencies on average.

7.2.3 Third-party contingency collections

More than half of the surveyed issuers worked with third-party contingency collectors prior to charge-off, which remained the same compared to the Bureau's 2017 Report.[235] The total number of unique third-party collection agencies used across issuers also remained steady from 2017 to 2018, with issuers who used third-party collectors employing an average of 13 third-party agencies in both years.[236] For issuers that used third-party collection agencies prior to charge-off, the average share of pre-charge-off debt placed with third-party collectors remained flat at 11 percent between 2017 and 2018. However, the share of pre-charge-off debt placed with third-party agencies varied widely among issuers, as some issuers placed a substantial portion (as high as 28 percent) of their pre-charge-off debt with third-party collectors, while some did not place any debt.

AGENCY COMPENSATION

Most issuers that contracted with third-party agencies for pre-charge-off collections paid a contingency fee that was a percentage of the amount collected. These fees ranged from 7.1 to 19.0 percent, with an average of 16.5 percent in 2017 and 15.3 percent in 2018. Survey respondents indicated that this variation is attributable to differences in the risk profile of the accounts being placed with third-party collectors. Generally, highly-collectible accounts command lower contingency fees compared to those perceived as being more difficult to collect. Among those issuers that used third-party agencies, a small number reported paying their third-party collectors on a FTE basis, rather than using contingency fees. Most issuers also provided additional incentives to third-party collectors based on their performance relative to a set financial target or to the performance of other collection agencies.

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[235] 2017 Report, *supra* note 5, at 315.

[236] These numbers were driven by one outlying issuer, who reported a significantly higher number of third-party collection agencies. Excluding this outlying issuer, the average number of third-party collection agencies used by each surveyed issuer was 10.

7.2.4 Performance

Prior to charge-off, issuers generally kept debts that were in an early stage of delinquency or were assessed as having a relatively high likelihood of recovery for in-house collections. Issuers that placed accounts with third-party collection agencies often assigned "high risk" accounts to third-party collectors, including accounts in the later stages of delinquency, closed accounts, and accounts where no contact had been made with the primary account owner for an extended period of time. Respondents also noted that they may assign accounts with special circumstances to third-party collection agencies with specialized collections expertise in the relevant area, such as those where the consumer was engaged with debt settlement companies, the accountholder was deceased, or bankruptcy applications were pending. As a result, in-house collections generally had higher liquidation rates and cure rates, and lower charge-off-rates, relative to third-party collections, as seen in Figure 3 below.[237] These performance metrics all remained relatively stable year-over-year from 2017 and 2018.

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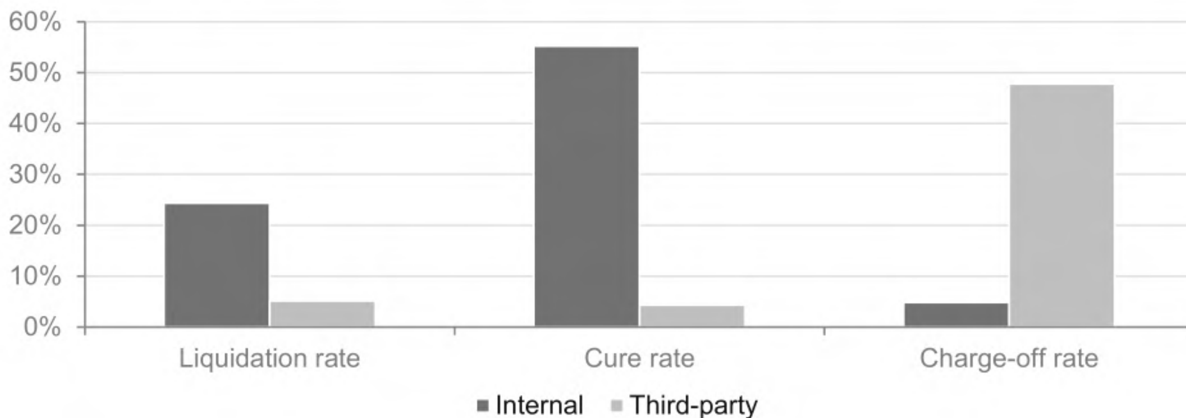
[237] The quarterly liquidation rate is defined as total pre-charge-off delinquent dollars collected in a given quarter as a percent of total pre-charge-off delinquent dollars in that same quarter. Cure rate is defined as the percent of pre-charge-off delinquent dollars in a given quarter that were repaid to current status by the end of the same quarter. Charge-off rate is defined as the percent of pre-charge-off delinquent dollars that charged off (representing contractual charge-offs as well as accounts charged off for bankruptcy, notice of decease, etc.) as of the end of the same quarter. These quarterly rates are averaged across all issuers and weighted by issuer's share of total pre-charge-off delinquent dollars. Finally, the 2018 quarterly average was calculated across all four quarters.

Figure 3: AVERAGE QUARTERLY PERFORMANCE FOR INTERNAL AND THIRD-PARTY COLLECTIONS, 2018 (MMI)



7.2.5 Loss mitigation and re-aging practices

Credit card issuers used various loss mitigation practices, including re-aging, short- and long-term forbearance programs, debt management plans offered by consumer credit counseling agencies, and debt settlement. Issuers reported that they generally structured their loss mitigation practices to conform to guidance issued by the Federal Financial Institutions Examination Council (FFIEC) and the federal banking agencies on the use of these collections tools.[238]

RE-AGING

Re-aging returns a delinquent, open-end credit card account to current status without collecting the total amount of principal, interest, and fees that are contractually due. Re-ages are often

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[238] *See generally* Uniform Retail Credit Classification and Account Management Policy: Policy Implementation, 65 Fed. Reg. 36903 (June 12, 2000); Off. of the Comptroller of the Currency, Bd. of Govs. of the Fed. Reserve System, Fed. Deposit Ins. Corp., Off. of Thrift Supervision, *Credit Card Lending: Account Management and Loss Allowance Guidance*, *OCC Bulletin 2003-1*, (Jan. 8, 2003), *available at* https://occ.gov/news-issuances/bulletins/2003/bulletin-2003-1.html.

performed by collections departments to assist customers who are experiencing temporary financial difficulties.

Issuers' policies allow re-aging of open-end accounts when a borrower makes at least three consecutive minimum monthly payments or an equivalent amount in a lump-sum payment. Additionally, an account must be on the books for at least nine months to be eligible for re-aging. The number of re-ages on an account is limited to one in 12 months and two in five years. However an account that is enrolled in a long-term forbearance or debt management program, including internal and third-party debt management plans, may be eligible for a third re-age within the five year period. All surveyed issuers' re-aging policies aligned with the guidance offered by the FFIEC and federal banking agencies.[239]

According to the results of the current survey, re-aged balances as a percentage of total delinquent dollars remained below 2 percent for each quarter between 2017 and 2018. There was considerable variation among the card issuers in terms of the share of pre-charge-off balances that were re-aged: the quarterly average ranged from as low as 0.44 percent of total delinquent dollars to a maximum of 5.8 percent. This wide range may reflect variation in each issuer's underlying portfolio composition. Collectively, issuers re-aged nearly $1 billion in balances per quarter, well above the $660 million per quarter reported in the Bureau's 2017 Report. However, re-aged balances as a share of total delinquent dollars still remained close to the 2 percent reported in the Bureau's 2017 Report.[240] An uptick in re-aged balances in recent quarters in 2018 aligned with an increase in credit card delinquencies.

FORBEARANCE PROGRAMS

Forbearance programs are a form of workout program designed to assist borrowers experiencing financial hardship. These programs can be "temporary" or "short-term," aimed at assisting borrowers experiencing hardships expected to last 12 or fewer months, or "long-term," intended to aid borrowers experiencing continued hardships lasting longer than 12 months. Forbearance programs usually lower a customer's interest rate and monthly required payment amount. Issuers reported that their long-term programs generally require borrowers to repay

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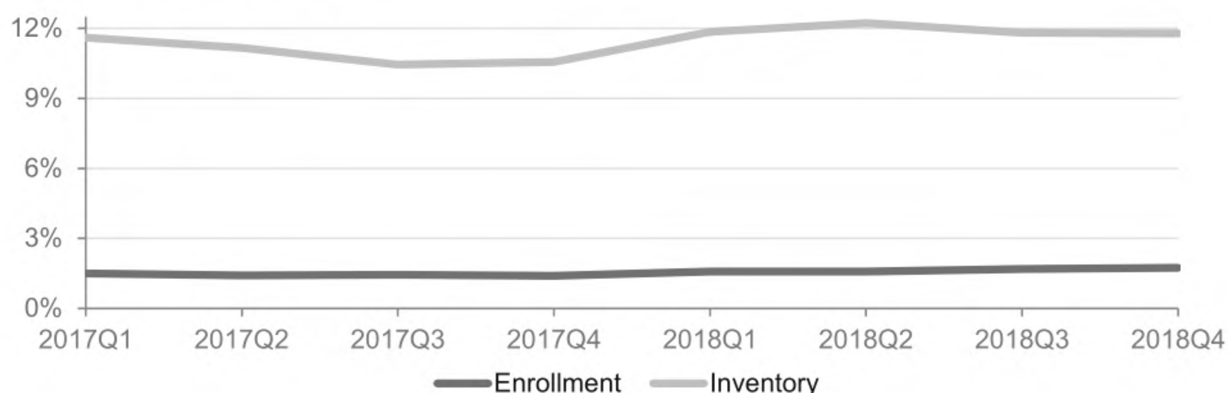
[239] 65 Fed. Reg. 36903 (June 12, 2000).

[240] 2017 Report, *supra* note 5, at 318.

their credit card debt within 60 months. In order to meet this amortization timeframe, creditors may need to substantially reduce interest rates and eliminate fees, so that a greater share of the borrower's monthly payment is applied to pay down the principal balance. All issuers surveyed generally reported assessing and documenting the reason, severity, and duration of the cardholder's financial difficulty when placing them in a forbearance program. All surveyed issuers' forbearance policies aligned with the guidance offered by the FFIEC and federal banking agencies.[241]

Figure 4: QUARTERLY FORBEARANCE NEW ENROLLMENT AND ACTIVE INVENTORY AS A SHARE OF DELINQUENT BALANCES (MMI)[242]



Review of issuers' loss mitigation policies indicates that most issuers have discontinued offering short-term forbearance programs over the last several years. Instead, issuers that did not offer short-term programs evaluated consumers with short-term financial hardships and offered them long-term programs as an alternative. Most issuers also reported that they do not allow their third-party collection agencies to offer and enroll borrowers in hardship programs, due to the complexity of managing these programs.

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[241] *Id.*

[242] "Inventory" refers to total balances for all accounts that are in active status in a forbearance program as of the end of the quarter.

CREDIT COUNSELING AGENCIES

Issuers work with consumer credit counseling agencies (CCAs) to help borrowers resolve their financial hardships, as an additional component of their loss mitigation efforts. CCAs work with borrowers to develop a budget and a debt management plan (DMP) for all of the consumer's enrolled debts, which may be owed to multiple creditors. These plans generally involve paying creditors a fixed payment amount at a reduced interest rate. Issuers typically categorize DMPs managed by CCAs as "long-term hardship programs."

All of the respondents reported that they work with CCAs in some capacity, although individual creditors' policies about how they work with and fund CCA services vary. Some respondents limited the number of CCAs they work with by requiring CCAs to meet certain selection criteria, such as whether CCAs are non-profits, belong to a trade group, or meet certain criteria for program outcomes. Some respondents reported referring consumers to specific CCAs. The majority of respondents reported funding CCAs through a "fair share" payment, which is a payment based on a percentage of the amount the consumer has paid back to the issuer. A few of the respondents stated that they do not pay fair share, but instead fund certain CCAs through grant funding. Several issuers reported exploring working with CCAs on debt relief programs that extend beyond the traditional DMP.

All issuers reported offering one or more types of forbearance or debt management programs with varying interest rates, monthly fixed payment amounts, and amortization periods. Total new enrollments in forbearance programs and DMPs offered by credit counselors remained below 2 percent of total pre-charge-off delinquent balances during the study period. However, total new enrollments increased by 16 percent from 2017 to 2018, representing a $500 million dollar increase in debt balances enrolled. Approximately $1.2 billion of debt was enrolled in various forbearance or debt management programs each quarter. The average quarterly new enrollment rate among individual issuers ranged from a low of 0.2 percent to a high of 5.2 percent of all pre-charge-off delinquent balances. While the Bureau's 2017 Report noted a steady decline in forbearance inventory between 2015 and 2016, issuers reported that total forbearance inventory shows a moderate upward trend due to an increasing number of new enrollments in 2018.

DEBT SETTLEMENT

Debt settlements occur when an issuer agrees to accept less than the full balance owed by the borrower as full satisfaction of the balance owed. This can happen when the creditor becomes persuaded that the consumer is unable to pay the full amount of the debt owed. Collectors may

also offer settlements to the consumer, as authorized by the creditor. Under current tax law, debt cancelled in this manner may have tax implications for the consumer.

Creditors' settlement policies outline the standards for settlement offers that the creditors will proactively make or reactively accept from consumers. Most issuers have policies in place to proactively offer settlements directly to consumers who meet the standardized risk criteria set by the creditor. These efforts may be conducted via in-house operations or through third parties. Issuers also set "floors" for settlements requested by the consumer, which specify the lowest amount the issuer is willing to accept as a settlement as a percent of the total balance. In addition to the size of the debt and the length of delinquency, issuers generally have procedures in place to assess the financial situation of the consumer when responding to a settlement request by the consumer. While there is some variation among issuers, the share of debt that each issuer settled for less than the full balance remained fairly steady throughout 2017 and 2018. Among surveyed issuers, the average share of pre-charge-off debt settled each quarter ranged from 0.07 percent to 0.79 percent, while the share of post-charge-off debt settled ranged from 0.26 percent to 3.04 percent.

Pre-charge-off balances are settled with a single lump-sum payment or multiple installments. Installment settlements typically consist of three payments, but pursuant to guidance from the Office of the Comptroller of the Currency for national banks and federal savings associations the total duration of the payments should not exceed three months.[243] The portion of the balance that is forgiven should generally be charged off when the settlement agreement is fulfilled.[244] Post-charge-off settlements can be structured over any length of time. Post-charge-off settlements can have lower floors relative to pre-charge-off settlements, though the degree to which lower rates are offered for charged-off debts varies across issuers. Average settlement rates—the balance paid as a ratio of the balance owed by the borrower for accounts that were settled—remained steady between 2017 and 2018 at about 53 percent pre-charge-off and 50

[243] *See* Off. of the Comptroller of the Currency, *Comptroller's Handbook: Credit Card Lending, Version 1.2*, (Jan. 2017), *available at* https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/credit-card-lending/pub-ch-credit-card.pdf.

[244] *See* OCC et al. Guidance, *supra* note 238.

percent post-charge-off, though there was some variation in the rates among individual respondents.

If the forgiven debt exceeds $600, issuers may file a 1099-C for "Cancellation of Debt" with the Internal Revenue Service. Most issuers disclose the potential of tax implications for the settlement to the consumer, either as part of a telephone script or via letter.

7.3 Recovery following charge-off

Once an account charges off, it is placed into one of a variety of channels, including internal collections, third-party agency placement, litigation, and debt sale to facilitate further recovery of the balance owed. Issuers may place accounts multiple times in different channels depending upon recovery performance within each channel. Issuers may also warehouse certain accounts where balances are considered unlikely to be repaid.[245] In 2018, issuers in the sample charged off $39 billion in debt, a 10 percent increase from 2017, and 56 percent more than the $25 billion charged off in 2015.[246] In general, the current survey found that:

- All issuers warehoused a significant portion of their overall post-charge-off inventory;
- Most issuers used third-party agencies throughout the entire review period to collect at least a portion of their charged-off debt;
- Most issuers engaged in internal collections for at least a portion of their charged-off debt;
- Most issuers engaged in post-charge-off litigation to collect debt from consumers; and

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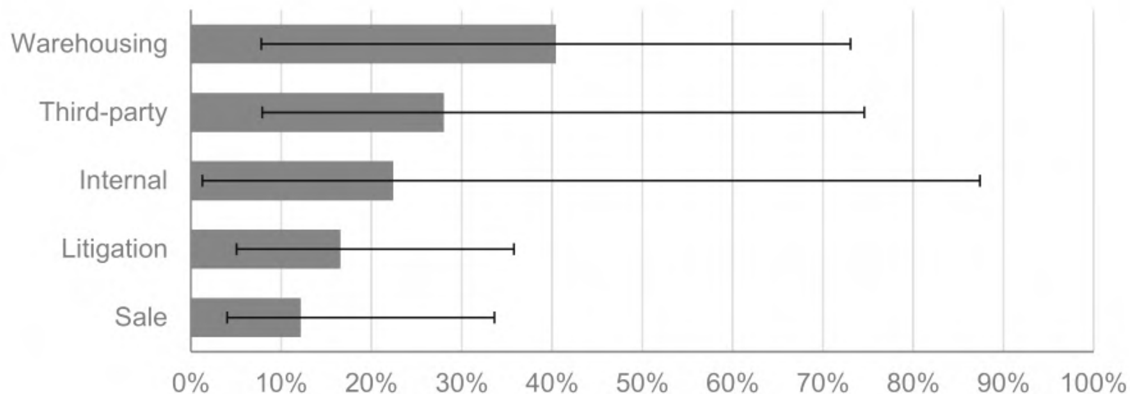
[245] Warehoused balances are generally those that issuers do not actively seek to collect and generally include accounts issuers considered to be uncollectible or unlikely to be repaid, including older accounts that may be past the statute of limitations. Some issuers also reported that they may place accounts in warehouse status when transitioning these accounts between placements.

[246] 2017 Report, *supra* note 5, at 320. The same group of issuers were surveyed for the Bureau's previous 2017 and 2015 Reports.

- A minority of issuers sold debt.

Figure 5: SHARE OF CHARGE-OFF BALANCE INVENTORY BY RECOVERY CHANNEL IN 2017 AND 2018 (MMI)[247]



Issuers reported a significant portion of their overall post-charge-off balance inventory was in warehouse status, as shown in Figure 5. The warehouse category includes accounts that are considered uncollectible for various reasons (*e.g.*, accounts lacking current contact information for the accountholder despite many attempts to locate them) or that are deemed unlikely to be repaid (*e.g.*, accounts where no payment has been received for an extended length of time).

Excluding warehoused accounts, issuers that used third-party collection agencies generally placed the largest share of their charged-off balance inventory with such agencies. Issuers that used third-party collection agencies reported placing nearly one-third of their post-charge-off inventory with third-party agencies in any given quarter between 2017 and 2018. While there was significant variation in third-party placements among issuers, the percentage of debt that each issuer placed with third-party agencies remained fairly consistent between 2017 and 2018. Among issuers, third-party placement share ranged from nearly 8 percent to 73 percent of an issuer's total post-charge-off inventory in 2017 or 2018. The range of placement into internal

[247] Green bars represent the average share of charged-off balances in each of the five recovery channels. The issuers provided the status of post-charge-off balance inventory as of the end of each quarter in 2017 and 2018. The distributions for 2017 and 2018 were averaged by issuer, and then averaged across issuers. Black lines running through each bar represent the range of the share of charged-off balances only for issuers that used that channel. In other words, the ranges do not include zero values, even though some issuers did not use that particular channel.

recovery was similarly varied, as a few issuers reported that they relied primarily on internal recovery for post-charge-off collections.

Most issuers sued some consumers to recover unpaid balances after charge-off. On average, issuers litigated almost 20 percent of their post-charge-off balance inventory. Finally, similar to the results of the Bureau's 2015 and 2017 Reports, few issuers leveraged debt sales as part of their post-charge-off recovery strategy. Issuers who sold debt reported selling an average of 12 percent of their post-charge-off balance inventory.

7.3.1 Internal recovery

Internal recovery is not a significant piece of most issuers' overall recovery strategy for post-charge-off debt. Similar to in-house collections prior to charge-off, issuers may pursue internal recovery efforts directly after charge-off, or they may first place accounts with third-party contingency agencies. A minority of the issuers used internal recovery as a significant piece of their overall recovery strategy, while the majority generally retained accounts that were ineligible for third-party placement or awaiting placement in another channel. There was a significant degree of variation in issuers' policies designating certain accounts ineligible for third-party placement. Some issuers use models that score accounts based on the likelihood of payment to subset accounts to place in internal recovery, while some do not allow accounts with certain statuses (*i.e.*, accounts of consumers who are currently on active military duty) to be placed with third-party agencies. While on average about 22 percent of an issuer's post-charge-off inventory was pursued through internal recovery in 2017 and 2018, one issuer chose to retain and internally recover more than 80 percent of its post-charge-off inventory during the review period.

7.3.2 Third-party recovery

Most issuers employed third-party agencies to recover post-charge-off debt, all on a contingency-fee basis. While most surveyed issuers placed between 20 percent and 40 percent of their charged-off balances with third-party collectors, one issuer did not place any charged-off debt with third-party contingency agencies for most of 2017 and 2018. Issuers described a number of reasons for placing charged-off debt with third-party agencies, including improved recoverability for certain "high-risk" accounts, internal resource constraints, and the need for specialized expertise in recovering certain "special segments" of debt (*e.g.*, debt owed by deceased consumers).

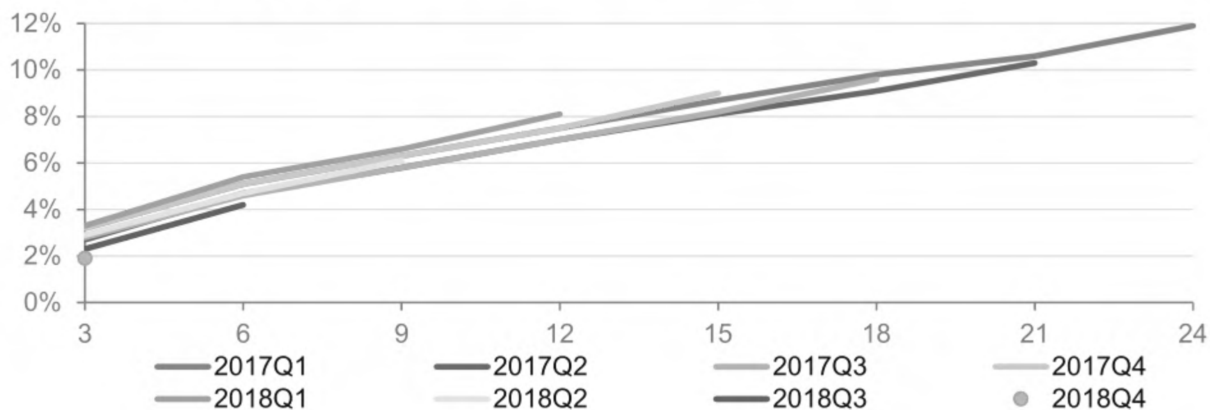
Creditors who employ third-party collectors generally contract with agencies to pursue a portfolio of accounts for a certain length of time. If an agency cannot recover money or establish contact on an account in the specified period, the creditor will generally recall the account. Accounts may be recalled from a third-party placement at any time, but recall usually follows a prescribed schedule determined by the age of the debt and the number of previous account placements.

PERFORMANCE

Performance of recovery is measured by the "cumulative recovery rate," which is the share of the charged-off balance that has been recovered over the life of the charged-off account. Recovery on charged-off debt can occur over several months or years. As the debt ages and the account moves from one placement to another, the amount of money the issuer expects to recover from that account generally decreases.

Figure 6 below shows the average cumulative recovery rates for balances that charged off each quarter between the first quarter of 2017 and the fourth quarter of 2018. These rates reflect the cumulative recovery on the debt across all potential placement channels, including internal placement, third-party agency placement, litigation, and proceeds from debt sales. Longer recovery periods mean that the issuers have had more time to collect on the debt, so the cumulative recovery rate rises over time.

Figure 6: CUMULATIVE RECOVERY RATES FOR QUARTERLY VINTAGES BY MONTHS FOLLOWING CHARGE-OFF (MMI)[248]



For debt that charged off in the first quarter of 2017, issuers recovered an average of 12 percent of the charged-off balance within a two-year period. Nearly two-thirds of this recovery occurred within the first year following charge-off. Quarterly vintages show stable performance over the two year review period. The first vintage for which there are 24 months of data is 2017Q1. After one year, issuers recovered 7.5 percent of the charged-off balances from this vintage. As debt ages, incremental gains in recovery decline. After the second year, issuers recovered an additional 4.4 percent, for a two-year total of 11.9 percent.

THIRD PARTY NETWORKS

The size of individual issuers' third-party vendor networks, which include both contingency agencies and law firms, was generally stable between 2017 and 2018. The overall number of unique vendors used across all issuers was 119 in both years. In 2018, all but one of the issuers' third-party vendor networks consisted of at least eight third-party vendors. Between 2017 and 2018, the largest single network employed by any surveyed issuer included 57 separate vendors. While no single vendor was used by all issuers, three were used by the majority.

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[248] Here, each "quarterly vintage" represents balances for all accounts that charged off at any time during the given quarter. Cumulative recovery includes all proceeds collected post-charge-off, including through third-party collections, litigation, and debt sales.

AGENCY COMPENSATION

Issuers who used third-party agencies to collect on post-charge-off debt typically paid a contingency fee that was a percentage of the amount of debt collected. Contingency fees are based on the level of placement (*e.g.*, primary, secondary, tertiary, and quaternary), with later placements typically receiving higher contingency fees as the debt ages and recovery becomes more difficult. In 2018, contingency fees ranged from 18 to 26 percent for primary placement, from 22 to 34 percent for secondary placement, from 26 to 44 percent for tertiary placement, and from 10 to 50 percent for quaternary placement. Some issuers reported higher contingency fees for tertiary placement than quaternary placement. These respondents noted that the volume of quaternary placements is generally low and includes only a select subset of accounts (*e.g.*, accounts that had previously broken from a payment plan) where some likelihood of collection remains. After quaternary placement, most issuers report that they recall accounts and place them in warehouse status, where no further collection activity typically occurs.

In addition to contingency fees, some issuers set incentives and penalties to encourage third-party agencies to meet performance targets. A minority of issuers reported that they offered incentives to reward agencies with superior performance relative to other agencies in the issuer's network. Some issuers reported that they rewarded their third-party collection agencies with additional bonuses for meeting hiring and retention goals. Many issuers' third-party agency compensation plans also contained a penalty component, where agencies could be penalized if they fell significantly behind their peers' average performance or had compliance problems. Penalties included reduced contingency fees and/or placements in future periods, exclusion from bonus consideration, increased frequency of audits, and termination for significant compliance violations.

VENDOR MANAGEMENT

Issuers manage their third-party vendors' compliance with the issuers' policies, procedures, applicable regulatory requirements, and financial performance targets using a variety of methods. These included:

- Monitoring of randomly-sampled collection calls on a periodic (*e.g.*, monthly) basis;
- Periodic (*e.g.*, semi-annual or annual) audits, including on-site visits;
- Direct engagement through a team that serves as the primary contact between issuer and vendor to provide oversight of day-to-day operations; and

- Complaint intake, tracking, investigation, resolution, and trend analysis.

All issuers have limits on consumer contact attempts that they extend to their third-party contingency agencies and monitor through quality assurance testing, routine audits, and call sampling. These limits are generally similar to the ones followed by issuers' in-house and first-party collectors in pre-charge-off collections, although a minority of issuers allowed slightly higher daily phone contact attempts in post-charge-off collections than in pre-charge-off collections.

Most issuers either prohibit or strictly limit their third-party collectors from using email and text to initiate contact with borrowers in post-charge-off collections, although information may be sent via these channels if a borrower specifically requests it. However, a minority of issuers allowed their third-party debt collectors to send follow-up communications, such as payment reminders, via email. Some issuers required their collectors to stop using an email address for communications following a "hard bounce" (*i.e.*, the recipient's email ID was invalid), but allowed communication to continue following a "soft bounce" (*i.e.*, the recipient's inbox was full).

Only a minority of the surveyed issuers reported that they sent an agency placement notification letter to alert the borrower that their debt had been placed with a third-party agency. These letters informed borrowers that their debt had been transferred, provided the name and contact information of the third-party agency, and offered borrowers an option to pay the balance online via the issuer's website.

All surveyed issuers monitored their third-party agencies' collections performance, both relative to the issuer's stated targets and to the performance of other agencies in the network. Several issuers reported that they tested a number of alternatives to determine optimal placement strategies between their internal recovery unit and third-party network. Respondents who engaged in such comparative testing indicated that based on the results of such tests, they are planning to retain a larger share of accounts to work internally in 2019.

7.3.3 Litigation

Card issuers may sue a borrower in certain situations to recover outstanding debts. Issuers use litigation strategies for both pre- and post-charge-off accounts, although only a minority of issuers reported initiating litigation proceedings prior to charge-off. According to the Bureau's current survey, issuers may select accounts for litigation based on factors such as account

balance, level of delinquency, and estimated likelihood of payment (indicated by the presence of assets and employment income). All issuers in the survey that litigated credit card debt reported that they used an external network of attorneys. A minority of issuers also reported that they leverage an internal attorney network to execute their litigation strategies. As observed in the Bureau's 2017 Report, a few issuers noted that they may litigate accounts upon notification that a consumer is working with a debt settlement company.[249]

All issuers that litigated debt reported that the volume of new balances placed in the litigation channel increased significantly during the survey period, with year-over-year growth ranging from nearly 10 to 55 percent across issuers. For issuers that used the litigation channel, litigated balances as a percentage of total post-charge-off inventory ranged from a low of 5 percent to a high of 36 percent. Increased litigation volume may be partially attributable to overall growth in delinquency and charge-off volumes during the review period. However, some issuers also indicated increasing use of the litigation channel in response to a growing volume of accounts in cease communication status (see Section 7.4.2). Survey respondents generally selected higher-balance accounts from their portfolios for litigation, with average litigated account balances ranging from $3,000 to $11,000 across issuers during the current survey period, compared to average pre-charge-off balances ranging from $1,300 to $4,800.

DEFAULT JUDGMENTS

A default judgment is a ruling in favor of the plaintiff collector when the defendant consumer has failed to respond to a summons or to appear in court. More than one-half of the issuers that use litigation as a strategy did not report default judgments separately. However, respondents who do track default judgments separately reported that more than 70 percent of all judgments were default judgments. This ratio was consistent with the Bureau's previous report, and remained relatively flat between 2017 and 2018 among issuers who tracked default judgments separately.[250]

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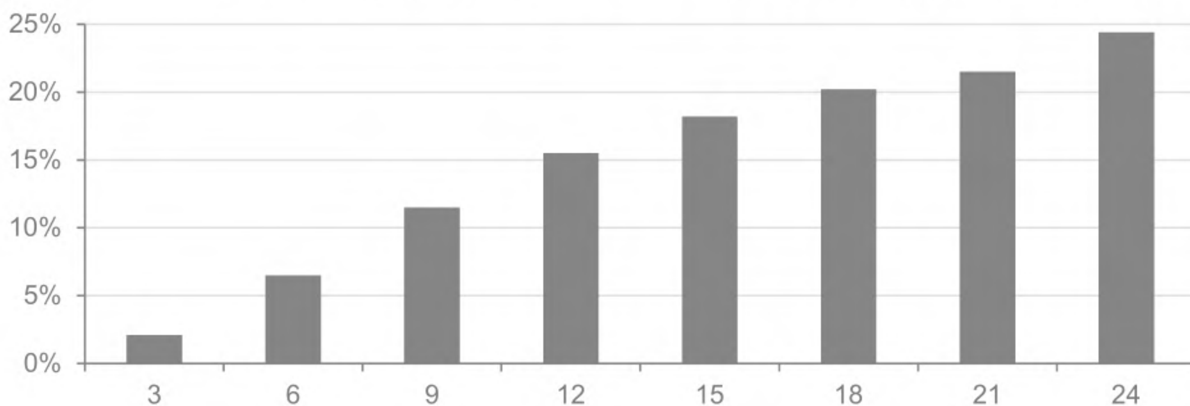
[249] 2017 Report, *supra* note 5, at 331.

[250] *Id.* at 326.

LITIGATION RECOVERY

After a creditor has won a judgment on a litigated account, recovery may occur over a prolonged period of time. To recover the debt, the issuer may exercise a wage garnishment against the debtor or ask the debtor to enroll in a payment plan. Thus, litigation generally produces a steady stream of recoveries from accounts with judgments against them, spread over a longer time period that may span several years. Figure 7 shows the cumulative recovery rate by months since judgment for vintages of accounts where a judgment was obtained between 2017 and 2018. Issuers recovered an average of 24 percent of the judgment balance for accounts where a judgment was obtained in the first quarter of 2017 (at 24 months, the longest performance window captured in the survey). Cumulative recoveries increased steadily over time as each vintage aged and a consistent flow of payments were applied to the account.

Figure 7: CUMULATIVE RECOVERY RATES BY MONTHS SINCE JUDGMENT WAS RECEIVED (MMI)[251]



The average two-year cumulative recovery rate for accounts with judgments was 24 percent, almost twice the overall two-year cumulative recovery rate for all charged-off accounts (compare with Figure 6). Accounts with judgments may have higher cumulative recovery rates because issuers disproportionately litigate accounts with a higher ability to repay—assessing borrowers' assets, employment, and other income as indicators.

[251] Here, each bar represents a "vintage" of accounts where judgment was received in a given quarter, starting with Q1 2017. Cumulative recovery for each vintage is measured as of December 31, 2018.

7.3.4 Debt sales

As part of their post-charge-off recovery strategy, some credit card issuers may sell credit card debt at a discounted rate to pre-selected debt buyers, receiving a fraction of the outstanding account balances sold. Typically, these sales are structured as "forward-flow" contracts, where a pool of accounts that meet a pre-determined criteria (*e.g.*, at charge-off or post-primary placement) are sold to the debt buyer on an ongoing (*e.g.*, monthly) basis. Issuers may also occasionally identify additional segments of accounts and sell them on an ad hoc basis depending upon market conditions. Finally, issuers may employ specific debt sale strategies for special segments like accounts where the issuer has received a notice of bankruptcy, where specialized expertise may be required to recover the amount owed. Debt buyers typically enter into contracts for the right to collect the entire balance, and they either attempt to collect themselves or employ third-party agencies to collect on their behalf on a contingency-fee basis.

MARKET STRUCTURE

The debt-buying market for credit card debt remains highly concentrated among a few buyers that purchase debt from many of the same issuers. Most of the surveyed issuers that sold debt in 2018 reported a roughly similar number of buyers year-over-year. However, there is a general trend of consolidation among surveyed issuers' debt buyer networks: the Bureau's 2017 Report found that in 2016, 20 unique debt buyers bought debt from the surveyed issuers that sold debt, while the current survey found that there were 15 unique buyers in 2018.[252] Eight buyers purchased debt from two or more issuers and six buyers bought debt from all the issuers that sold debt.

DEBT SALE VOLUME

Fewer than one-half of issuers surveyed sold debt in 2017 and 2018, and these issuers were the same ones that reported selling debt in the Bureau's 2017 Report. Issuers that reported that they did not sell debt in 2017 and 2018 also indicated that they have no plans to do so in 2019. A majority of issuers that sold debt during 2017 and 2018 reported that they planned to sell a

[252] 2017 Report, *supra* note 5, at 327.

lower percentage of debt in 2019 compared to 2018, while a minority reported that they planned to sell roughly the same amount. This is a reversal from the results of the Bureau's 2017 Report, where all issuers that sold debt reported that they planned to sell a higher proportion of charge-offs in the next year due to heighted delinquencies and charge-offs.[253] In general, issuers that planned to reduce their use of debt sale strategies in 2019 explained this decision as an attempt to diversify post-charge-off recovery income across channels and strengthen financial resiliency. The survey respondents that sold debt in 2018 indicated that they planned to sell approximately 45 percent of their freshly-charged-off debt in 2019 at an expected average price ranging from $0.09 to $0.13 per dollar of debt balances.

Figure 8 compares the distribution of total post-charge-off inventory by recovery channel for issuers that did and did not sell debt in 2017 and 2018. Issuers that sold debt in 2017 and 2018 reported that in that period, roughly 12 percent of total post-charge-off inventory was sold to debt buyers. While both issuers that sold debt and those that did not sell debt relied on third-party agencies to collect a significant share of their charged-off inventory, issuers that did not sell debt placed a greater portion of balances in the internal recovery channel. As post-charge-off inventory aged between 2017 and 2018, all issuers held a growing share of debt in the warehouse category, where typically no active attempts are made to collect the balance owed.

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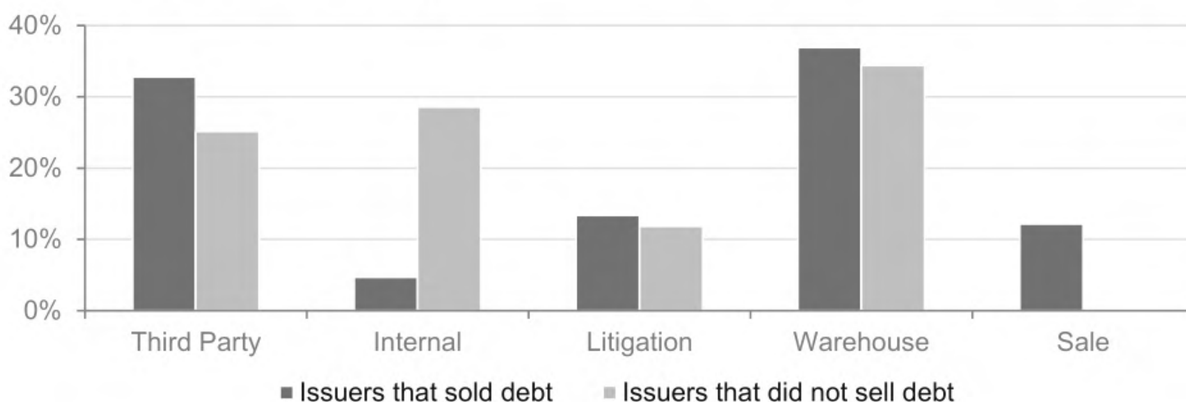
[253] *Id.*

Figure 8: SHARE OF CHARGED-OFF BALANCE INVENTORY BY CHANNEL FOR ISSUERS THAT DID AND DID NOT SELL DEBT (MMI)[254]



DEBT PRICE

Charged-off debt generally sells for a fraction of the account balance owed or "face value," at a price largely dependent upon the age of the debt. Additionally, certain special segments of debt, such as accounts for which the issuer has received notice of bankruptcy, may command higher prices. The price of bankruptcy accounts may be above the overall average price of debt sold because the buyer may be able to recover a larger portion of the debt by filing proofs of claim as part of the bankruptcy process. Figure 9 shows the average price of debt by type. The overall average price of debt increased from 11 percent to 12 percent of face value between 2017 and 2018. However, the price of freshly-charged-off debt declined from 14 percent to 13 percent of face value over the same period. The price of freshly-charged-off debt is now 2 percentage points lower than its previous high of 16 percent reported in 2016.[255]

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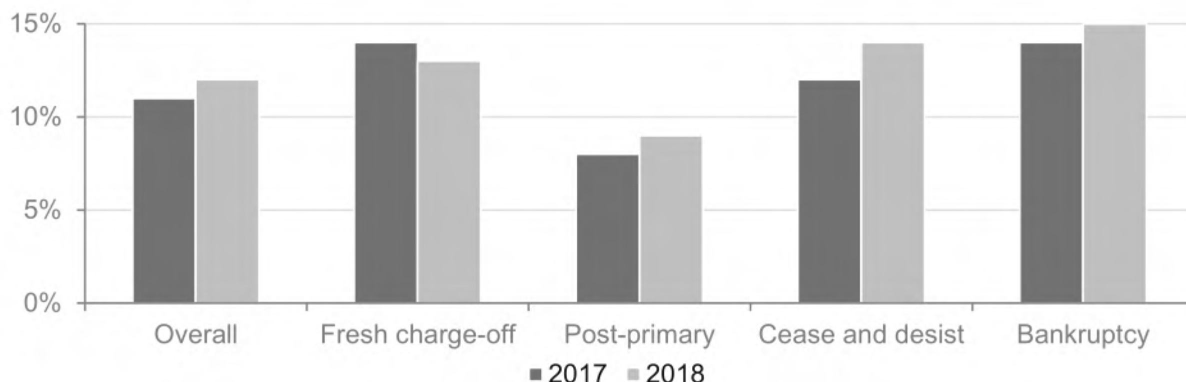
[254] Bars represent the average share of total charged-off balance inventory in each of the five recovery channels. The issuers provided the share of balances placed in each channel by quarter as of the end of the quarter for 2017 and 2018. The distributions for 2017 and 2018 were averaged by issuer, and then averaged across issuers that sold debt and issuers that did not sell debt.

[255] 2017 Report, *supra* note 5, at 329.

Figure 9: AVERAGE PRICE OF DEBT SOLD AS A PERCENTAGE OF ACCOUNT BALANCE BY TYPE OF DEBT SOLD (MMI)



Debt sold after one or more placements (post-primary) was priced at only 9 percent. Accounts where the collector received a request to cease and desist communications or received a notice of bankruptcy sold for an average of roughly 14 percent of face value in 2018, suggesting higher expected debt buyer recoveries from such accounts.

DEBT SALE CONTRACTS

All survey respondents that sold debt reported that they provide buyers with key documents and account information at the time of sale, including:[256]

- The account's last 12 statements;
- The amount and date of the last account payment;
- Itemized account of all amounts claimed, including principal, interest, and fees;
- Special status indicators (*e.g.*, attorney representation or cease and desist); and
- Information relating to prior collection efforts.

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[256] An RFI commenter noted that OCC Bulletin 2014-37, which provided guidance on documentation to be transferred upon the sale of debt, applies only to national banks and federal savings associations, and not to credit card issuers more broadly. *See* ABA Comment Letter at 8.

After the debt is sold, issuers reported that they may provide additional documentation at the buyer's request, including cardholder agreements, written applications, affidavits, and earlier account statements. While most issuers who sold debt reported that debt buyers do not pay a fee to access these documents, a minority reported charging a fee to provide additional documentation.

All surveyed issuers that sold debt also stated that they send out "goodbye" letters to the cardholder. These letters inform borrowers of the sale and provide the name and contact information of the buyer.

Contractual restrictions imposed on buyers by all surveyed issuers that sold debt are generally consistent with OCC Bulletin 2014-37, and include:[257]

- Restrictions on resale of the debt, which is limited to special circumstances (*e.g.*, the buyer exiting the market);
- Restrictions on buyers' ability to assess interest on the purchased debt;
- Restrictions on buyers' ability to litigate purchased accounts;
- Prohibitions on litigation by buyers on debt that is past the statute of limitations; and
- Conditions under which the issuer will repurchase the debt.

Debt sale contracts generally do not restrict debt buyers from reporting to credit reporting agencies. Instead, the contracts require that the buyer adhere to all Fair Credit Reporting Act requirements.

[257] *See* Off. of the Comptroller of the Currency, *Consumer Debt Sales - Risk Management Guidance, OCC Bulletin 2014-37* (Aug. 4, 2014), *available at* http://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-37.html.

7.4 Special topics in credit card collections

7.4.1 Debt settlement companies

Borrowers sometimes work with DSCs, which are typically for-profit entities with the primary objective of enrolling qualified borrowers in a debt settlement program.[258] These firms do not receive any compensation from issuers. Instead, they typically assess the borrower a fee based on the original debt balance and contingent upon completing the settlement with the creditor. Debt settlement programs involve redirecting payments that consumers would have made to creditors to a borrower-controlled fund, which is then used by the debt settlement company to pay negotiated settlements. Since enrolled consumers stop making payments to creditors, borrowers who work with the DSCs typically find that their accounts continue to grow in delinquency and are reported to the credit reporting agencies.[259] Issuers may also pursue legal collections on these accounts. DSCs also often advise consumers to send a cease and desist communication letter to creditors as part of the program. Those issuers who sell debt often sell charged-off debt for which they have received a cease and desist communication letter to debt buyers because such debts generally are more difficult to recover.

All of the surveyed issuers have established policies and procedures about how to manage accounts enrolled with DSCs. In most cases, issuers require a third-party authorization document signed or otherwise authorized by the consumer in order to communicate with the DSC about the account. Some issuers reported that they will not negotiate settlements with DSCs even after receiving third-party authorization from the consumer. Some issuers have policies that allow the accounts to move quickly to placement with special third-party agencies for potential litigation. Most issuers that work with DSCs reported that they apply the same

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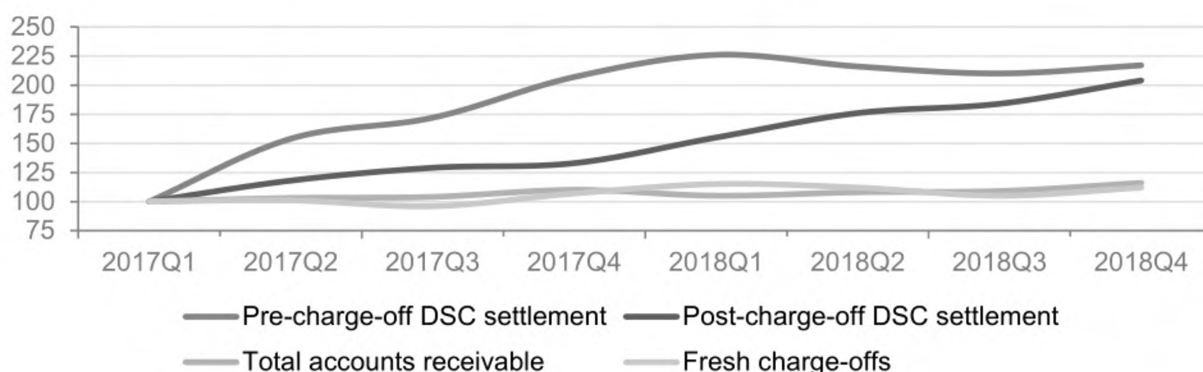
[258] *See* Greg J. Regan, *Options for Consumers in Crisis: An Updated Economic Analysis of The Debt Settlement Industry*, American Fair Credit Council, (Feb. 5, 2018), *available at* https://americanfaircreditcouncil.org/regan-reports/ (data as of Mar. 31, 2017).

[259] One RFI commenter claimed that consumers have "limited niche choices in debt relief assistance," while also lacking data necessary to make informed choices about debt relief products and services. The commenter advocated greater disclosure of performance data for non-profit and for-profit debt relief providers, including "success rate, the impact to future retirement savings, credit report/score impact, protection from legal action, and cost of the solution." *See* Steve Rhode Comment Letter, at 2.

settlement policies available to consumers who call the creditor directly to request settlements. However, a minority of issuers who work with DSCs have a set settlement rate specific to debt settlement companies, and these fixed rates forgive a smaller percentage of the balance owed than the floor settlement rates available to consumers who call the creditor directly and demonstrate financial hardship. In some cases, creditors have dedicated teams, either in-house or provided by third-parties, which specialize in engaging with DSCs.

Figure 10: INDEXED GROWTH IN PRE- AND POST-CHARGE-OFF DSC SETTLEMENT BALANCES, ACCOUNTS RECEIVABLE, AND FRESH CHARGE-OFFS (MMI)[260]



As shown in Figure 10, the volume of balances settled through DSCs grew proportionately faster than the growth in the issuers' overall account receivables and fresh charge-offs between 2017 and 2018. Pre-charge-off settlements grew 117 percent and post-charge-off settlements grew 104 percent between 2017 and 2018, compared to only 16 percent growth in accounts receivables and 12 percent growth in fresh charge-offs. Respondents reported nearly $2.2 billion in debt settled through DSCs within the two year survey period, $1.4 billion of which was settled post-charge-off, almost twice the volume of pre-charge-off settlements. Growth in pre-charge-off settlements accelerated more quickly than in post-charge-off settlements within the first half of the survey period before leveling off in 2018.

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[260] This graph represents changes in balances settled through for-profit DSCs, accounts receivables, or fresh charge-offs indexed to the values in the first quarter of 2017. These numbers do not include settlements for accounts where legal representation or other third parties were involved in settlement negotiations.

7.4.2 Cease communication

All issuers reported honoring cease communications requests, both verbal as well as written, from the consumers or their power-of-attorney, though only a minority of issuers reported tracking volumes of written requests separately from verbal requests. Issuers accommodated requests to cease all communications (phone calls, written communications, etc.) except to send legally required communications like monthly statements. They also accommodated special and limited cease communication requests (*e.g.*, "no phone calls only," "no calls to place of employment"). For accounts placed with third-party collectors, issuers generally recall those accounts with cease and desist requests and place them with attorney firms for further collections, including litigation. Those issuers who reported selling debt post-charge-off, regularly sold accounts with cease communication status. In 2018, 2.8 percent of the pre-charge-off balance inventory had cease and desist communication status, a 7 percent increase from 2017. Similarly, 4.7 percent of the post-charge-off balances had cease communication status representing a 10 percent increase compared to 2017. These increases may partly be due to the fact that more consumers are working with for-profit DSCs, who advise their clients to send cease communication requests to their creditors while waiting to negotiate settlements.

7.4.3 Consumer-level collections

When a consumer has multiple delinquent accounts, issuers may choose to collect debt at the consumer level by managing all the delinquent accounts together. Three-fourths of the surveyed issuers noted that they pursued some degree of consumer-level pre-charge-off collections for borrowers with multiple delinquent accounts, the same as in the Bureau's 2017 Report.[261] Respondents indicated that consumer-level collection strategies were more common for internal and first-party pre-charge-off collections than for third-party collections. Issuers who utilized a consumer-level strategy for pre-charge-off collections generally reported that the oldest delinquent account with the highest balance in the relationship was the lead account, and that all of a consumer's delinquent accounts were discussed during a single call to the consumer. The percentage of total pre-charge-off delinquent dollars belonging to consumers with multiple

[261] 2017 Report, *supra* note 5, at 333.

accounts from the same issuer varied widely across issuers, ranging from 5.2 to 66 percent in 2018.

Most of the surveyed issuers did not have a consumer-level approach for recovering post-charge-off debt. For the minority of issuers that used a consumer-level recovery strategy post-charge-off, some issuers reported that they placed all of a consumer's charged-off accounts with the same third-party agency, while others reported that they used a litigation strategy involving assigning all of a consumer's charged-off accounts to the same law firm.

8. Innovation

The Bureau's Congressional mandate to review the credit card marketplace specifically instructs the agency to assess "credit card product innovation."[262] Consumer and provider access to digital technology is fundamentally changing the ways in which consumers obtain and use credit cards. Since the 2017 Report, digital account servicing platforms, such as websites and mobile apps where consumers can view and manage account activity, continue to increase in the number of available features. Cardholders continue to transact online in large volumes and mobile wallets are increasingly used at the physical point-of-sale (POS). Gains in computing power and data analysis technology are being used by card issuers to enhance credit and risk management. Because of these innovations, consumers with access to the relevant technology can now readily and rapidly:

- Access their credit score and information about how to manage and improve their score;
- Identify and compare credit cards according to their own criteria;
- Apply for credit cards and, if approved, be able to use the card in near real-time;
- Permit/Allow the use of new data in the underwriting process;
- Specify the delivery of alerts about card use or payment obligations;
- Receive promotional offers based on the consumer's choice of criteria, such as location;
- Turn card functionality off and on, or limit and control its use in certain channels;

[262] 15 U.S.C. § 1616(a)(4)(D) (2012). Congress established the Bureau's statutory purpose as ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. *See* 12 U.S.C. 5511(a) (2012). The Bureau's objective includes exercising its authorities for the purpose of ensuring access and innovation. *See* 12 U.S.C. 5511(b)(5) (2012).

- Manage card use interactively in accordance with the consumer's overall strategy for personal financial management; and
- Choose to repay obligations on the card with new alternative payment options.

Although some of these innovations have been available to some consumers for some time, the collective availability of these tools and use at scale is becoming a competitive differentiator in today's consumer credit card market. Digitally-based tools have been introduced in multiple stages of the product's life cycle—shopping, origination, servicing, and transacting.[263]

This section covers some of these recent changes in more detail. Section 8.1 reviews a number of changes associated with card servicing, including account management and payment tools. Section 8.2 covers a number of recent innovations at the point-of-sale. Section 8.3 reviews innovation in credit and fraud risk management.[264]

8.1 Account servicing innovation

8.1.1 Account management enhancements

Most basic account servicing actions are now standard in card companies' mobile and online platforms. As discussed in the 2017 Report, cardholders can review transactions (and dispute fraudulent ones), make payments, transfer balances, request cash advance PINs, activate new cards, request replacement cards, download full account statements, receive information about other card benefits, add or remove an authorized user from their accounts, inform their issuer of upcoming travel, report a card lost or stolen, change their account's due date, or send and read

[263] *See supra* note 2.

[264] Important innovations related to card marketing and comparison shopping are covered in Section 4.1.

messages to and from account servicing professionals or chat with them in real-time.[265] More recent changes provide customers with new account management features.

Important developments to these platforms include:

- Many credit and debit card providers now offer a feature that lets customers instantly freeze and subsequently 'un-freeze' the cards within the mobile app.[266] At least one credit card provider offers customers the ability to manage recurring card payments within its mobile app.[267] Another credit card provider offers cardholders virtual card numbers that can be used for individual or recurring transactions and may be accessed and dialed through a mobile app.[268] Another credit card provider has started to offer their customers the ability to dictate where or when the cards can be used, allowing consumers to set spending limits and alerts across merchant categories.[269] Both features may allow cardholders to have better control over their payment cards.[270]

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[265] *See* 2017 Report, *supra* note 5, at 171.

[266] *See* Susan Ladika, *Credit card on/off switches: More card issuers adding them*, Creditcards.com (Feb. 19, 2018), *available at* https://www.creditcards.com/credit-card-news/credit-card-on-off-switches.php; *see also* Press Release, Chase, *Chase Lets Customers Lock, Unlock Credit Cards from Their Phone and Computer*, (Sept. 27, 2018), *available at* https://www.businesswire.com/news/home/20180927005487/en/Chase-Lets-Customers-Lock-Unlock-Credit-Cards.

[267] Press Release, Wells Fargo, *Wells Fargo Launches Control Tower, New Digital Experience for Customers Nationwide* (Oct. 1, 2018), *available at* https://www.businesswire.com/news/home/20181001005683/en/Wells-Fargo-Launches-Control-Tower-SM-New.

[268] Kelly Dilworth, *Virtual card numbers: Safer, Convenient, and a Spending Risk, Creditcards.com* (Mar. 29, 2018), *available at* https://blogs.creditcards.com/2018/03/virtual-card-numbers-safer-convenient-and-a-spending-risk.php.

[269] Press Release, Barclays, *Barclays Launches "Control Your Card" Digital Features to Give Cardmembers More Control Over Credit Card Usage* (Apr. 16, 2019), *available at* https://www.prnewswire.com/news-releases/barclays-launches-control-your-card-digital-features-to-give-cardmembers-more-control-over-credit-card-usage-300832388.html.

[270] The developments build on functionality rolled out by the networks in 2016. Visa's Consumer Transaction Controls "enables account holders to set simple, convenient, and effective spending controls, receive transaction

- Card companies are now employing AI-powered chatbots to navigate and execute digital account management functions and make transactions.[271] Some of the most heavily-promoted chatbots are provided as tools within the issuers' mobile apps, where they provide an alternative method of accessing the apps' features in addition to providing higher-order functionality, such as responding to questions about spending patterns. For example, cardholders can use voice or text to direct a chatbot to search for certain transactions, display basic account information, add an authorized user, summarize and plot monthly spending, or send alerts for upcoming bills, among other options. Many chatbots are responsive to both voice and text, with voice recognition requiring an additional layer of technology. Several issuers and one network have integrated chatbots into the Facebook Messenger platform with the aim of providing a better experience for customers that transact through the app.[272]
- Several issuers have recently provided a means for consumers to load credit cards into digital wallets directly from individual issuers' mobile apps. Originally, cardholders had to navigate to a digital wallet and load it with the requisite card information. Now for certain mobile wallets, some issuers allow cardholders to manage this process beginning in the issuers' mobile apps, where card information is pre-loaded.[273]

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alerts, or even temporarily suspend their accounts using a simple on/off feature." *See* Press Release, Visa, *Visa Puts Consumers in Charge of Security* (Feb. 9, 2016), *available at* http://www.businesswire.com/news/home/20160209005812/en/Visa-Puts-Consumers-Charge-Security. Mastercard's In Control product can grant "greater convenience, security and control to consumers, small businesses and corporations," and "parents, employers and other customers can set parameters for when, where and how cards are used, giving them more control over their accounts." *See* Mastercard, *Empower Your Customers with Mastercard In Control, available at* https://www.mastercard.us/en-us/issuers/products-and-solutions/grow-manage-your-business/payment-innovations/mastercard-in-control.html (last visited July 1, 2019).

[271] Dawn Allcot, *Artificial Intelligence is Changing Credit Cards and Banking,* Bankrate.com (Feb. 4, 2019), *available at* https://www.bankrate.com/credit-cards/artificial-intelligence-banking-credit-card-rewards/.

[272] Rachel Brown, *Mastercard, American Express and Wells Fargo charge up Facebook Messenger chatbots*, Mobile Marketer, (Apr. 19, 2017), available at https://www.mobilemarketer.com/news/mastercard-american-express-and-wells-fargo-charge-up-facebook-messenger-c/440724/.

[273] *See* American Express, *Apple Pay*, https://www.americanexpress.com/us/credit-cards/features-benefits/digital-wallets/apple-pay.html (last visited June 19, 2019). *See also* Bank of America, *Show me how to: Digital wallets*,

- Several new credit cards provide interactive digital interfaces to assist the cardholder in making payments toward their credit card balances. Using one of these interfaces, a cardholder can 'dial' or 'slide' from the minimum payment amount to the full balance and see corresponding finance charges.[274]

8.1.2 Increased repayment options

One especially-notable new feature in account servicing is payment flexibility. Previous reports reviewed two types of emerging lending products that offer consumers alternative repayment options: (1) unsecured personal loans from fintech lenders used to pay off revolving credit card balances and (2) non-card loans offered to consumers at the point-of-sale as a credit-based payment option. The number of providers of these emerging lending products has continued to grow, while several credit card issuers have responded by introducing competing features on card accounts allowing for new forms of payment flexibility.

PERSONAL LENDING

Closed-end unsecured personal loans, such as those offered by nonbank lenders, compete with credit cards for consumer loan balances.[275] Personal loans are generally aimed at consumers looking to consolidate or reduce the cost of carrying credit card debt or those looking to finance a large purchase. As closed-end loans meant for a specific use, personal loans may, for some cardholders, be a lower cost means of borrowing than revolving a credit card balance.[276] If used

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https://promo.bankofamerica.com/cbobrochure/?showme_howto=digital (last visited June 19, 2019). *See also* Citi, *It's faster than ever to add your Citi card to Apple Pay right from the Citi Mobile App*, https://www.citi.com/credit-cards/creditcards/citi.action?ID=citi-apple-pay (last visited June 19, 2019).

[274] *See, e.g.*, Apple, *Apple Card*, https://www.apple.com/apple-card/ (last visited July 23, 2019); Petal, *Petal Card*, https://www.petalcard.com/ (last visited July 23, 2019).

[275] Loans of this nature are received as a cash disbursement and do not generally compete with credit card transacting.

[276] For example, one study found that given the same credit risk, consumers would be able to obtain credit at a lower rate through an online personal lender than through traditional credit cards. Study abstract: "for the same risk of default, consumers pay smaller spreads on loans from the Lending Club than from traditional lending channels."

to repay or consolidate credit card balances, personal loans also have the effect of increasing a cardholder's available line. There is an emerging body of research on the use of personal loans and their relationship to credit card debt. Consumer use and outcomes are still being researched.[277]

Personal loans have long been offered by banks and specialty finance companies, but competition has sharply increased since the Great Recession. Leading up to and then following the recession, online lenders emerged with a focus on providing personal loans to consumers for the purpose of debt consolidation.[278] Since the end of 2015, consumer personal loan balances have increased by 34 percent.[279] Credit card companies have begun to offer personal loans themselves and one bank made its first entry into the consumer market with a personal loan product.[280] At least one student loan refinancing company has expanded into personal lending.[281] Some banks have entered partnerships with fintechs to offer personal loans through fintechs' platforms.[282]

See Julapa Jagtiani and Catharine Lemieux, *Fintech Lending: Financial Inclusion, Risk Pricing, and Alternative Information*, (July 18, 2017), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3005260.

[277] One working paper finds that consumers that receive personal loans from fintech companies are likely to use the additional funds for consumption rather than for consolidating high-cost credit card debt. *See* Marco Di Maggio & Vincent Yao, *Fintech Borrowers: Lax-Screening or Cream-Skimming?*, (Aug. 1, 2018), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3224957.

[278] *See* J. Christina Wang, *Technology, the Nature of Information, and Fintech Marketplace Lending*, at 6. Fed. Reserve Bank of Boston (Oct. 2018) *available at* https://www.bostonfed.org/publications/current-policy-perspectives/2018/technology-nature-of-information-fintech-marketplace-lending.aspx.

[279] Oliver Wyman Experian MIR Q4 2018 and MIR Q4 2017.

[280] AnnaMaria Andriotis & Peter Rudegeair, *Lenders Shunned Risky Personal Loans. Now They're Competing for Them*, Wall St. J. (Aug. 24, 2018), *available at* https://www.wsj.com/articles/lenders-shunned-risky-personal-loans-now-theyre-competing-for-them-1535103000.

[281] *See* SoFi, *Personal Loans*, https://www.sofi.com/personal-loans/ (last visited June 19, 2019).

[282] Press Release, Regions Bank, *Regions Bank to Offer Expanded Online Consumer Loan Experience Powered by Leading Fintech Firm Avant* (Apr. 8, 2016), *available at* https://www.businesswire.com/news/home/20160408005117/en/Regions-Bank-Offer-Expanded-Online-

ALTERNATIVE CREDIT OPTIONS ONLINE AND AT THE POINT-OF-SALE

Another type of non-card loan offered to consumers for online purchases and at the physical POS offer a more direct alternative to credit cards than personal loans, and are sometimes marketed as such. Non-card loans at the online POS are typically closed-end, fully-amortized installment loans that are presented to consumers when making a purchase with a participating merchant, generally by means of a branded "pay with" button as a payment option during checkout. Physical POS financing is also available at some retailers through partnerships with lenders. In both cases, after inputting several pieces of personal information (sometimes on a merchant's device if in-store) a consumer is presented with repayment options as a result of a near real-time automatic underwriting process. Once an approved consumer's preferred terms have been selected, funds are sent directly to the merchant.

Competition with credit cards may intensify if these products become more widely available. Several POS lenders, for example, have engaged in strategies that leverage debit card networks to expand acceptance of their products beyond their merchant partners.[283] While many providers primarily serve online POS, competition at physical POS is increasing. One lender expanded to the physical POS with a major retailer partnership.[284] A payments provider recently announced plans to provide physical POS consumer loans through its merchant network.[285]

One emerging point of product differentiation is pricing. The more-established alternative lenders generally charge interest on POS loans. In some cases, financing may be offered for free

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Consumer-Loan. *See also* Hannah Levitt, *HSBC U.S. Partners With Web-Based Avant to Offer Personal Loans*, Bloomberg (Oct. 22, 2018), *available at* https://www.bloomberg.com/news/articles/2018-10-22/hsbc-u-s-partners-with-web-based-avant-to-offer-personal-loans.

[283] Providers that offer this capability describe it as using one-time prepaid debit cards. *See* Affirm, *Affirm In-store Virtual Card*, *available at* https://docs.affirm.com/Merchant_Resources/Affirm_In-store_Virtual_Card (last visited June 26, 2019). *See also* Klarna, *What is a Ghost card?,* https://www.klarna.com/us/customer-service/what-is-a-ghost-card/ (last visited June 26, 2019).

[284] Kevin Wack, *Walmart teams with Affirm to offer point-of-sale loans*, PaymentsSource (Feb. 27, 2019), *available at* https://www.paymentssource.com/news/walmart-teams-with-affirm-to-offer-point-of-sale-loans.

[285] Selina Wang, *Jack Dorsey's Square Rolls Out Lending for Customer Purchase,* Bloomberg (Oct. 4, 2018), *available at* https://www.bloomberg.com/news/articles/2018-10-04/jack-dorsey-s-square-rolls-out-lending-for-customer-purchases.

to the consumer, in which cases, the lenders generally receive additional compensation from the merchant. A new group of alternative POS lenders now offers no-interest financing as a default model. For example, several providers allow consumers to pay off purchases in a fixed number of installments—often four—over several months.[286] These payments sometimes include no interest, although consumers can incur late or missed payment fees. Merchants pay these lenders a fixed amount or percentage of each transaction. Some of these products have shown rapid growth—and attracted calls for more regulatory attention—in foreign markets.[287]

CREDIT CARD PAYMENT INNOVATION

As the previous two categories of products continue to grow, credit card issuers are positioned to lose purchase and revolving volume. Personal loans used to pay off credit card balances cause issuers to miss out on interest and fee revenue that would have been paid over time. POS loans divert sales that would add to those outstanding balances, also resulting in lost interest and fee revenue.

These long-term threats to credit card profitability may have contributed to the development of flexible payment options for credit card purchases. New fixed payment features of accounts leverage a card's existing credit line for a repayment plan that is separate from payments made toward the regular feature of the account, which may provide consumers with greater flexibility and control in paying down different purchases at different costs and speeds. Issuers have implemented a variety of these types of payment options into the card servicing platform for easier signup. New flexible payment features of credit card accounts fall into two categories: those that provide a payment plan for existing purchases and those that provide a payment plan for future purchases.

[286] Valeriya Safronova, *It's Layaway, But for a Post-Recession Economy*, N.Y. Times (May 3, 2019), *available at* https://www.nytimes.com/2019/05/03/fashion/afterpay-quadpay-klarna-affirm.html.

[287] Michael McGowan, *Afterpay: buy-now pay-later scheme soars in popularity but experts sound warning*, The Guardian (Sept. 20, 2017), *available at* https://www.theguardian.com/australia-news/2017/sep/21/afterpay-buy-now-pay-later-scheme-soars-in-popularity-but-experts-sound-warning.

The first set of features allows certain individual purchases made on a credit card to be paid off using fixed monthly payments over a set period of time. Issuers that offer this type of feature let consumers select eligible transactions through the card's mobile app or online portal for fixed monthly payments.[288] For issuers, the feature may help retain incremental balances on the card and undercut competition from alternative lenders. In announcing this feature, one bank's leadership specifically noted that it will allow them to compete with other financial products at the POS.[289] The issuers' products (or announced products) differ slightly but, in general, purchases over a certain dollar threshold are eligible.[290]

Credit repayment flexibility is not new, but today's options differ in their use of credit card mobile apps. One issuer launched a credit card balance management platform in 2009, but it was delivered separately from the primary account interaction.[291] Today's repayment flexibility products are presented to the consumer in the flow of viewing his or her transaction history. Eligible transactions are denoted with an icon that links to the product terms. A range of repayment periods and corresponding costs are offered (*e.g.*, three payments, six payments, or 12 payments). In addition, one issuer provides a corresponding feature through which cardholders may pay down the account balance in an amount equal to a specific transaction's dollar amount.

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[288] Issuers describe such fixed monthly payments in different ways. American Express describes payments as including a fixed monthly fee with no interest. Citi describes payments as payments with a fixed APR. Chase describes payments as subject to the *My Chase Plan* fee, a fixed finance charge.

[289] Michelle Davis & Jennifer Surane, *JPMorgan Sees a $250 Billion Opportunity in New Credit Card Loan Features*, Bloomberg (Feb. 26, 2019), *available at* https://www.bloomberg.com/news/articles/2019-02-26/jpmorgan-eyes-250-billion-loan-opportunity-in-new-card-features.

[290] This threshold ranges from $100 for American Express's *Plan It* to $500 for JPMorgan Chase's *My Chase Plan*. *See* American Express, *Pay it Plan it*, https://www.americanexpress.com/us/credit-cards/features-benefits/plan-it/prospect-plan.html (last visited June 20, 2019); *see also, supra* note 289.

[291] Chase's Blueprint allowed consumers to split off certain purchases and pay them back with fixed payments. The feature was phased out in 2018. Robin Saks Frankel, *Chase to Scrap Blueprint, Its Card Management Program*, NerdWallet (Sept. 24, 2018), *available at* https://www.nerdwallet.com/blog/credit-cards/chase-ending-blueprint-credit-card-management-program/.

The second set of new repayment options for credit card accounts consists of features that provide a payment plan for purchases yet to be made. Multiple issuers offer cardholders the opportunity to receive a cash disbursement from an unused portion of their credit line, which is repaid in equal monthly payments over a set period of time. These initiatives allow the issuers to increase consumer use of portions of credit line that are not currently being used. A card issuer may offer this feature to cardholders that meet certain basic eligibility checks, such as satisfactory payment history on the card and meaningful unused line size. Cardholders may be able to select different lengths of repayment, depending on their eligibility. The transactions extended under this feature are repaid using equal monthly payments for a set period of time.[292]

These features and their structures implicate a broad array of regulatory provisions. Card issuers working in this space must navigate a complex regulatory landscape, including, but not limited to, limitations on APR and fee increases, payment allocation rules, and ability-to-pay requirements. Costs for consumers may differ from the costs of other balance items when using new repayment options.

8.2 Innovation at the physical point-of-sale

Beyond lending, innovation continues to focus on streamlining the consumer experience at the physical POS, providing greater speed, security, or convenience for consumers and merchants. Three significant developments are evident at the physical POS.

First, beginning in early 2018, all four major U.S. card networks eliminated signature requirements for EMV "chip" card transactions.[293] As merchant adoption of EMV terminals

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[292] *See, e.g.*, Citi, *Citi Flex Loan*, https://www.citi.com/credit-cards/creditcards/citi.action?ID=flex-loan (last visited June 13, 2019). *See also* Ethan Steinberg, *Chase to Introduce Two New Credit Card Financing Options*, The Points Guy (June 1, 2019), *available at* https://thepointsguy.com/news/my-chase-plan-my-chase-loan/.

[293] The EMV standard, often referred to as "chip" or "smart card" technology, is a security standard for credit and debit card transactions developed in the mid-1990s. The technology is most closely identified with a microchip embedded in a payment card, and is already widely used throughout much of the rest of the world outside of the U.S., particularly in developed economies such as Canada, Australia, and western Europe. EMVCo, which manages

increased following the October 2015 liability shift, networks observed declines in fraud on transactions at EMV-enabled merchants. The elimination of the signature requirement in reliance on digital authentication technology could increase transaction speed for consumers and merchants.

Second, near-field communication (NFC) acceptance at the physical POS continues to increase. NFC-enabled terminals allow for the two-way transmission of payment-related information without physical contact between the payment device and merchant terminal. As covered in the 2015 Report, many mobile wallets allow consumers to store payment information and make payments via smartphones or other digital devices.[294] Several of these mobile payments use NFC technology, meaning that consumers can purchase goods and services at any business that has an NFC-enabled payment terminal. Early on, relatively few merchants supported such payments and consumer adoption was small. In the last few years, however, the number of retail locations supporting NFC mobile wallets has nearly doubled.[295] Deployment of NFC terminals was initially delayed by the imminent transition to EMV, but now nearly all new terminals are

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the EMV specification, estimates that as of the second quarter of 2018, nearly 70 percent of card-present global transactions utilized the specification. *See* EMVCo, *EMV Chip Deployment Statistics*, https://www.emvco.com/about/deployment-statistics/ (last visited March 18, 2019).

[294] Most notably, smartwatches. *See* Conor Allison, *Google Pay: What it is, which smartwatches support it and how to use it*, Wareable (Mar. 26, 2019), *available at* https://www.wareable.com/android-wear/how-to-set-up-use-android-pay-wear-smartwatch. *See also* Apple, *How to use Apple Pay*, https://support.apple.com/en-us/HT201239 (last visited June 20, 2019).

[295] For example, in early 2017, several years after its launch, Apple Pay was accepted at 36 percent of retail locations. As of early 2019, Apple reported that Apple Pay is accepted at 65 percent of retail locations. Retailers that support Apple Pay also support other mobile wallets such as Google Pay. *See* Press Release, Apple, *Apple Pay coming to Target, Taco Bell and more top US retail locations* (Jan. 22, 2019), *available at* https://www.apple.com/newsroom/2019/01/apple-pay-coming-to-target-taco-bell-and-more-top-us-retail-locations. *See also* Juli Clover, *Apple Pay Now Supported by 36% of Merchants in the United States*, MacRumors (Feb. 7, 2017), *available at* https://www.macrumors.com/2017/02/07/apple-pay-36-percent-united-states/.

capable of accepting NFC transactions.[296] An industry analyst reports that consumer adoption of mobile wallets was stagnant from 2015 to 2017.[297]

Third, contactless cards—common in many other countries—are becoming more common in the United States as several large issuers are providing cards with an embedded antenna.[298] Generally, contactless cards contain technology that allows the transmission of card information to the reader, but cannot receive information from a device as is possible with NFC-equipped mobile devices.[299] Contactless cards were initially launched by issuers in the mid-2000s but failed to gain significant uptake in large part due to limited acceptance at merchants. Recent payment terminal upgrades and consumer familiarity with contactless mobile wallet payments has led card companies to return to issuing contactless cards.[300] The current generation of contactless cards may be used for contactless payments at NFC-enabled payment terminals and may also be used for traditional 'dip' or 'swipe' payments using the EMV chip or magnetic strip. Contactless payment provides faster transaction time than current EMV payments. As with

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[296] Thad Peterson, *Contactless Cards in America—When, Oh When, Will They Appear?*, Digital Transactions (Nov. 1, 2018), *available at* https://www.digitaltransactions.net/magazine_articles/contactless-cards-in-america-when-oh-when-will-they-appear/. *See also* PYMNTS, *Visa: Why the US Is Finally Ready for Contactless*, PYMNTS.com (Sept. 25, 2018), *available at https://www.pymnts.com/visa/2018/contactless-cards-payments-mobile-wallet-pos-emv-apple-pay/*.

[297] Press Release, Javelin, *Merchants Winning the Battle for Mobile Wallet Supremacy* (Sept. 7, 2018), *available at* https://www.javelinstrategy.com/press-release/merchants-winning-battle-mobile-wallet-supremacy.

[298] Contactless adoption has lagged behind other parts of the world in part because the United States was slower to migrate to EMV—a change that precipitated widespread upgrades to terminals able to support EMV and contactless. *See* Jim Daly, *As U.S. Contactless Card Payments Ramp up, Canada and the U.K. Point the Way to Mass Adoption*, Digital Transactions (May 21, 2019), *available at* https://www.digitaltransactions.net/as-u-s-contactless-card-payments-ramp-up-canada-and-the-u-k-point-the-way-to-mass-adoption/.

[299] James Thrasher, *RFID vs. NFC: What's the Difference?*, RFID Insider (Oct. 11, 2013), *available at* https://blog.atlasrfidstore.com/rfid-vs-nfc.

[300] Jim Daly, *Contactless II*, Digital Transactions (Apr. 2, 2018), *available at* http://www.digitaltransactions.net/magazine_articles/contactless-ii/. *See also* Marianne Crowe & Elisa Tavilla, *Tap to Pay: Will Contactless Cards Pave the Way for NFC Mobile Payments in the U.S.?,* Fed. Reserve Bank of Boston (Apr. 23, 2019), *available at* https://www.bostonfed.org/publications/payment-strategies/tap-to-pay-will-contactless-cards-pave-the-way-for-nfc-mobile-payments-in-the-us.aspx.

mobile payments, contactless cards transmit tokenized one-time payment codes, securing the card payment credentials. However, in contrast to mobile payments, contactless cards do not act a means of user authentication and do not prevent use of a stolen card.

8.3 Risk management innovation

Issuers are incorporating technological advancements and new data into risk-scoring models used for underwriting and for fraud management.

8.3.1 Credit risk management innovation

Recent innovations in underwriting may enable credit card issuers to offer credit to more people more cheaply by leveraging new technology and the rising availability of new data sources. New underwriting solutions allow card companies to better evaluate credit risks to issue cards to thin-file and no-file consumers with greater confidence. The Bureau estimates 26 million U.S. adults lack sufficient data to generate a typical credit bureau score, either because they do not possess any reported credit history or because their credit history is limited or stale.[301] Underwriting innovations have the potential to expand credit inclusion to portions of this population. An increasing ability for lenders to accurately assess risk could reduce the price of credit for those who are shown to be good risks (although it could *increase* the price of credit for those shown to be worse risks), and might even reduce the overall average price of credit for those who qualify for credit.[302]

[301] *See* Office of Research, Bureau of Consumer Fin. Prot., *Data Point: Credit Invisibles*, (May 2015), http://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf.

[302] The efficacy of these new data and computational techniques used for the purposes of credit risk management is still being understood. At least one non-profit organization, FinRegLab is partnering with industry to research the use of alternative data. *See* FinRegLab, *Advancing the Safe & Smart Use of Technology & Data in Financial Services*, https://finreglab.org/ (last visited July 19, 2019).

Over the past several years, credit risk management innovation has focused on two areas: first, expanding the pool of eligible loan candidates; and second, developing tools that identify credit risk more effectively. Achieving either goal may involve the use of new datasets beyond the traditional credit repayment history data creditors have relied upon for decades. In addition, either may include analytical approaches, such as models that more heavily weigh recent credit behavior (also known as "trended data" solutions), and solutions that rely on machine learning to find new predictive combinations of indicators.[303]

NEW DATA SOURCES

Traditional credit scores use information available on standard credit reports sourced from one of the three national credit reporting agencies (NCRAs). Such information includes credit history, debts in collection, and bankruptcies.[304] Companies that build tools to aid the assessment of credit risk, however, have frequently invested in alternative sources of data. For example, companies have invested in data such as consumer payment history on non-financial products that have recurring billing, such as rent, telecommunications, and utilities.[305] More recently, cash flow data from checking accounts has been leveraged.[306] There are recent

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[303] For some consumers, the use of new sources of information and analytical approaches may be a way to gain access to credit. Some commentators have raised concerns that new information sources and analytical approaches may pose risks to consumers or may not be in compliance with regulatory requirements. *See* 82 Fed. Reg. 11183 (Feb. 21, 2017), NCLC Comment Letter, at 11.

[304] Prior to July 2017, NCRAs included information on tax liens and civil judgments on consumer credit files. *See* Eric Ellman, *Statement Consumer Data Industry Association*, Consumer Data Industry Ass'n (Mar. 13, 2017), https://s3.amazonaws.com/rdcms-cdia/files/production/public/PDFs/FNL.3.13.CDIA_Media_Statement_Liens.pdf.

[305] For example, NCTUE maintains a database of consumer payment information reported by utility and telecom providers, Experian RentBureau houses payment data reported by large landlords, and MicroBilt provides credit reports and scores that leverages the aforementioned data elements and more. *See* Nat'l Consumer Telecom & Utilities Exchange, *Mission Statement*, https://www.nctue.com/about-us (last visited July 19, 2019); Experian, *Unlock the Power of Rental Payment Data*, https://www.experian.com/rentbureau/renter-credit.html (July 19, 2019); and MicroBilt, *Lend Smarter. Collect Quicker. Grow Your Business.*, https://www.microbilt.com/ (last visited July 19, 2019).

[306] Checking account data is consumer-permissioned and is provided to score developers and issuers through data aggregation technology.

indications that these new data sources may become more broadly used for credit card underwriting. Important developments include the following:

- In 2015, credit-scoring company FICO introduced FICO Score XD, a score that uses traditional credit report information as well as—for consumers that lack sufficient credit history to generate a score using a credit report alone—telecommunications and utility payments, and public records and property data. The score is designed to share the same scale (300–850) and odds-to-score relationships as other FICO models.[307] With the additional data, FICO reports being able to provide scores for more than half of previously unscored consumers.[308]

- Cash flow-based underwriting is an emerging trend that also depends on consumer-permissioned access to transaction data. As with other alternative data sources, cash flows may allow lenders to assess the credit risk of no-file and thin-file consumers with greater certainty. One company using such data offers perks and rewards with its credit cards that are not typical for entry level cards. Another purports to provide higher credit limits and lower interest rates than competitors, along with not charging any fees to customers. Yet another has a special application channel for international students studying in the United States.[309]

- In addition to card companies that have developed credit risk scoring models in-house, there is at least one commercially-available credit score, UltraFICO, which considers

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[307] The odds-to-score relationship describes the repayment odds at a given credit score.

[308] FICO, *FICO Score XD*, https://www.fico.com/en/latest-thinking/product-sheet/fico-score-xd (last visited July 19, 2019).

[309] International students are likely to benefit from the use of cash flow underwriting because they typically lack credit history in the U.S. and do not possess a social security number.

consumers cash flows from consumer permissioned access to transaction account data.[310]

- In 2019, CRA Experian launched Boost, which allows individual consumers to permission access to bank account transaction data from which Experian records payments to telecommunications and utilities providers.[311] Experian then adds positive payment history to Experian credit files for as long as the consumer stays enrolled. Experian reports that among a sample of consumer FICO scores, 10 percent of thin-file consumers became scoreable after using Experian Boost. Experian also reports credit score improvements among those that started with a score below 680.[312]

OTHER INNOVATIONS

New analytical approaches, which are often combined with alternative data sources, are being used more frequently than in the past for consumer loan underwriting. One analytical approach new in the last several years, trended data, is being applied by some score developers to standard credit bureau data.[313] Traditionally, credit bureau scores consider discrete events within a credit history, such as the occurrence of a 60-day delinquency. In contrast, trended data considers the trend in credit behavior over time to help inform whether a consumer's credit standing is improving or worsening.[314] It does so by looking at specific data fields within a credit report, when they are available, such as the actual payment amount consumers make toward an

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[310] As of this writing, UltraFICO is in its pilot phase. FICO, *UltraFICO*, https://www.fico.com/ultrafico/ (last visited July 19, 2019).

[311] Commercially available credit scores have long considered payments to telecommunications and utilities providers when this information is present on a consumer credit report; however, such information is rarely present on credit reports.

[312] Susan Henson, *Introducing Experian Boost, a New Way to Instantly Improve Your Credit Scores*, Experian (Apr. 8, 2019), *available at* https://www.experian.com/blogs/ask-experian/introducing-experian-boost/.

[313] Lisa Prevost, *A Focus on Credit History for Mortgage Approvals*, N.Y. Times (Oct. 25, 2015), *available at* https://www.nytimes.com/2015/10/25/realestate/a-focus-on-credit-history-formortgage-approvals.html.

[314] VantageScore, *VantageScore Solutions Debuts VantageScore 4.0 Credit Scoring Model*, (Apr. 3, 2017), *available at* https://www.vantagescore.com/news-story/226/vantagescore-solutions-debuts-vantagescore-40-credit-scoring.

outstanding balance.[315] Other approaches include the application of machine learning to risk scoring. Several known applications of machine learning based underwriting models exist in the subprime and non-credit card market.[316] In addition, at least one new credit card company utilizes machine learning to evaluate credit risk and other card companies may also be exploring the use of machine learning-based credit scoring models as means to drive higher approval rates without sacrificing credit risk.[317] It has been reported that one large retailer has encouraged partner banks to consider vendors that specialize in machine learning models.[318]

While technological advancements may benefit the credit card market, they may also present some risks. New technology has the potential to expand credit access, improve issuers' risk assessment, and provide better service and convenience to consumers. However, certain advancements may have unintended side effects, including the potential for unlawful lending discrimination, or misunderstanding by consumers. The Bureau is interested in promoting innovation that may help extend affordable, responsible credit to more people, while at the same time ensuring compliance with applicable Federal and State law, so that consumers are treated fairly and remain protected.

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[315] In response to the Bureau's Request for Information a commentator noted that sometimes credit card issuers do not report information to the credit bureaus that trended data models rely upon. *See* NCLC Comment Letter, at 10.

[316] Becky Yerak, *AI Helps Auto-Loan Company Handle Industry's Trickiest Turn*, Wall St. J. (Jan. 3, 2019), *available at* https://www.wsj.com/articles/ai-helps-auto-loan-company-handle-industrys-trickiest-turn-11546516801. *See also* Penny Crosman, *Is AI making credit scores better, or more confusing?*, American Banker (Feb. 14, 2017), *available at* https://www.americanbanker.com/news/is-ai-making-credit-scores-better-or-more-confusing.

[317] John Adams, *Can artificial intelligence match credit cards to millennials?*, PaymentsSource (Sept. 8, 2017), *available at* https://www.paymentssource.com/news/petal-uses-artificial-intelligence-to-lure-millennials-to-credit-cards.

[318] AnnaMaria Andriotis, *The $10 Billion Tussle Over Walmart's Credit Cards*, Wall St. J. (Oct. 24, 2018), *available at* https://www.wsj.com/articles/the-10-billion-tussle-over-walmarts-credit-cards-1540378800.

8.3.2 Fraud risk management innovation

Fraud remains a constant and costly reality of the credit card market. One recent estimate pegged total 2017 debit and credit card fraud at $24.26 billion, and projected that to increase to $34.66 billion by 2022.[319] This subsection briefly reviews fraud trends, then covers a number of trends in fraud prevention.

CARD-PRESENT FRAUD AND EMV ADOPTION

Card-present transactions involve physical cards and are susceptible to stolen or counterfeit card fraud. This type of fraud is continuing to decline in the wake of EMV roll-out in the United States. Visa, for example, reports that the dollar volume of counterfeit card fraud on its network has decreased 80 percent from September 2015 to September 2018 for merchants that have upgraded to chip-enabled terminals.

The adoption of EMV technology in the U.S. has been accompanied by the so-called "liability shift" that occurred in October 2015. It required liability for losses in card-present transactions to shift to whichever party—the card issuer or the merchant acquirer—had not implemented the EMV standard. By the end of 2018, U.S.-issued debit and credit chip cards in circulation totaled over 840 million, representing 61 percent of all U.S.-issued Visa cards.[320]

CARD-NOT-PRESENT (CNP) FRAUD

CNP transactions introduce additional security complications surrounding identity and authentication. As EMV technology has targeted card-present fraud and digital commerce has become more prevalent, fraudsters have shifted their focus to CNP fraud. Tokenization, discussed in detail in the 2015 Report, was introduced to limit the value of payment data breaches, however, there has been a simultaneous boom in digital commerce transactions. The U.S. Department of Commerce estimates that total e-commerce sales for 2018 were $513.6

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[319] *See* The Nilson Report, *No. 1142*, (Nov. 2018).

[320] *See* EMVCo, *supra* note 293.

billion, up 14.2 percent from 2017.[321] As of 2018, over half of all debit and credit card fraud losses worldwide are from CNP transactions, totaling $6.5 billion.[322]

Card-not-present fraud also involves a different set of liabilities. Unlike card-present fraud, in which the credit card issuer generally bears financial liability absent specific circumstances allowing chargeback under network rules, merchants generally bear the financial liability in card-not-present fraud cases.

TRENDS IN FRAUD AND FRAUD PREVENTION

A consistent theme cutting across various types of fraud is the difficulty of verifying a customer's identity. The plethora of recent data breaches have compromised a vast amount of consumer data that can be used to commit fraud. According to one estimate, since 2013 nearly 15 billion data records have been lost or stolen.[323]

Struggles with identity verification begin with application fraud. Using stolen or synthetic identifying information, fraudsters apply for financial products that can then be used for fraudulent payments and account access.[324] One estimate predicts financial institutions' costs associated with credit card application fraud will reach $781 million by 2020.[325] Even if a consumer has been successfully identified in the application process, any credit card purchase can be a result of account takeover fraud. Fraudsters gain access to a customer's account itself,

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[321] U.S. Census Bureau News, U.S. Department of Commerce, *Quarterly Retail E-commerce Sales , 4th Quarter 2018*, (Mar. 13, 2019) *available at* https://www.census.gov/retail/index.html#ecommerce.

[322] *See* The Nilson Report, *No. 1142*, (Nov. 2018).

[323] *See* Breach Level Index, *Data Breach Statistics*, https://breachlevelindex.com/ (last visited Mar. 18, 2019).

[324] Synthetic fraud occurs when there is no real-world person from which identifying information is stolen. Instead, fraudsters manufacture identities with information required for credit applications.

[325] Shirley W. Inscoe, *Application Fraud: Fighting an Uphill Battle,* Aite (Dec. 11, 2018), *available at* https://aitegroup.com/report/application-fraud-fighting-uphill-battle.

providing them the opportunity to reroute communications and potentially access other financial products and services at the financial institution without the consumer's knowledge.

Traditional fraud models attempt to pinpoint fraud by checking a single transaction against a number of rules that result in a pass/fail decision. For example, if a transaction is above a certain threshold or made in a foreign country, it might be flagged as fraudulent. These rules have been easy for fraudsters to learn and evade. In addition, the traditional model's rigidity caused a substantial number of non-fraudulent transactions to be denied. One source estimates that 70 percent of transactions that were declined due to fraud were false positives.[326] These false positives cause issuers and merchants to lose out on authentic sales and customer loyalty.

Issuers and payment networks are investing in more adaptive technologies and strategies to better combat fraud loss. Important developments include the following:

- Machine learning: Unlike the system of rigid decisions in traditional fraud detection, machine learning systems can adapt more quickly to variations in data, learning to better identify fraudulent transactions over time. Machine learning fraud prevention efforts use thousands of individualized data checks on any one transaction to increase the likelihood of accurately identifying a fraudulent or permissible payment.[327]
- Dynamic CVV: If a credit card's card number, expiration date, and CVV code have been collected, a fraudulent card-not-present transaction is difficult to prevent. At least one

[326] Al Pascual, *The Financial Impact of Fraud: Merchants Challenged as E-commerce Fraud Rises Post-EMV*, Javelin (Oct. 25, 2016), *available at* https://www.javelinstrategy.com/coverage-area/financial-impact-fraud.

[327] As with underwriting, the use of AI for fraud control raises concerns of unintentional bias, which can affect consumers through declined transactions and closed accounts. Rob Matheson, *Reducing False Positives in Credit Card Fraud Detection*, MIT News (Sept. 20, 2018), *available at* http://news.mit.edu/2018/machine-learning-financial-credit-card-fraud-0920. *See also* Penny Crosman, *Can AI's 'black box' problem be solved?,* American Banker (Jan. 1, 2019), *available at* *https://www.americanbanker.com/news/can-ais-black-box-problem-be-solved*.

issuer is experimenting with dynamic CVV codes on credit cards which will refresh periodically, rendering previously gathered card information inaccurate.[328]

- 3D Secure 2.0: 3D Secure was developed by the major card networks in 2001 as an additional layer of fraud protection. The 3D Secure process requires consumers to take steps to authenticate themselves in the course of a transaction. This process has contributed to increases in cart abandonment as consumers are routed through additional authentications steps. 3D Secure 2.0 is being introduced in 2019 and includes multi-platform digital support, additional contextual data share between merchants and issuers, and a more frictionless authentication experience.[329]

- Secure Remote Commerce (SRC): An additional joint card network effort, SRC is a still-developing standard for card payments in digital commerce. The approach would do away with the current standard of inputting card credentials, a commonly-cited friction point in the payments process. SRC is focusing on interoperability, raising the possibility that consumers may someday only interact with one "Pay" button at the digital point-of-sale that can accommodate many types of payments.[330] Merchants have raised concerns that SRC requirements will lead higher shopping cart abandonment and could limit merchants' transaction-routing choices.[331]

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[328] PNC, *Innovation in Fraud Protection*, https://www.pnc.com/en/corporate-and-institutional/treasury-management/resources/payment-solutions-news/innovations-in-fraud-protection.html (last visited June 27, 2019).

[329] *See* Visa, *FAQ: Visa 3-D Secure 2.0*, https://technologypartner.visa.com/Download.aspx?id=681 (last visited June 27, 2019).

[330] *See* EMVCo, *EMV Secure Remote Commerce*, https://www.emvco.com/emv-technologies/src/ (last visited July 19, 2019).

[331] John Stewart, *Networks Say SRC Will Go Live Later This Year to Simplify—And Secure—Digital Checkouts*, Digital Transactions (June 7, 2019), *available at* https://www.digitaltransactions.net/networks-say-src-will-go-live-later-this-year-to-declutter-and-secure-digital-checkouts/.

APPENDIX A: SUPPORTING FIGURES

Figure 1: AVERAGE APR, GENERAL PURPOSE (Y-14+)

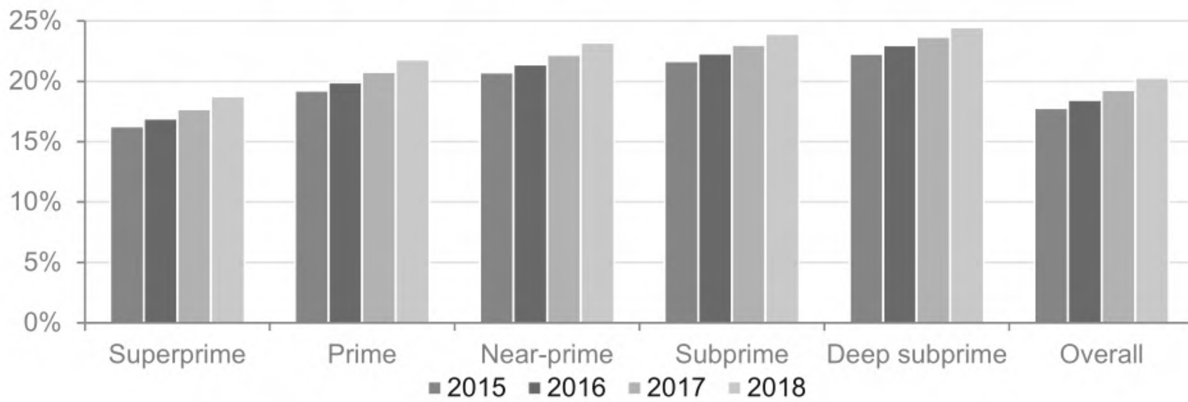


Figure 2: AVERAGE APR, PRIVATE LABEL (Y-14+)

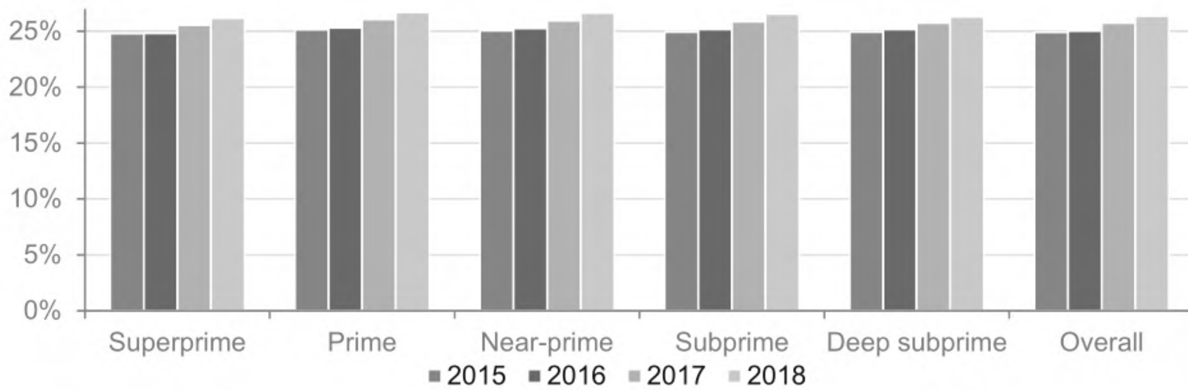


Figure 3: FEDERAL FUNDS RATE COMPARED TO WSJ PRIME RATE(WSJ,FEDERAL RESERVE)[332]

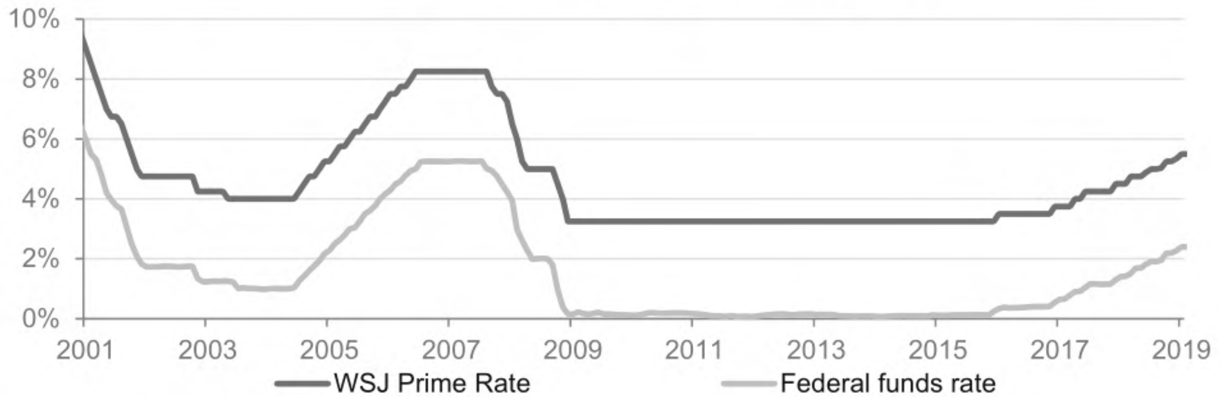
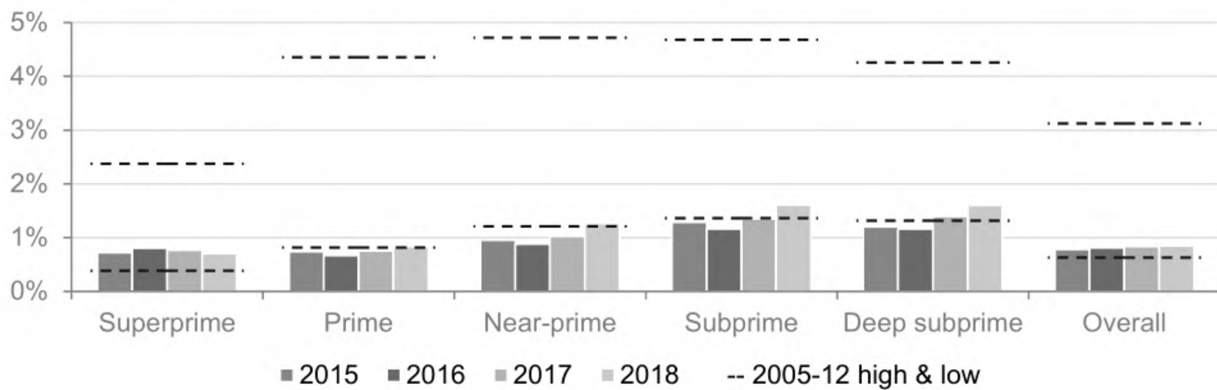


Figure 4: AVERAGE QUARTERLY CREDIT LINE DECREASE INCIDENCE, GENERAL PURPOSE (CCP)



[332] Fed. Reserve Bank of St. Louis, *Effective Federal Funds Rate*, https://fred.stlouisfed.org/series/fedfunds (last visited June 13, 2019); Wall St. J., *Market Data Center*, https://www.wsj.com/market-data/bonds/moneyrates (last visited June 13, 2019).

Figure 5: AVERAGE QUARTERLY CREDIT LINE DECREASE INCIDENCE, PRIVATE LABEL (CCP)

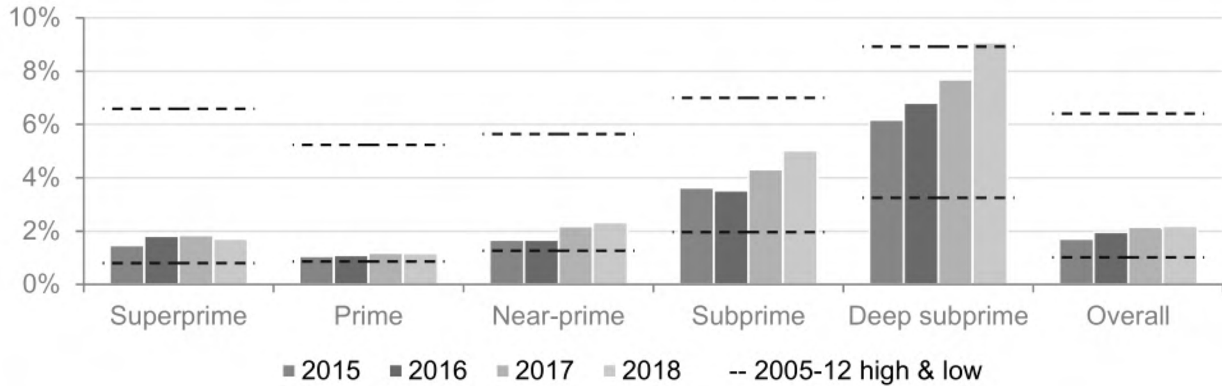


Figure 6: MEDIAN CREDIT LINE DECREASE AMOUNT, GENERAL PURPOSE (CCP)

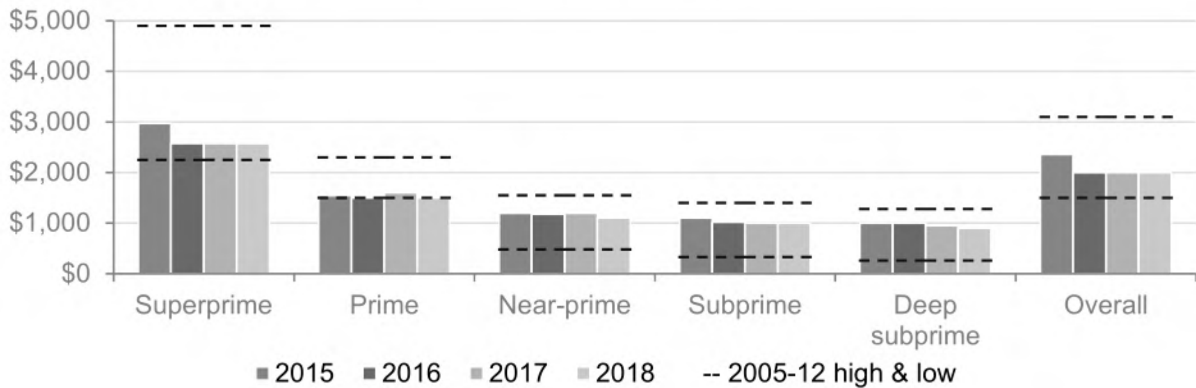
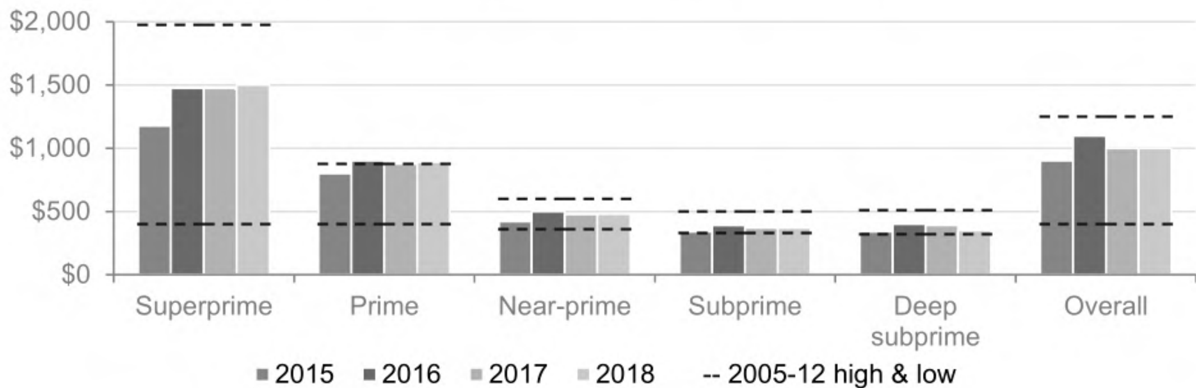


Figure 7: MEDIAN CREDIT LINE DECREASE AMOUNT, PRIVATE LABEL (CCP)



Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

December 18, 2019

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

Dear Speaker Pelosi:

Enclosed is the Consumer Financial Protection Bureau's report to Congress on the Truth in Lending Act (TILA), the Electronic Fund Transfer Act (EFTA), and the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act) as required under 15 U.S.C. § 1613 and 15 U.S.C. § 1693p, which require reporting on the administration of functions under TILA and EFTA and an assessment of the extent to which compliance is being achieved, and the CARD Act, 15 U.S.C. § 1616(e), which requires reporting on supervisory and enforcement activities with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations.

Should you have any questions concerning this report, please do not hesitate to contact me or have your staff contact Meredith Manna in the Bureau's Office of Legislative Affairs. Ms. Manna can be reached at (b)(6)

Sincerely,

Kathleen L. Kraninger

Kathleen L. Kraninger
Director

DECEMBER 18, 2019

Annual Report on the Truth in Lending Act, the Electronic Fund Transfer Act, and the Credit Card Accountability Responsibility and Disclosure Act

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1. Annual Report on the Truth in Lending Act, the Electronic Fund Transfer Act, and the Credit Card Accountability Responsibility and Disclosure Act

The Truth in Lending Act (TILA)[1] and the Electronic Fund Transfer Act (EFTA)[2] require the Consumer Financial Protection Bureau (CFPB or Bureau) to make an annual report to Congress that includes a description of the administration of functions under TILA and EFTA, and an assessment of the extent to which compliance with TILA and EFTA has been achieved. In addition, the Credit Card Accountability Responsibility and Disclosure Act (CARD Act)[3] requires reporting on supervisory and enforcement activities with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations.[4]

This Report provides the information required by TILA, EFTA, and the CARD Act for the periods January 1, 2016–December 31, 2016, and January 1, 2017–December 31, 2017.[5] This Report describes the Bureau's and other agencies' enforcement efforts and required

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[1] 15 U.S.C. § 1613.

[2] 15 U.S.C. § 1693p.

[3] 15 U.S.C. § 1616(e).

[4] In 2012, the Federal Reserve Board (FRB) and the Bureau agreed that responsibility for the reporting required by the CARD Act passed to the Bureau under the terms of the Consumer Financial Protection Act of 2010.

[5] In order to facilitate reporting on an interagency basis, this TILA, EFTA, and CARD Act Report is based on the full calendar years of 2016 and 2017. Future reports will be included as an addendum to the Bureau's Fall Semi-Annual Report (SAR) to Congress. The next report, covering the period January 1, 2018–December 31, 2018, will be included in the Bureau's upcoming Fall 2019 SAR. Past TILA, EFTA, and CARD Act reports can be found in the Bureau's Fall SARs from 2013—2016, *available at* https://www.consumerfinance.gov.

reimbursements to consumers by supervised institutions as they relate to TILA, EFTA, the CARD Act, and their respective implementing regulations, Regulation Z (for TILA and the CARD Act),[6] and Regulation E (for EFTA). It also provides an assessment of the extent of compliance with the provisions of TILA, EFTA, and their implementing regulations.

[6] The Federal Trade Commission's (FTC) enforcement action summaries in this Report also include references to violations of the Consumer Leasing Act (CLA) and Regulation M. The CLA is an amendment to TILA. *See* 15 U.S.C. § 1667-1667f.

2. Public enforcement actions and reimbursements – TILA, EFTA, CARD Act

2.1 TILA: Public enforcement actions and reimbursements

The purposes of TILA include: (1) to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available and avoid the uninformed use of credit, and (2) to protect the consumer against inaccurate and unfair credit billing and credit card practices. 15 U.S.C. § 1601(a).

The enforcement efforts made, and reimbursements required, by all the agencies assigned enforcement authority under TILA are discussed in this section.

The agencies charged with enforcement of TILA under 15 U.S.C. § 1607 include:

- the Bureau,
- the Federal Deposit Insurance Corporation (FDIC),
- the Federal Reserve Board (FRB),
- the National Credit Union Administration (NCUA),
- the Office of the Comptroller of the Currency (OCC),
- the Federal Trade Commission (FTC),
- the Department of Transportation (DOT),
- the Farm Credit Administration (FCA), and

- the Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA).[7]

During the reporting period of January 1, 2016, through December 31, 2016, the following agencies reported public enforcement actions under TILA, including:

TABLE 1: 2016 PUBLIC ENFORCEMENT ACTIONS RELATED TO TILA

Agency	Summary
Bureau	Filed complaints against four pawnbrokers for, among other violations, allegedly using credit agreements that inaccurately disclosed the annual percentage rate (APR) in the course of extending closed-end credit in violation of TILA and Regulation Z. Filed a complaint against a pawnbroker for, among other violations, allegedly using credit agreements that did not include brief descriptions of the finance charge and APR and inaccurately disclosed the APR in the course of extending closed-end credit in violation of TILA and Regulation Z. Entered into a consent order with an online lender for, among other violations, understating the finance charge and APR in credit agreements and failing to disclose the APR and other required information in advertisements with triggering terms in violation of TILA and Regulation Z. Filed five administrative proceedings against five title lenders and entered into consent orders with three of them in 2016 for, among other violations, failing to disclose the APR in online advertisements about title loans in violation of TILA and Regulation Z. Entered into a consent order with an auto sales company for, among other violations, using credit agreements that failed to disclose certain charges as finance charges, thereby understating the finance charge and APR in violation of TILA and Regulation Z. Entered into a consent order with a retail credit financing company for, among other violations, failing to provide adequate account-opening disclosures in

[7] The Grain Inspection, Packers, and Stockyards Administration (GIPSA) was eliminated as a standalone agency within the U.S. Department of Agriculture (USDA) in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and TILA and EFTA reporting now comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

Agency	Summary
	connection with extending open-end credit in violation of TILA and Regulation Z.
FDIC	Entered into two consent orders for violations of Regulation Z.
OCC	Issued a consent order against a bank for, among other things, violations of TILA and Regulation Z in connection with the bank's mortgage department.
FTC	Obtained a stipulated final order with civil penalties against an automotive group for allegedly violating a prior consent order with the FTC by concealing sale and lease terms that added significant costs or limited who could qualify for vehicles at advertised prices and amounts, and for advertising credit or lease terms without disclosing, or without disclosing clearly and conspicuously, required credit or lease information in violation of TILA or CLA and Regulation Z or Regulation M. Entered into a stipulated preliminary injunction with an automotive group for allegedly failing to disclose, or disclose clearly and conspicuously, required credit information in their advertising in violation of TILA or CLA and Regulation Z or Regulation M. Entered into a consent order with an automotive group for allegedly failing to disclose, or disclose clearly and conspicuously, required lease information in their advertising in violation of CLA. Obtained a judgment against a group of payday lenders for charging undisclosed and inflated fees in violation of TILA. Obtained a judgment against a consumer electronics retailer for violating a prior FTC consent order for, among other things, allegedly failing to provide required written disclosures and account statements to consumers in violation of TILA and Regulation Z.
DOT	Issued a consent order against an airline company for failing to issue refunds to certain customers within the time limits set forth in Regulation Z.

No other agencies with TILA enforcement authority reported taking any public enforcement actions related to TILA during the January 1, 2016, through December 31, 2016, time period.

For TILA and Regulation Z violations found during the same time period, the Bureau, FDIC, and FRB required 34 institutions to reimburse an estimated 57,889 consumers approximately $5.2 million. This amount includes reimbursements required by the enforcement actions noted in Table 1, as well as non-public supervisory or enforcement actions, and includes violations for other Federal consumer financial laws.

During the reporting period of January 1, 2017, through December 31, 2017, the following agencies reported public enforcement actions under TILA, including:

TABLE 2: 2017 PUBLIC ENFORCEMENT ACTIONS RELATED TO TILA

Agency	Summary
Bureau	Entered into consent orders with four pawnbrokers for, among other violations, using credit agreements that inaccurately disclosed the APR in the course of extending closed-end credit in violation of TILA and Regulation Z. Entered into a consent order with a pawnbroker for, among other violations, using credit agreements that did not include brief descriptions of the finance charge and APR and inaccurately disclosed the APR in the course of extending closed-end credit in violation of TILA and Regulation Z. Entered into two consent orders with two title lenders for, among other violations, failing to disclose the APR in online advertisements about title loans in violation of TILA and Regulation Z. Entered into a consent order with a pawnbroker for, among other violations, using credit agreements that inaccurately disclosed the finance charge and APR in the course of extending closed-end credit in violation of TILA and Regulation Z. Entered into a consent order with a pawnbroker for, among other violations, using credit agreements that misstated the APR in the course of extending closed-end credit in violation of TILA and Regulation Z. Filed a complaint against a mortgage loan servicer and its subsidiaries for, among other violations, allegedly failing to timely and appropriately credit payments and failing to send borrowers periodic statements accurately

Agency	Summary
	detailing information in violation of TILA and Regulation Z. Filed a complaint against four online lenders for, among other things, allegedly disclosing a rate of finance charge but not the APR in advertisements and orally providing cost information other than the APR (or the APR for a sample transaction) in response to inquiries in connection with extending closed-end credit in violation of TILA and Regulation Z.
FTC	Obtained a stipulated final order with civil penalties against a group of auto dealerships for allegedly violating a prior consent order with the FTC by misrepresenting the total cost of vehicle financing or leases or the offer's availability to all consumers, and for advertising credit or lease terms without disclosing, or disclosing clearly and conspicuously, required credit or lease information in violation of TILA or CLA and Regulation Z or Regulation M. Obtained a stipulated order against a group of auto dealerships and owners for allegedly failing to disclose, or to clearly and conspicuously disclose, required credit or lease information in ads in violation of TILA or CLA and Regulation Z or Regulation M. Entered into a consent order with an auto dealer for allegedly failing to disclose, or to clearly and conspicuously disclose, required credit or lease information in violation of TILA or CLA and Regulation Z or Regulation M when the ads promoted certain terms, such as the monthly payment.
DOT	Issued a consent order against an airline company for failing to timely process refunds for air transportation purchased with credit cards in violation of TILA and Regulation Z.

No other agencies with TILA enforcement authority reported taking any public enforcement actions related to TILA during the January 1, 2017, through December 31, 2017, time period.

For TILA and Regulation Z violations found during the same time period, the Bureau, FDIC, FRB, and NCUA required 41 institutions to reimburse an estimated 9,334 consumers approximately $1.5 million. This amount includes reimbursements required by the enforcement actions noted in Table 2, as well as non-public supervisory or enforcement actions, and includes

violations for other Federal consumer financial laws.

2.2 EFTA: Public enforcement actions and reimbursements

The purpose of EFTA is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of EFTA is the provision of individual consumer rights. 15 U.S.C. § 1693(b).

The enforcement efforts made, and reimbursements required, by all the agencies assigned enforcement authority under EFTA are discussed in this section.

As required by EFTA, the Bureau monitors what effects the act has on compliance costs for financial institutions, as well as the benefits of the act to consumers.

Consumers use electronic payments more than any other type, and consumer reliance upon electronic payments relative to that of non-electronic payments is increasing. According to the 2016 and 2017 Survey of Consumer Payment Choice, the average consumer makes 70 payments a month. For the average consumer, 57 percent of payments use a debit, credit, or prepaid card; 33.6 percent use cash, paper checks, or some other paper payment instrument; and 8.3 percent use some other form.[8] Consumer use of cash has been steady since 2010; however, check use has declined steadily and now makes up only about five percent of all payments.[9] Check use is diminishing even among consumers that use checking accounts: while 90 percent of consumers had a checking account, only 80 percent had paper checks, down from 90 percent in 2008.[10] Debit (and credit) card payments have generally increased to replace the declining check share.[11] In addition, one third of all consumers had made a mobile payment, regardless of the underlying electronic method.[12]

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[8] Claire Green and Joanna Stavins, "The 2016 and 2017 Surveys of Consumer Payment Choice: Summary Results." *Available at:* https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/2018/rdr1803.pdf, pp. 12-13.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

Within the universe of electronic payments, consumers conduct an array of electronic fund transfers (EFTs), including debit card, electronic benefit transfer (EBT) card, prepaid card (including gift card), automated clearinghouse (ACH), and mobile phone-enabled person-to-person (P2P) payments. In addition, EFTs include consumer automated teller machine (ATM) transactions and certain remittance transfers.

Consumers conduct over 80 billion debit, EBT, and prepaid card payments and transact nearly $3 trillion across transaction (non-credit) card accounts annually. According to the most recent Federal Reserve Payments Study, debit card volume totaled $2.6 trillion and 69.6 billion transactions in 2017.[13] That same year, EBT payments totaled approximately $60 billion and 2.4 billion transactions.[14] Further, prepaid card payments totaled $240 billion and 10.7 billion transactions in 2017.[15] According to the 2016 and 2017 Survey of Consumer Payment Choice, slightly over 80 percent of consumers owned a debit card and approximately half of consumers owned a prepaid card.[16]

Although consumers tend to conduct fewer ACH transactions relative to card transactions, the consumer dollar volume over ACH is higher. ACH volume totaled approximately 21.5 billion transactions and $46.8 trillion in 2017.[17] Per the Federal Reserve, these totals increased approximately 5.7 percent and 6.9 percent, respectively, from 2016.[18] The Bureau estimates consumer account debits represent slightly more than half of all ACH transaction volume and over 40 percent of ACH dollar volume.[19]

P2P represents an emerging and fast-growing category of EFTs. The P2P EFT marketplace is challenging to size for a number of reasons. First, a number of firms facilitate P2P EFTs over a variety of proprietary platforms. In addition, many P2P services utilize legacy EFT platforms to

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[13] *Available at:* https://www.federalreserve.gov/newsevents/pressreleases/files/2018-payment-systems-study-annual-supplement-20181220.pdf.

[14] *Id.* Note, however, that many of the requirements of EFTA and Regulation E do not apply to EBT systems that are established under State or local law or administered by a State or local government.

[15] *Id.*

[16] *Supra* note 8 at T-5.

[17] NACHA press release. *Available at* https://www.nacha.org/news/ach-network-volume-and-value-hit-new-highs-2017.

[18] *Supra* note 13.

[19] For reference, in 2015, consumer ACH debit volume totaled approximately 12.5 billion transactions and $18.3 trillion, while the ACH Network processed a total of 24B transactions totaling $41.6T volume. *See* NACHA press release. *Available at* https://www.nacha.org/news/ach-volume-grows-56-percent-adding-13-billion-payments-2015-0.

transmit payment messages and settle transactions. As a result, P2P transaction volume is often conflated with that of the legacy payment systems upon which the P2P services rely. Further, the Bureau's Prepaid Account Rule, which is effective April 1, 2019, establishes a definition for prepaid accounts (which includes certain mobile wallets) and explicitly brings prepaid accounts within the scope of Regulation E, and as a result, could expand the universe of P2P payments that are subject to Regulation E.[20] An industry analyst reports, based on survey results and estimates, that 144 million, or 57 percent of U.S. consumers made a P2P payment in 2017.[21]

ATM transaction volume appears to have diminished in recent years; however, the total value of ATM withdrawals appears to have remained relatively constant over the same span. Specifically, the Federal Reserve, citing a survey of large institutions, reported a 2.8 percent decline in the number of ATM withdrawals from 2016 to 2017.[22] During this period, the Federal Reserve states that the aggregate value of ATM withdrawals increased by 0.5 percent.[23]

The Bureau issued the Prepaid Accounts Rule on October 5, 2016, to create comprehensive protections for prepaid accounts. The rule provides an overview of prepaid financial products, including general purpose reloadable cards, as well as an analysis of the potential benefits and costs related to disclosures, limited liability and error resolution, access to prepaid account information, and the posting of prepaid account agreements.[24]

The incremental costs associated with the EFTA are difficult to quantify because it is difficult to determine how industry practices would have evolved in the absence of statutory requirements. The benefits of the EFTA are also difficult to measure, as they cannot be isolated from consumer protections that would have been provided in the absence of regulation. The Bureau will continue to consider the potential benefits and costs to consumers and financial institutions in evaluating new rules under EFTA. The Bureau will also continue to monitor the market and evaluate the adequacy of consumer protection under EFTA.

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[20] *See* 12 CFR 1005.3(b)(1) for the general definition of an EFT within Regulation E. The Prepaid Rule expands the definition of an account within Regulation E at 12 CFR 1005.2(b)(3)(i). Comment 12 CFR 1005.2(b)(3)(i)-10 addresses accounts with a primary function of conducting P2P transfers.

[21] Talie Baker and Judy Fishman, *Person-to-person Payments in the U.S.: The Case for Real Time*, Aité Group (Feb. 2019), *available at* https://aitegroup.com/report/person-person-payments-us-case-real-time.

[22] *Supra* note 13. Note: financial institutions operate just over 40 percent of all U.S. ATMs per the National ATM Council, *available at:* https://natmc.org/new-study-shows-independent-operators-provide-majority-of-u.s.-atms-serve-under-banked.html.

[23] *Supra* note 13.

[24] *Available at* https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/prepaid-accounts-under-electronic-fund-transfer-act-regulation-e-and-truth-lending-act-regulation-z/. The Prepaid Accounts Rule also regulates overdraft credit features that may be offered in conjunction with prepaid accounts (covered under Regulation Z).

The agencies charged with enforcement of EFTA under 15 U.S.C. § 1693 include:

- the Bureau,
- the FDIC,
- the FRB,
- the NCUA,
- the OCC,
- the FTC,
- the DOT, and
- the Securities and Exchange Commission.

During the reporting period of January 1, 2016, through December 31, 2016, the following agencies reported public enforcement actions under EFTA, including:

TABLE 3: 2016 PUBLIC ENFORCEMENT ACTIONS RELATED TO EFTA

Agency	Summary
Bureau	Entered into a consent order with a financial services company offering payday loans and check-cashing services for, among other violations, failing to obtain written authorization for preauthorized electronic fund transfers from consumers' bank accounts in violation of EFTA and Regulation E. Entered into a consent order with a bank for, among other violations, violating the overdraft opt-in requirements of EFTA and Regulation E. Entered into a consent order with a retail credit financing company for, among other violations, entering into revolving credit agreements with ACH pre-authorization provisions that failed to disclose requisite information in violation of EFTA and Regulation E.
FDIC	Entered into one consent order for violations of Regulation E.

Agency	Summary
FTC	Obtained a judgment against a group of payday lenders for making preauthorized debits from consumers' bank accounts as a condition of obtaining payday loans in violation of EFTA and Regulation E. Obtained court orders against skincare marketers for violating EFTA and Regulation E by allegedly failing to obtain from consumers a signed or similarly authenticated written authorization for preauthorized electronic fund transfers from their accounts, and for failing to provide them a copy of the authorization. Obtained stipulated orders against defendants involved in an Internet enterprise for violating EFTA and Regulation E by allegedly charging recurring monthly fees never agreed to. Obtained a stipulated final order against a marketer of dietary supplements for allegedly debiting consumers' bank accounts on a recurring basis without obtaining written authorization from them or providing a copy of the authorization in violation of EFTA. Obtained a stipulated final order against two individuals and their companies that marketed weight loss supplements for allegedly debiting consumers' bank accounts on a recurring basis for preauthorized electronic fund transfers without obtaining the consumers' signed or similarly authenticated written authorization, and for failing to provide them a copy of the authorization, in violation of EFTA. Obtained a judgment against a consumer electronics retailer for violating a prior FTC consent order for, among other things, violating EFTA by allegedly conditioning the extension of credit on mandatory preauthorized transfers.

No other agencies with EFTA enforcement authority reported taking any public enforcement actions related to EFTA during the January 1, 2016, through December 31, 2016, time period.

For EFTA and Regulation E violations found during this time period, the Bureau and the NCUA required 10 institutions to reimburse 164,677 consumers a total of $3.1 million. This amount includes reimbursements required by the enforcement actions noted in Table 3, as well as non-

public supervisory or enforcement actions, and includes reimbursements associated with violations of other Federal consumer financial laws.

During the reporting period of January 1, 2017, through December 31, 2017, the following agencies reported public enforcement actions under EFTA, including:

TABLE 4: 2017 PUBLIC ENFORCEMENT ACTIONS RELATED TO EFTA

Agency	Summary
Bureau	Filed a complaint against a bank for, among other violations, allegedly violating the overdraft opt-in requirements of EFTA and Regulation E.
FTC	Obtained stipulated final orders against three dietary supplement marketers for allegedly debiting consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their account, and for failing to provide consumers with a copy of the authorization, in violation of EFTA and Regulation E. Obtained a stipulated order with a network of online marketers for violating EFTA by allegedly debiting consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their accounts, and for failing to provide consumers with a copy of the authorization. Entered into stipulated final orders against a company and its owners that marketed dietary supplements for allegedly debiting consumers' bank accounts on a recurring basis without obtaining a written authorization form, or providing a copy of the authorization to consumers, in violation of EFTA. Obtained a final order with a company and its owner for charging consumers for monthly fees they never agreed to pay, in violation of EFTA. Obtained a default judgment against the owner of a media group for violating EFTA and Regulation E by debiting consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated

Agency	Summary
	from consumers for preauthorized electronic fund transfers from their accounts, and for failing to provide consumers with a copy of the authorization.

No other agencies with EFTA enforcement authority reported taking any public enforcement actions related to EFTA during the January 1, 2017, through December 31, 2017, time period. For EFTA and Regulation E violations found during this time period as a result of non-public supervisory or enforcement actions, the Bureau and the NCUA required 17 institutions to reimburse 1,156 consumers a total of $140,157.

2.3 CARD Act: Public enforcement actions and reimbursements

The CARD Act amended TILA to establish fair and transparent practices for the extension of credit under an open-end consumer credit plan. Section 502(e) of the CARD Act requires reporting on supervision and enforcement activities undertaken by the Federal banking agencies (the FRB, FDIC, and OCC) and the FTC with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations, including the CARD Act and Section 5 of the FTC Act.

During the reporting period of January 1, 2016, through December 31, 2016, the following agencies reported public enforcement actions under the applicable Federal consumer financial protection laws:

TABLE 5: 2016 PUBLIC ENFORCEMENT ACTIONS RELATED TO SECTION 5 OF THE FTC ACT

Agency	Summary
OCC	Issued two consent orders against a bank for violating the FTC Act for unfair practice of billing customers for two identity protection products that they did not receive. These enforcement actions were taken in coordination with the CFPB.

Agency	Summary
	Issued two consent orders against a bank for violating Section 5 of the FTC Act for the unfair practice of charging customers for credit protection monitoring products who, but for at least some amount of time, did not receive the products' credit monitoring benefits.

No other agencies reported taking public enforcement actions related to the CARD Act or other applicable Federal consumer financial laws during the January 1, 2016, through December 31, 2016, time period.

As a result of enforcement actions taken during this time period, the banks regulated by the OCC made, or will make, approximately $47.9 million in reimbursements to approximately 400,000 affected consumers. This amount includes reimbursements required by the enforcement actions noted in Table 5. In the enforcement actions coordinated with the OCC, the Bureau required the institution to reimburse an estimated 257,000 consumers a total of approximately $27.75 million.

During the reporting period of January 1, 2017, through December 31, 2017, the following agencies reported public enforcement actions under the applicable Federal consumer financial protection laws:

TABLE 6: 2017 ENFORCEMENT ACTIONS RELATED TO THE CARD ACT AND OTHER APPLICABLE LAWS

Agency	Summary
FDIC	Issued six public enforcement actions against one bank and two institution-affiliated parties related to the violations in Section 5 of the FTC Act for unfair and deceptive practices.
FRB	Issued a consent order against a state member bank for deceptive practices in violation of Section 5 of the FTC Act related to balance transfer credit cards issued to consumers by the bank through third parties.
OCC	Issued four consent orders against two banks for unfair billing practices for an identity protection product offered by the bank in violation of the FTC Act.

No other agencies reported taking public enforcement actions related to the CARD Act or other applicable Federal consumer financial laws during the January 1, 2017, through December 31, 2017, time period.

As a result of enforcement actions taken during this same time period, the OCC, FDIC, and FRB required six institutions and affiliates to reimburse an estimated 54,940 consumers approximately $12.7 million. This amount includes reimbursements required by the enforcement actions noted in Table 6, and includes reimbursements associated with violations of other Federal consumer financial laws.

3. Assessment of compliance and common violations – TILA and EFTA

The agencies that are members of the Federal Financial Institutions Examination Council (FFIEC) reported overall compliance by supervised entities with TILA, EFTA, and their respective implementing regulations.[25] The agencies did report, however, that more institutions were cited for violations of Regulation Z than Regulation E over both the 2016 and 2017 reporting periods. Based on the information reported by the FFIEC agencies, this section outlines the most frequently cited violations of Regulation Z and Regulation E across the FFIEC agencies for each reporting period.[26]

For the reporting period of January 1, 2016, through December 31, 2016, the most frequently cited violation of Regulation Z across the FFIEC agencies was:

- 12 C.F.R. § 1026.18(d) – On closed-end credit, failure to disclose, or accurately disclose, the finance charge, using that term, and a brief description such as "the dollar amount the credit will cost you."

For the reporting period of January 1, 2016, through December 31, 2016, the most frequently cited violations of Regulation E across the FFIEC agencies were:

- 12 C.F.R. § 1005.11(c) – Failure to comply with the investigation and timeframe requirements for resolving errors in electronic fund transfers.
- 12 C.F.R. § 1005.11(d) – Failure to follow the required procedures when an investigation determines no error or a different error occurred.

For the reporting period of January 1, 2017, through December 31, 2017, the most frequently

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[25] Other agencies either do not conduct compliance examinations or reported general compliance for the laws under their jurisdiction.

[26] Because the FFIEC agencies use different methods to compile data, the information presented here supports only general conclusions.

cited violations of Regulation Z across the FFIEC agencies were:

- 12 C.F.R. § 1026.18(d) – On closed-end credit, failure to disclose, or accurately disclose, the finance charge, using that term, and a brief description such as "the dollar amount the credit will cost you."

- 12 C.F.R. § 1026.19(e) – On closed-end credit, failure to disclose good faith estimates of the disclosures.

- 12 C.F.R. § 1026.38(a) – Failure to disclose the title of the form, "Closing Disclosure," using that term for certain mortgage transactions.

- 12 C.F.R. § 1026.38(f) – Failure to provide consumers with specific information under the heading "Loan Costs" on the Closing Disclosure.

For the reporting period of January 1, 2017, through December 31, 2017, the most frequently cited violations of Regulation E across the FFIEC agencies were:

- 12 C.F.R. § 1005.11(b) –Failure to comply with the requirements of this section with respect to any oral or written notice of error from the consumer.

- 12 C.F.R. § 1005.11(c) – Failure to comply with the investigation and timeframe requirements for resolving errors in electronic fund transfers.

- 12 C.F.R. § 1005.31(b) –Failure to comply with providing disclosures, as applicable, and using the terms, or substantially similar terms, set forth in this section.

4. Outreach related to TILA and EFTA

The FFIEC agencies conducted training and issued guidance and examination procedures to assist supervised institutions in complying with the requirements of TILA, EFTA, and their respective implementing regulations. The agencies also provided guidance to consumers on these topics through various means, such as Federal Register Notices, workshops, blogs, and other outreach events.

In 2016, the FTC hosted workshops on such topics as payday and car title loans, testing and evaluation of disclosures that companies make to consumers about advertising claims, and other information. The FTC also released videos to assist consumers with buying and financing vehicles and issued blog posts on various topics such as auto purchasing and financing, deceptive payday lending practices, marketplace lending, and metrics and thresholds for determining effective disclosures and improving disclosure design.

In 2017, the FTC hosted workshops and issued blog posts on topics such as auto sales, finance issues, financial issues specific to servicemembers, deceptive and unfair payday lending, deceptive advertising in car sales, and negative option plans. The FTC also released a blog post discussing its second FinTech Forum—held in 2016—that brought together government and industry participants, consumer advocates, and other stakeholders, to discuss two evolving types of financial technology, including peer-to-peer payment systems and crowdfunding.

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

December 18, 2019

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
4340 O'Neill House Office Building
Washington, DC 20024

Dear Chairwoman Waters and Ranking Member McHenry:

Enclosed is the Consumer Financial Protection Bureau's report to Congress on the Truth in Lending Act (TILA), the Electronic Fund Transfer Act (EFTA), and the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act) as required under 15 U.S.C. § 1613 and 15 U.S.C. § 1693p, which require reporting on the administration of functions under TILA and EFTA and an assessment of the extent to which compliance is being achieved, and the CARD Act, 15 U.S.C. § 1616(e), which requires reporting on supervisory and enforcement activities with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations.

Should you have any additional questions, please do not hesitate to contact me or have your staff contact Meredith Manna in the Bureau's Office of Legislative Affairs. Ms. Manna can be reached at (b)(6)

Sincerely,

Kathleen L. Kraninger
Director

consumerfinance.gov

DECEMBER 18, 2019

Annual Report on the Truth in Lending Act, the Electronic Fund Transfer Act, and the Credit Card Accountability Responsibility and Disclosure Act

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1. Annual Report on the Truth in Lending Act, the Electronic Fund Transfer Act, and the Credit Card Accountability Responsibility and Disclosure Act

The Truth in Lending Act (TILA)[1] and the Electronic Fund Transfer Act (EFTA)[2] require the Consumer Financial Protection Bureau (CFPB or Bureau) to make an annual report to Congress that includes a description of the administration of functions under TILA and EFTA, and an assessment of the extent to which compliance with TILA and EFTA has been achieved. In addition, the Credit Card Accountability Responsibility and Disclosure Act (CARD Act)[3] requires reporting on supervisory and enforcement activities with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations.[4]

This Report provides the information required by TILA, EFTA, and the CARD Act for the periods January 1, 2016–December 31, 2016, and January 1, 2017–December 31, 2017.[5] This Report describes the Bureau's and other agencies' enforcement efforts and required

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[1] 15 U.S.C. § 1613.

[2] 15 U.S.C. § 1693p.

[3] 15 U.S.C. § 1616(e).

[4] In 2012, the Federal Reserve Board (FRB) and the Bureau agreed that responsibility for the reporting required by the CARD Act passed to the Bureau under the terms of the Consumer Financial Protection Act of 2010.

[5] In order to facilitate reporting on an interagency basis, this TILA, EFTA, and CARD Act Report is based on the full calendar years of 2016 and 2017. Future reports will be included as an addendum to the Bureau's Fall Semi-Annual Report (SAR) to Congress. The next report, covering the period January 1, 2018–December 31, 2018, will be included in the Bureau's upcoming Fall 2019 SAR. Past TILA, EFTA, and CARD Act reports can be found in the Bureau's Fall SARs from 2013—2016, *available at* https://www.consumerfinance.gov.

reimbursements to consumers by supervised institutions as they relate to TILA, EFTA, the CARD Act, and their respective implementing regulations, Regulation Z (for TILA and the CARD Act),[6] and Regulation E (for EFTA). It also provides an assessment of the extent of compliance with the provisions of TILA, EFTA, and their implementing regulations.

[6] The Federal Trade Commission's (FTC) enforcement action summaries in this Report also include references to violations of the Consumer Leasing Act (CLA) and Regulation M. The CLA is an amendment to TILA. *See* 15 U.S.C. § 1667-1667f.

2. Public enforcement actions and reimbursements – TILA, EFTA, CARD Act

2.1 TILA: Public enforcement actions and reimbursements

The purposes of TILA include: (1) to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available and avoid the uninformed use of credit, and (2) to protect the consumer against inaccurate and unfair credit billing and credit card practices. 15 U.S.C. § 1601(a).

The enforcement efforts made, and reimbursements required, by all the agencies assigned enforcement authority under TILA are discussed in this section.

The agencies charged with enforcement of TILA under 15 U.S.C. § 1607 include:

- the Bureau,
- the Federal Deposit Insurance Corporation (FDIC),
- the Federal Reserve Board (FRB),
- the National Credit Union Administration (NCUA),
- the Office of the Comptroller of the Currency (OCC),
- the Federal Trade Commission (FTC),
- the Department of Transportation (DOT),
- the Farm Credit Administration (FCA), and

- the Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA).[7]

During the reporting period of January 1, 2016, through December 31, 2016, the following agencies reported public enforcement actions under TILA, including:

TABLE 1: 2016 PUBLIC ENFORCEMENT ACTIONS RELATED TO TILA

Agency	Summary
Bureau	Filed complaints against four pawnbrokers for, among other violations, allegedly using credit agreements that inaccurately disclosed the annual percentage rate (APR) in the course of extending closed-end credit in violation of TILA and Regulation Z. Filed a complaint against a pawnbroker for, among other violations, allegedly using credit agreements that did not include brief descriptions of the finance charge and APR and inaccurately disclosed the APR in the course of extending closed-end credit in violation of TILA and Regulation Z. Entered into a consent order with an online lender for, among other violations, understating the finance charge and APR in credit agreements and failing to disclose the APR and other required information in advertisements with triggering terms in violation of TILA and Regulation Z. Filed five administrative proceedings against five title lenders and entered into consent orders with three of them in 2016 for, among other violations, failing to disclose the APR in online advertisements about title loans in violation of TILA and Regulation Z. Entered into a consent order with an auto sales company for, among other violations, using credit agreements that failed to disclose certain charges as finance charges, thereby understating the finance charge and APR in violation of TILA and Regulation Z. Entered into a consent order with a retail credit financing company for, among other violations, failing to provide adequate account-opening disclosures in

[7] The Grain Inspection, Packers, and Stockyards Administration (GIPSA) was eliminated as a standalone agency within the U.S. Department of Agriculture (USDA) in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and TILA and EFTA reporting now comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

Agency	Summary
	connection with extending open-end credit in violation of TILA and Regulation Z.
FDIC	Entered into two consent orders for violations of Regulation Z.
OCC	Issued a consent order against a bank for, among other things, violations of TILA and Regulation Z in connection with the bank's mortgage department.
FTC	Obtained a stipulated final order with civil penalties against an automotive group for allegedly violating a prior consent order with the FTC by concealing sale and lease terms that added significant costs or limited who could qualify for vehicles at advertised prices and amounts, and for advertising credit or lease terms without disclosing, or without disclosing clearly and conspicuously, required credit or lease information in violation of TILA or CLA and Regulation Z or Regulation M. Entered into a stipulated preliminary injunction with an automotive group for allegedly failing to disclose, or disclose clearly and conspicuously, required credit information in their advertising in violation of TILA or CLA and Regulation Z or Regulation M. Entered into a consent order with an automotive group for allegedly failing to disclose, or disclose clearly and conspicuously, required lease information in their advertising in violation of CLA. Obtained a judgment against a group of payday lenders for charging undisclosed and inflated fees in violation of TILA. Obtained a judgment against a consumer electronics retailer for violating a prior FTC consent order for, among other things, allegedly failing to provide required written disclosures and account statements to consumers in violation of TILA and Regulation Z.
DOT	Issued a consent order against an airline company for failing to issue refunds to certain customers within the time limits set forth in Regulation Z.

No other agencies with TILA enforcement authority reported taking any public enforcement actions related to TILA during the January 1, 2016, through December 31, 2016, time period.

For TILA and Regulation Z violations found during the same time period, the Bureau, FDIC, and FRB required 34 institutions to reimburse an estimated 57,889 consumers approximately $5.2 million. This amount includes reimbursements required by the enforcement actions noted in Table 1, as well as non-public supervisory or enforcement actions, and includes violations for other Federal consumer financial laws.

During the reporting period of January 1, 2017, through December 31, 2017, the following agencies reported public enforcement actions under TILA, including:

TABLE 2: 2017 PUBLIC ENFORCEMENT ACTIONS RELATED TO TILA

Agency	Summary
Bureau	Entered into consent orders with four pawnbrokers for, among other violations, using credit agreements that inaccurately disclosed the APR in the course of extending closed-end credit in violation of TILA and Regulation Z. Entered into a consent order with a pawnbroker for, among other violations, using credit agreements that did not include brief descriptions of the finance charge and APR and inaccurately disclosed the APR in the course of extending closed-end credit in violation of TILA and Regulation Z. Entered into two consent orders with two title lenders for, among other violations, failing to disclose the APR in online advertisements about title loans in violation of TILA and Regulation Z. Entered into a consent order with a pawnbroker for, among other violations, using credit agreements that inaccurately disclosed the finance charge and APR in the course of extending closed-end credit in violation of TILA and Regulation Z. Entered into a consent order with a pawnbroker for, among other violations, using credit agreements that misstated the APR in the course of extending closed-end credit in violation of TILA and Regulation Z. Filed a complaint against a mortgage loan servicer and its subsidiaries for, among other violations, allegedly failing to timely and appropriately credit payments and failing to send borrowers periodic statements accurately

Agency	Summary
	detailing information in violation of TILA and Regulation Z. Filed a complaint against four online lenders for, among other things, allegedly disclosing a rate of finance charge but not the APR in advertisements and orally providing cost information other than the APR (or the APR for a sample transaction) in response to inquiries in connection with extending closed-end credit in violation of TILA and Regulation Z.
FTC	Obtained a stipulated final order with civil penalties against a group of auto dealerships for allegedly violating a prior consent order with the FTC by misrepresenting the total cost of vehicle financing or leases or the offer's availability to all consumers, and for advertising credit or lease terms without disclosing, or disclosing clearly and conspicuously, required credit or lease information in violation of TILA or CLA and Regulation Z or Regulation M. Obtained a stipulated order against a group of auto dealerships and owners for allegedly failing to disclose, or to clearly and conspicuously disclose, required credit or lease information in ads in violation of TILA or CLA and Regulation Z or Regulation M. Entered into a consent order with an auto dealer for allegedly failing to disclose, or to clearly and conspicuously disclose, required credit or lease information in violation of TILA or CLA and Regulation Z or Regulation M when the ads promoted certain terms, such as the monthly payment.
DOT	Issued a consent order against an airline company for failing to timely process refunds for air transportation purchased with credit cards in violation of TILA and Regulation Z.

No other agencies with TILA enforcement authority reported taking any public enforcement actions related to TILA during the January 1, 2017, through December 31, 2017, time period.

For TILA and Regulation Z violations found during the same time period, the Bureau, FDIC, FRB, and NCUA required 41 institutions to reimburse an estimated 9,334 consumers approximately $1.5 million. This amount includes reimbursements required by the enforcement actions noted in Table 2, as well as non-public supervisory or enforcement actions, and includes

violations for other Federal consumer financial laws.

2.2 EFTA: Public enforcement actions and reimbursements

The purpose of EFTA is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of EFTA is the provision of individual consumer rights. 15 U.S.C. § 1693(b).

The enforcement efforts made, and reimbursements required, by all the agencies assigned enforcement authority under EFTA are discussed in this section.

As required by EFTA, the Bureau monitors what effects the act has on compliance costs for financial institutions, as well as the benefits of the act to consumers.

Consumers use electronic payments more than any other type, and consumer reliance upon electronic payments relative to that of non-electronic payments is increasing. According to the 2016 and 2017 Survey of Consumer Payment Choice, the average consumer makes 70 payments a month. For the average consumer, 57 percent of payments use a debit, credit, or prepaid card; 33.6 percent use cash, paper checks, or some other paper payment instrument; and 8.3 percent use some other form.[8] Consumer use of cash has been steady since 2010; however, check use has declined steadily and now makes up only about five percent of all payments.[9] Check use is diminishing even among consumers that use checking accounts: while 90 percent of consumers had a checking account, only 80 percent had paper checks, down from 90 percent in 2008.[10] Debit (and credit) card payments have generally increased to replace the declining check share.[11] In addition, one third of all consumers had made a mobile payment, regardless of the underlying electronic method.[12]

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[8] Claire Green and Joanna Stavins, "The 2016 and 2017 Surveys of Consumer Payment Choice: Summary Results." *Available at:* https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/2018/rdr1803.pdf, pp. 12-13.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

Within the universe of electronic payments, consumers conduct an array of electronic fund transfers (EFTs), including debit card, electronic benefit transfer (EBT) card, prepaid card (including gift card), automated clearinghouse (ACH), and mobile phone-enabled person-to-person (P2P) payments. In addition, EFTs include consumer automated teller machine (ATM) transactions and certain remittance transfers.

Consumers conduct over 80 billion debit, EBT, and prepaid card payments and transact nearly $3 trillion across transaction (non-credit) card accounts annually. According to the most recent Federal Reserve Payments Study, debit card volume totaled $2.6 trillion and 69.6 billion transactions in 2017.[13] That same year, EBT payments totaled approximately $60 billion and 2.4 billion transactions.[14] Further, prepaid card payments totaled $240 billion and 10.7 billion transactions in 2017.[15] According to the 2016 and 2017 Survey of Consumer Payment Choice, slightly over 80 percent of consumers owned a debit card and approximately half of consumers owned a prepaid card.[16]

Although consumers tend to conduct fewer ACH transactions relative to card transactions, the consumer dollar volume over ACH is higher. ACH volume totaled approximately 21.5 billion transactions and $46.8 trillion in 2017.[17] Per the Federal Reserve, these totals increased approximately 5.7 percent and 6.9 percent, respectively, from 2016.[18] The Bureau estimates consumer account debits represent slightly more than half of all ACH transaction volume and over 40 percent of ACH dollar volume.[19]

P2P represents an emerging and fast-growing category of EFTs. The P2P EFT marketplace is challenging to size for a number of reasons. First, a number of firms facilitate P2P EFTs over a variety of proprietary platforms. In addition, many P2P services utilize legacy EFT platforms to

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[13] *Available at:* https://www.federalreserve.gov/newsevents/pressreleases/files/2018-payment-systems-study-annual-supplement-20181220.pdf.

[14] *Id.* Note, however, that many of the requirements of EFTA and Regulation E do not apply to EBT systems that are established under State or local law or administered by a State or local government.

[15] *Id.*

[16] *Supra* note 8 at T-5.

[17] NACHA press release. *Available at* https://www.nacha.org/news/ach-network-volume-and-value-hit-new-highs-2017.

[18] *Supra* note 13.

[19] For reference, in 2015, consumer ACH debit volume totaled approximately 12.5 billion transactions and $18.3 trillion, while the ACH Network processed a total of 24B transactions totaling $41.6T volume. *See* NACHA press release. *Available at* https://www.nacha.org/news/ach-volume-grows-56-percent-adding-13-billion-payments-2015-0.

transmit payment messages and settle transactions. As a result, P2P transaction volume is often conflated with that of the legacy payment systems upon which the P2P services rely. Further, the Bureau's Prepaid Account Rule, which is effective April 1, 2019, establishes a definition for prepaid accounts (which includes certain mobile wallets) and explicitly brings prepaid accounts within the scope of Regulation E, and as a result, could expand the universe of P2P payments that are subject to Regulation E.[20] An industry analyst reports, based on survey results and estimates, that 144 million, or 57 percent of U.S. consumers made a P2P payment in 2017.[21]

ATM transaction volume appears to have diminished in recent years; however, the total value of ATM withdrawals appears to have remained relatively constant over the same span. Specifically, the Federal Reserve, citing a survey of large institutions, reported a 2.8 percent decline in the number of ATM withdrawals from 2016 to 2017.[22] During this period, the Federal Reserve states that the aggregate value of ATM withdrawals increased by 0.5 percent.[23]

The Bureau issued the Prepaid Accounts Rule on October 5, 2016, to create comprehensive protections for prepaid accounts. The rule provides an overview of prepaid financial products, including general purpose reloadable cards, as well as an analysis of the potential benefits and costs related to disclosures, limited liability and error resolution, access to prepaid account information, and the posting of prepaid account agreements.[24]

The incremental costs associated with the EFTA are difficult to quantify because it is difficult to determine how industry practices would have evolved in the absence of statutory requirements. The benefits of the EFTA are also difficult to measure, as they cannot be isolated from consumer protections that would have been provided in the absence of regulation. The Bureau will continue to consider the potential benefits and costs to consumers and financial institutions in evaluating new rules under EFTA. The Bureau will also continue to monitor the market and evaluate the adequacy of consumer protection under EFTA.

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[20] *See* 12 CFR 1005.3(b)(1) for the general definition of an EFT within Regulation E. The Prepaid Rule expands the definition of an account within Regulation E at 12 CFR 1005.2(b)(3)(i). Comment 12 CFR 1005.2(b)(3)(i)-10 addresses accounts with a primary function of conducting P2P transfers.

[21] Talie Baker and Judy Fishman, *Person-to-person Payments in the U.S.: The Case for Real Time*, Aité Group (Feb. 2019), *available at* https://aitegroup.com/report/person-person-payments-us-case-real-time.

[22] *Supra* note 13. Note: financial institutions operate just over 40 percent of all U.S. ATMs per the National ATM Council, *available at:* https://natmc.org/new-study-shows-independent-operators-provide-majority-of-u.s.-atms-serve-under-banked.html.

[23] *Supra* note 13.

[24] *Available at* https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/prepaid-accounts-under-electronic-fund-transfer-act-regulation-e-and-truth-lending-act-regulation-z/. The Prepaid Accounts Rule also regulates overdraft credit features that may be offered in conjunction with prepaid accounts (covered under Regulation Z).

The agencies charged with enforcement of EFTA under 15 U.S.C. § 1693 include:

- the Bureau,
- the FDIC,
- the FRB,
- the NCUA,
- the OCC,
- the FTC,
- the DOT, and
- the Securities and Exchange Commission.

During the reporting period of January 1, 2016, through December 31, 2016, the following agencies reported public enforcement actions under EFTA, including:

TABLE 3: 2016 PUBLIC ENFORCEMENT ACTIONS RELATED TO EFTA

Agency	Summary
Bureau	Entered into a consent order with a financial services company offering payday loans and check-cashing services for, among other violations, failing to obtain written authorization for preauthorized electronic fund transfers from consumers' bank accounts in violation of EFTA and Regulation E. Entered into a consent order with a bank for, among other violations, violating the overdraft opt-in requirements of EFTA and Regulation E. Entered into a consent order with a retail credit financing company for, among other violations, entering into revolving credit agreements with ACH pre-authorization provisions that failed to disclose requisite information in violation of EFTA and Regulation E.
FDIC	Entered into one consent order for violations of Regulation E.

Agency	Summary
FTC	Obtained a judgment against a group of payday lenders for making preauthorized debits from consumers' bank accounts as a condition of obtaining payday loans in violation of EFTA and Regulation E. Obtained court orders against skincare marketers for violating EFTA and Regulation E by allegedly failing to obtain from consumers a signed or similarly authenticated written authorization for preauthorized electronic fund transfers from their accounts, and for failing to provide them a copy of the authorization. Obtained stipulated orders against defendants involved in an Internet enterprise for violating EFTA and Regulation E by allegedly charging recurring monthly fees never agreed to. Obtained a stipulated final order against a marketer of dietary supplements for allegedly debiting consumers' bank accounts on a recurring basis without obtaining written authorization from them or providing a copy of the authorization in violation of EFTA. Obtained a stipulated final order against two individuals and their companies that marketed weight loss supplements for allegedly debiting consumers' bank accounts on a recurring basis for preauthorized electronic fund transfers without obtaining the consumers' signed or similarly authenticated written authorization, and for failing to provide them a copy of the authorization, in violation of EFTA. Obtained a judgment against a consumer electronics retailer for violating a prior FTC consent order for, among other things, violating EFTA by allegedly conditioning the extension of credit on mandatory preauthorized transfers.

No other agencies with EFTA enforcement authority reported taking any public enforcement actions related to EFTA during the January 1, 2016, through December 31, 2016, time period.

For EFTA and Regulation E violations found during this time period, the Bureau and the NCUA required 10 institutions to reimburse 164,677 consumers a total of $3.1 million. This amount includes reimbursements required by the enforcement actions noted in Table 3, as well as non-

public supervisory or enforcement actions, and includes reimbursements associated with violations of other Federal consumer financial laws.

During the reporting period of January 1, 2017, through December 31, 2017, the following agencies reported public enforcement actions under EFTA, including:

TABLE 4: 2017 PUBLIC ENFORCEMENT ACTIONS RELATED TO EFTA

Agency	Summary
Bureau	Filed a complaint against a bank for, among other violations, allegedly violating the overdraft opt-in requirements of EFTA and Regulation E.
FTC	Obtained stipulated final orders against three dietary supplement marketers for allegedly debiting consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their account, and for failing to provide consumers with a copy of the authorization, in violation of EFTA and Regulation E. Obtained a stipulated order with a network of online marketers for violating EFTA by allegedly debiting consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated from consumers for preauthorized electronic fund transfers from their accounts, and for failing to provide consumers with a copy of the authorization. Entered into stipulated final orders against a company and its owners that marketed dietary supplements for allegedly debiting consumers' bank accounts on a recurring basis without obtaining a written authorization form, or providing a copy of the authorization to consumers, in violation of EFTA. Obtained a final order with a company and its owner for charging consumers for monthly fees they never agreed to pay, in violation of EFTA. Obtained a default judgment against the owner of a media group for violating EFTA and Regulation E by debiting consumers' bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated

Agency	Summary
	from consumers for preauthorized electronic fund transfers from their accounts, and for failing to provide consumers with a copy of the authorization.

No other agencies with EFTA enforcement authority reported taking any public enforcement actions related to EFTA during the January 1, 2017, through December 31, 2017, time period. For EFTA and Regulation E violations found during this time period as a result of non-public supervisory or enforcement actions, the Bureau and the NCUA required 17 institutions to reimburse 1,156 consumers a total of $140,157.

2.3 CARD Act: Public enforcement actions and reimbursements

The CARD Act amended TILA to establish fair and transparent practices for the extension of credit under an open-end consumer credit plan. Section 502(e) of the CARD Act requires reporting on supervision and enforcement activities undertaken by the Federal banking agencies (the FRB, FDIC, and OCC) and the FTC with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations, including the CARD Act and Section 5 of the FTC Act.

During the reporting period of January 1, 2016, through December 31, 2016, the following agencies reported public enforcement actions under the applicable Federal consumer financial protection laws:

TABLE 5: 2016 PUBLIC ENFORCEMENT ACTIONS RELATED TO SECTION 5 OF THE FTC ACT

Agency	Summary
OCC	Issued two consent orders against a bank for violating the FTC Act for unfair practice of billing customers for two identity protection products that they did not receive. These enforcement actions were taken in coordination with the CFPB.

Agency	Summary
	Issued two consent orders against a bank for violating Section 5 of the FTC Act for the unfair practice of charging customers for credit protection monitoring products who, but for at least some amount of time, did not receive the products' credit monitoring benefits.

No other agencies reported taking public enforcement actions related to the CARD Act or other applicable Federal consumer financial laws during the January 1, 2016, through December 31, 2016, time period.

As a result of enforcement actions taken during this time period, the banks regulated by the OCC made, or will make, approximately $47.9 million in reimbursements to approximately 400,000 affected consumers. This amount includes reimbursements required by the enforcement actions noted in Table 5. In the enforcement actions coordinated with the OCC, the Bureau required the institution to reimburse an estimated 257,000 consumers a total of approximately $27.75 million.

During the reporting period of January 1, 2017, through December 31, 2017, the following agencies reported public enforcement actions under the applicable Federal consumer financial protection laws:

TABLE 6: 2017 ENFORCEMENT ACTIONS RELATED TO THE CARD ACT AND OTHER APPLICABLE LAWS

Agency	Summary
FDIC	Issued six public enforcement actions against one bank and two institution-affiliated parties related to the violations in Section 5 of the FTC Act for unfair and deceptive practices.
FRB	Issued a consent order against a state member bank for deceptive practices in violation of Section 5 of the FTC Act related to balance transfer credit cards issued to consumers by the bank through third parties.
OCC	Issued four consent orders against two banks for unfair billing practices for an identity protection product offered by the bank in violation of the FTC Act.

No other agencies reported taking public enforcement actions related to the CARD Act or other applicable Federal consumer financial laws during the January 1, 2017, through December 31, 2017, time period.

As a result of enforcement actions taken during this same time period, the OCC, FDIC, and FRB required six institutions and affiliates to reimburse an estimated 54,940 consumers approximately $12.7 million. This amount includes reimbursements required by the enforcement actions noted in Table 6, and includes reimbursements associated with violations of other Federal consumer financial laws.

3. Assessment of compliance and common violations – TILA and EFTA

The agencies that are members of the Federal Financial Institutions Examination Council (FFIEC) reported overall compliance by supervised entities with TILA, EFTA, and their respective implementing regulations.[25] The agencies did report, however, that more institutions were cited for violations of Regulation Z than Regulation E over both the 2016 and 2017 reporting periods. Based on the information reported by the FFIEC agencies, this section outlines the most frequently cited violations of Regulation Z and Regulation E across the FFIEC agencies for each reporting period.[26]

For the reporting period of January 1, 2016, through December 31, 2016, the most frequently cited violation of Regulation Z across the FFIEC agencies was:

- 12 C.F.R. § 1026.18(d) – On closed-end credit, failure to disclose, or accurately disclose, the finance charge, using that term, and a brief description such as "the dollar amount the credit will cost you."

For the reporting period of January 1, 2016, through December 31, 2016, the most frequently cited violations of Regulation E across the FFIEC agencies were:

- 12 C.F.R. § 1005.11(c) – Failure to comply with the investigation and timeframe requirements for resolving errors in electronic fund transfers.

- 12 C.F.R. § 1005.11(d) – Failure to follow the required procedures when an investigation determines no error or a different error occurred.

For the reporting period of January 1, 2017, through December 31, 2017, the most frequently

[25] Other agencies either do not conduct compliance examinations or reported general compliance for the laws under their jurisdiction.

[26] Because the FFIEC agencies use different methods to compile data, the information presented here supports only general conclusions.

cited violations of Regulation Z across the FFIEC agencies were:

- 12 C.F.R. § 1026.18(d) – On closed-end credit, failure to disclose, or accurately disclose, the finance charge, using that term, and a brief description such as "the dollar amount the credit will cost you."
- 12 C.F.R. § 1026.19(e) – On closed-end credit, failure to disclose good faith estimates of the disclosures.
- 12 C.F.R. § 1026.38(a) – Failure to disclose the title of the form, "Closing Disclosure," using that term for certain mortgage transactions.
- 12 C.F.R. § 1026.38(f) – Failure to provide consumers with specific information under the heading "Loan Costs" on the Closing Disclosure.

For the reporting period of January 1, 2017, through December 31, 2017, the most frequently cited violations of Regulation E across the FFIEC agencies were:

- 12 C.F.R. § 1005.11(b) –Failure to comply with the requirements of this section with respect to any oral or written notice of error from the consumer.
- 12 C.F.R. § 1005.11(c) – Failure to comply with the investigation and timeframe requirements for resolving errors in electronic fund transfers.
- 12 C.F.R. § 1005.31(b) –Failure to comply with providing disclosures, as applicable, and using the terms, or substantially similar terms, set forth in this section.

4. Outreach related to TILA and EFTA

The FFIEC agencies conducted training and issued guidance and examination procedures to assist supervised institutions in complying with the requirements of TILA, EFTA, and their respective implementing regulations. The agencies also provided guidance to consumers on these topics through various means, such as Federal Register Notices, workshops, blogs, and other outreach events.

In 2016, the FTC hosted workshops on such topics as payday and car title loans, testing and evaluation of disclosures that companies make to consumers about advertising claims, and other information. The FTC also released videos to assist consumers with buying and financing vehicles and issued blog posts on various topics such as auto purchasing and financing, deceptive payday lending practices, marketplace lending, and metrics and thresholds for determining effective disclosures and improving disclosure design.

In 2017, the FTC hosted workshops and issued blog posts on topics such as auto sales, finance issues, financial issues specific to servicemembers, deceptive and unfair payday lending, deceptive advertising in car sales, and negative option plans. The FTC also released a blog post discussing its second FinTech Forum—held in 2016—that brought together government and industry participants, consumer advocates, and other stakeholders, to discuss two evolving types of financial technology, including peer-to-peer payment systems and crowdfunding.

Consumer Financial Protection Bureau

Very good thx — RC

1700 G Street NW, Washington, DC 20552

October 11, 2017

Recommendation Memorandum for the Director

FROM	Seth Frotman (b)(6) Assistant Director, CEE – Students
THROUGH	Gail Hillebrand, Associate Director, CEE
SUBJECT	2017 Annual Report of the CFPB Student Loan Ombudsman

Recommendation(s)

We recommend that the Bureau publish the attached *Annual Report of the CFPB Student Loan Ombudsman*, the most recent edition of our periodic analysis of student loan complaints (Tab 1). We also recommend the Bureau transmit to the Secretary of the Treasury, the Secretary of Education, the Senate Committees on Banking, and Health, Education Labor and Pensions, the House Committees on Financial Services, and Education and Workforce, as required by Section 1035 of the Dodd-Frank Act.

The attached version has addressed most of the reconciled comments received during clearance, but additional minor, non-substantive revisions may take place between this version and publication, subject to review and approval by Seth Frotman and Gail Hillebrand.

Background

Beginning in October 2012, the Bureau has published semiannual reports from the Student Loan Ombudsman, analyzing student loan complaints, and providing policy recommendations for policymakers and industry stakeholders related to the problems identified by these consumers. Over the past four and a half years, the Bureau has gradually expanded the scope of consumer complaints from student loan borrowers to cover the lifecycle of private student loans, as well as the servicing and collection of federal student loans:

- In March 2012, the Bureau began accepting complaints from borrowers with student loans, handling complaints related to the origination and servicing of private student

loans and referring complaints related to the origination and servicing of federal student loans to the Department of Education.

- In December 2013, the Bureau expanded our consumer response function to include complaints related to the collection of both private and federal student loans.
- In February 2016, the Bureau began accepting federal student loan servicing complaints, while continuing to route complaints related to the origination of federal student loans to the Department of Education.

Since March 2012, the Bureau has received more than 60,000 complaints from student loan borrowers related to the servicing or collection of a student loan.

Annual Report of the CFPB Student Loan Ombudsman

The *Annual Report of the CFPB Student Loan Ombudsman* provides an overview of the complaints submitted between October 1, 2015 and September 30, 2016. This report highlights a range of obstacles described by individual student loan borrowers related to the servicing of federal student loans, the servicing of private student loans, and debt collection, where a debt collector is seeking to recover a student loan.

This report also describes the process through which individual consumer complaints highlighted by the CFPB Student Loan Ombudsman have led to a series of supervisory, enforcement and regulatory actions that have provided more than $750 million in relief to consumers and resulted in policy changes that have strengthened key aspects of the student loan repayment process for millions of individuals. This report offers three examples to illustrate how this process has benefited consumers:

- **Military borrowers and the Servicemembers Civil Relief Act (SCRA).** First, this report describes how complaints from individual military borrowers received by the Bureau in 2012 served as the first step in a process that led to public enforcement actions by the Department of Justice and the FDIC against one large student loan servicer, and subsequently shaped a series or regulatory changes by the U.S. Department of Education that automated the process for invoking a key protection under the SCRA for active duty military borrowers with federal student loans.

- **Borrowers seeking an Income-Driven Repayment (IDR) plan.** Second, this report highlights how complaints received by the Bureau in 2015 and 2016 related to the handling of applications for an IDR plan showed borrowers encountered a series of servicing problems, including delays, unexpected denials and lost paperwork. In 2016, the Bureau highlighted these problems in a report by the Student Loan Ombudsman and released an edition of *Supervisory Highlights* noting that CFPB examiners cited one or

more servicers for the unfair practice of improperly denying, or failing to approve, IDR applications. The U.S. Department of Education strengthened their servicing contracts with respect to the handling of incomplete IDR applications, requiring additional timely and actionable borrower communication where a borrower submitted an incomplete or deficient application, effectively prohibiting the practice of summarily denying incomplete IDR applications by its contractors.

- **Borrowers who encounter private student loan "auto-defaults."** Finally, the report explores how the Bureau received a series of complaints from private student loan borrowers in 2013 and 2014 related to the industry practice of calling into default performing private loans following the death of or bankruptcy filing by a co-signer. The CFPB highlighted this practice in a 2014 report by the Student Loan Ombudsman. In 2016, CFPB released an edition of *Supervisory Highlights,* explaining that *CFPB* examiners had cited one or more companies for the practice of auto-defaulting private student loan borrowers to be unfair in cases where the where the 'Whole Loan Due' clause was ambiguous because reasonable consumers would not likely interpret the promissory notes to allow their own default based on a co-signers' bankruptcy. In late 2016, the Consumer Bankers Association wrote a letter to YOU explaining that the largest private student lenders had abandoned this practice and modified promissory notes for future borrowers to ensure that any future loan holder could not interpret the loan contract to permit "auto-defaults" of performing private student loans.

The report explains that, taken together, these examples illustrate a process that has led to consumer-driven reform benefiting borrowers across the student loan marketplace. The report also offers recommendations to policymakers to address the problems described in the first section of the report: 1) continued robust, coordinated oversight of student loan servicers by federal and state agencies; and 2) strengthened servicing standards for the servicing of all student loans, coupled with coordinated efforts to hold servicers accountable for meeting these standards.

Next Steps

With your approval, on October 16, 2017, we will transmit this report to the Secretary of the Treasury, the Secretary of Education, the Senate Committees on Banking, and Health, Education Labor and Pensions, the House Committees on Financial Services, and Education and Workforce, as required by Section 1035 of the Dodd-Frank Act. We will also release this report to the public.

Attachments

Tab 1: Annual Report of the CFPB Student Loan Ombudsman

Recommendation Memorandum for Decision Clearance Sheet

Subject/Document Title **2017 Annual Report of the CFPB Student Loan Ombudsman**		
Name of Document Owner **Mike Pierce**	Office **Students**	Telephone Extension (b)(6)
Approved by (name of Associate or Assistant Director) **Gail Hillebrand**		
Legal Division	Name of Clearer **Martha Fulford**	Date 10/6
Office **RMR**	Name of Clearer **Lisa Cole, Pat Scherschel, Tom Conkling, Vanessa Megaw**	Date 10/6
Office **EA**	Name of Clearer **Cheryl Parker Rose, John Pitts, David Mayorga**	Date 10/6
Office **SEFL**	Name of Clearer **Allison Brown, Pax Tirrell, Veronica Spicer, Nick Jabbour, Andrea Matthews**	Date 10/6
Office **Consumer Response**	Name of Clearer **Darian Dorsey**	Date 10/6
Office **Director's Office**	Name of Clearer **Brian Shearer**	Date 10/6
Office	Name of Clearer	Date
Office	Name of Clearer	Date

October 2017

Annual report of the CFPB Student Loan Ombudsman

Strategies for consumer-driven reform

Consumer Financial Protection Bureau

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Executive summary

- Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, this annual report analyzes complaints submitted by consumers between September 1, 2016 and August 31, 2017. During this period, the Consumer Financial Protection Bureau ("CFPB" or "Bureau") handled approximately 7,700 private student loan complaints, 12,900 federal student loan servicing complaints, and approximately 2,300 debt collection complaints related to private or federal student loan debt.

- During the reporting period, consumers with student loans submitted complaints about over 250 companies, including student loan servicers, debt collectors, private student lenders, and companies marketing student loan "debt relief." These consumers identified a range of payment processing, billing, customer service, borrower communications, and income-driven repayment (IDR) plan enrollment problems. The Bureau's analysis of these complaints suggests that borrowers assigned to the largest student loan servicers may encounter widespread problems, whether these borrowers are trying to get ahead or struggling to keep up with their student debt.

- Since 2012, the Bureau has handled complaints from individual student loan borrowers, and the CFPB Student Loan Ombudsman has monitored these complaints. Each year, reports by the Student Loan Ombudsman emphasize the individual challenges borrowers identify in their complaints. These reports also highlight where challenges may be systemic in nature and illustrate where law enforcement, regulatory action, or market-driven reform may be necessary to better protect similarly situated student loan borrowers.

- From July 21, 2o11 through August 31, 2017, CFPB handled over 50,700 private and federal student loan complaints, and about 9,800 debt collection complaints related to private or federal student loan debt. These complaints have served as the critical link in a process through which government agencies and market participants have repeatedly taken action to

improve the student loan system for millions of Americans. In effect, these complaints have led to actions that have collectively returned more than $750 million to student loan borrowers.

- This report offers three illustrative examples of how an effective consumer complaint process can empower individual consumers to shape public policy. The report describes how consumer complaints led to reforms that expanded invocation of protections through automation, improved borrower outcomes through enhanced, timely, and accurate borrower communication, and mitigated risk of unanticipated borrower harm by spurring industry to make changes to key loan terms.

  - In the first example, servicemembers with student loans submitted complaints to the Bureau that described servicing practices that inhibited access to a specific consumer protection established under the federal Servicemember Civil Relief Act (SCRA). In 2012, the Student Loan Ombudsman and the Bureau's Office of Servicemember Affairs described the obstacles servicemembers were facing in a public report and also shared these complaints with other federal agencies. These complaints informed enforcement actions by the Department of Justice (DOJ) and the Federal Deposit Insurance Corporation (FDIC), which halted illegal practices at one large student loan servicer and returned more than $60 million to 77,000 servicemembers. Following this action, the Department of Education improved processes for the invocation of specific consumer protections under the SCRA to better protect federal student loan borrowers servicing on active duty. As a consequence of this coordinated interagency work, more than 100,000 military borrowers have automatically saved more than $20 million in student loan interest charges each year since 2015. This example offers insight into the benefits of automation-driven reform as policymakers seek to strengthen many other aspects of the student loan repayment process.

  - In the second example, borrowers seeking to enroll in IDR plans submitted complaints to the Bureau describing a range of servicing practices that delayed or deterred access to promised payment relief. The Student Loan Ombudsman published a report recounting these problems and, in 2016, the Bureau's Office of Supervision cited one or more student loan servicers for the unfair practice of "denying, or failing to approve, IDR applications that should have been approved on a regular basis." The Department of Education's Office of Federal Student Aid (FSA) also responded to concerns related to IDR application processing in 2016 by strengthening its contractual requirements for

servicers handling student loans owned by the federal government, requiring these servicers to proactively communicate with student loan borrowers who submit incomplete IDR applications. Since these changes, more than 700,000 new federal Direct loan borrowers have successfully applied for and enrolled in an IDR plan. This example may be instructive before considering steps to "streamline" repayment assistance options by limiting the range of benefits and protections available to consumers with student debt. Clear, plain language disclosures and "just-in-time" communication about available and applicable options can simplify the presentation of information and strengthen the student loan repayment process.

- The final example illustrates where borrower complaints can expose an industry practice that harms consumers and, at the same time, does not serve an essential market function. In this example, individual consumers submitted complaints about private student loan "auto defaults" – the process of calling into default and attempting to collect on a private student loan following the death of, or bankruptcy filing by, a cosigner, even when the borrower is making required payments on time and in full each month. Subsequently, Bureau's Office for Supervision cited the practice of auto-defaulting private student loan borrowers to be unfair in cases where the where the "Whole Loan Due" clause was ambiguous. Ultimately the largest private lenders have largely ceased including provisions in their new contracts that could be interpreted to permit "auto-defaults" for performing loans and abandoned this practice with respect to their current customers. As policymakers consider reforms that may expand the private student loan market, this example illustrates how features of private student lending can present potential risks to consumers, and how complaints and robust oversight can move the market to mitigate risk of unanticipated borrower harm through consumer-driven reforms to product features.

- In each of the previous three examples, individual consumer complaints led to increased scrutiny by a regulator or law enforcement agency with the authority, tools, and will to take action on these borrowers' behalf, after these complaints were highlighted by the Student Loan Ombudsman. These examples provide a roadmap for policymakers to achieve additional consumer-driven reforms and illustrate how individual borrowers can shape changes to government policies and industry practices.

- This report also offers recommendations to policymakers and market participants. In this section, the CFPB Student Loan Ombudsman describes how student loan borrowers benefit

from continued robust, coordinated, and consumer-driven oversight of the student loan industry by federal and state agencies. Further, this report recommends standards to strengthen servicing practices for the servicing of all student loans and accountability for servicers to meet these standards.

1. About this report

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act) established a Student Loan Ombudsman within the Bureau. Pursuant to the Act, the Ombudsman shall compile and analyze data on student loan complaints and make appropriate recommendations to the Secretary of the Treasury, the Director of the Consumer Financial Protection Bureau, the Secretary of Education, and Congress.

This report analyzes approximately 7,700 private student loan complaints, 12,900 federal student loan servicing complaints, and approximately 2,300 debt collection complaints related to private or federal student loan debt handled between September 1, 2016 and August 31, 2017. Figures are current as of October 1, 2017.

2. Student loan complaint data

SOURCES OF INFORMATION

To identify the range of issues faced by student loan borrowers, this report relies on complaints handled by the Bureau. We also reviewed other information, such as comments submitted by the public in response to requests for information, submissions to the "Tell Your Story" feature on the Bureau's website, and input from discussions with consumers, regulators, law enforcement agencies, and market participants.[1]

2.1 Federal student loan complaints

From September 1, 2016 through August 31, 2017, the Bureau handled approximately 12,900 federal student loan complaints.

[1] This report does not suggest the prevalence of the issues described as they relate to the entire student loan market. The information provided by borrowers helps to illustrate where there may be a mismatch between borrower expectations and actual service delivered. We do not verify the facts alleged in these complaints, but we take steps to confirm a commercial relationship between the consumer and the company. Representatives from industry and borrower assistance organizations will likely find the inventory of borrower issues helpful in further understanding the diversity of customer experience in the market.

2.1.1 Federal student loan complaint data

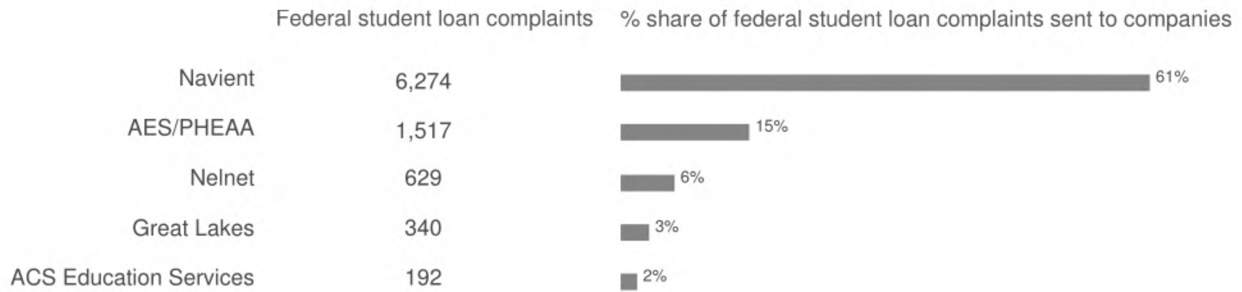
The following tables are based on complaints sent to companies from September 1, 2016, through August 31, 2017, as exported from the public Consumer Complaint Database as of October 1, 2017.[2]

FIGURE 1: FEDERAL STUDENT LOAN ISSUES REPORTED BY CONSUMERS FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017

Note: Consumers submitting student loan complaints can select from the following three types of complaint categories: "Getting a loan," "Can't pay my loan," and "Dealing with my lender or servicer", and "Problem with credit report or score." The Bureau first began to make it possible for consumers to submit complaints about credit reporting issues when submitting a complaint about another financial product in April 2017. This figure reflects the categories consumers selected when submitting a complaint.

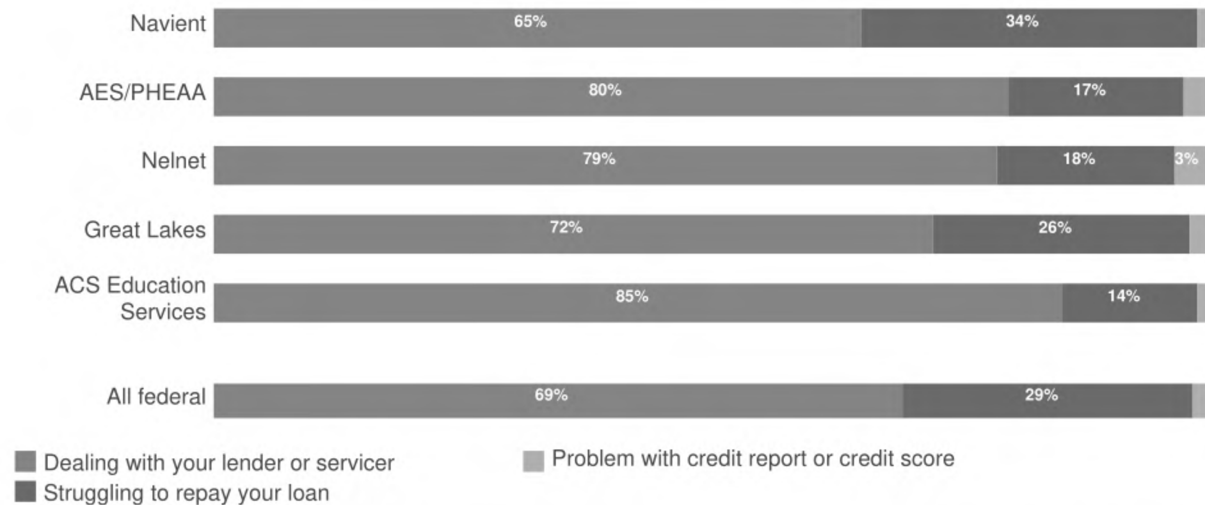
[2] Not all complaints handled by the Bureau are published in the public Consumer Complaint Database. Complaints are listed in the database after a company responds or after has had the complaint for 15 calendar days, whichever comes first. Complaints that do not meet publication criteria may be removed from the database. The publication criteria are available at http://files.consumerfinance.gov/f/201303_cfpb_Final-Policy-Statement-Disclosure-of-Consumer-Complaint-Data.pdf. Therefore, the number of complaints published in the database may be fewer than the total number of complaints handled by the Bureau.

FIGURE 2: COMPANIES WITH THE MOST FEDERAL STUDENT LOAN COMPLAINTS SENT TO COMPANIES RANKED BY VOLUME FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: This table reflects complaints where (1) the consumer identified the sub-product as a federal student loan and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This table reflects the top companies by complaint volume for the period of September 1, 2016 through August 31, 2017.

FIGURE 3: ISSUES IDENTIFIED IN FEDERAL STUDENT LOAN COMPLAINTS BY COMPANY FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: This table reflects complaints where (1) the consumer identified the sub-product as a federal student loan, (2) the consumer identified the issue and (3) the identified company responded to the complaint, confirming a relationship with the consumer. This table reflects the top companies by complaint volume.

2.1.2 Issues identified in federal student loan complaints

As noted above, during the reporting period, the Bureau handled more than 12,900 complaints about federal student loans. Consumers have submitted federal student loan complaints about problems against over 150 companies covering nearly every aspect of the student loan repayment lifecycle. The following section highlights some of the most significant issues raised by consumers who submitted federal student loan complaints during the reporting period.

BORROWERS COMPLAIN ABOUT PROBLEMS ACCESSING FEDERAL STUDENT LOAN PROTECTIONS

The Higher Education Act provides for a series of protections intended to facilitate repayment success, including the ability to make income-driven payments, receive loan discharge in the event of total and permanent disability, and consolidate older federal loans to become eligible for specific loan benefits.[3] Yet federal student loan borrowers continue to struggle to access the protections guaranteed under federal law, many of which are designed to help borrowers avoid delinquency and default during periods of economic disruption or distress.[4] The Bureau has previously discussed how servicing breakdowns can delay, deter, or deny access to federal benefits and protections, rendering them illusory for many student loan borrowers.[5] For

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[3] *See, e.g.*, 20 U.S.C. §§ 1078-3(b)(5) (authorizing Federal Family Education Loan Program (FFELP) loan borrowers to consolidate their loans into a Direct Consolidation Loan in order to obtain certain IDR options or Public Service Loan Forgiveness), 1087(a) (authorizing disability discharge for FFELP loan borrowers), 1098e (authorizing the Income-Based Repayment program for FFELP loan borrowers with partial financial hardships), 1087e(e) (authorizing IDR options for Direct Loan borrowers).

[4] For a discussion on the range of programs available to federal student loan borrowers experiencing financial distress, see Consumer Financial Protection Bureau (CFPB), *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

[5] *See, e.g.*, CFPB, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf (highlighting how the ability to access IDR plans is critical to repayment success); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 17, 2016), https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman (explaining how IDR enrollment is

example, nearly all federal student loan borrowers have the right to make payments based on their income through an IDR plan.[6] The Bureau has also repeatedly documented how the ability to enroll in and maintain an IDR plan is crucial for struggling borrowers hoping to avoid default.[7] However, borrowers continue to complain to the Bureau that servicing roadblocks may delay or block their ability to make income-driven payments.

Borrowers complain about encountering obstacles when seeking to enroll in IDR plans. Borrowers report experiencing servicing obstacles when trying to enroll in an IDR plan, such as unexpected delays, lost paperwork, poor customer service, and inconsistent application processing. Borrowers describe how these obstacles can increase loan costs, reduce benefits, and

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essential to preventing previously defaulted federal student loan borrowers from re-defaulting on their loans); CFPB, *Staying on track while giving back: The cost of student loan servicing breakdowns for people serving their communities* (Jun. 22, 2017), https://www.consumerfinance.gov/data-research/research-reports/staying-track-while-giving-back-cost-student-loan-servicing-breakdowns-people-serving-their-communities; *see also* CFPB, *Update from the CFPB Student Loan Ombudsman* (May 16, 2017), http://files.consumerfinance.gov/f/documents/201705_cfpb_Update-from-Student-Loan-Ombudsman-on-Redefaults.pdf (presenting data from servicers that show "the vast majority (greater than 90 percent) of borrowers who rehabilitated one or more defaulted loans were not enrolled and making IDR payments within the first nine months after 'curing' a default").

[6] *See* 20 U.S.C. § 1098e(b). Income-Based Repayment (IBR) is one of several types of IDR plans. While all IDR plans peg a borrower's payment amount to the borrower's discretionary income and family size, the individual plans each have slightly different terms, the most prominent of which is the percentage of discretionary income used to determine the payment (*e.g.*, IBR payments are set at 15 percent of a borrower's discretionary income, while payment under Pay As You Earn (PAYE), another IDR plan, are set at 10 percent of a borrower's discretionary income). *See, e.g.*, 34 C.F.R. §§ 682.215 (defining IBR for FFELP borrowers); 685.209 (defining PAYE, Income-Contingent Repayment (ICR), and Revised Pay As You Earn (REPAYE) for Direct Loan borrowers), 685.221 (defining IBR for Direct Loan borrowers); *see also* CFPB, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf (discussing the different IDR options available to federal student loan borrowers).

[7] *See, e.g.*, CFPB, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf (highlighting how the ability to access IDR plans is critical to repayment success); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 17, 2016), https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman (explaining how IDR enrollment is essential to preventing previously defaulted federal student loan borrowers from re-defaulting on their loans); *see also* CFPB, *Update from the CFPB Student Loan Ombudsman*, *supra* note 5.

extend repayment terms for consumers.[8] For example, borrowers complain that when seeking to use a pay stub instead of their tax return to prove their income, their application may sit under review for months at a time, inhibiting them from making progress repaying their loan.[9]

Borrowers also complain that when providing their servicer with income documentation other than a tax return, their servicer may incorrectly calculate their income-driven payment amount, resulting in payments that are higher than expected. Other borrowers complain that when they reach out to their servicer because their standard monthly payment is unaffordable, they are directed to options like forbearance or extended repayment, which may be costlier over the long-term. Borrowers with loans in forbearance complain that while it may provide short-term relief, had they known about and enrolled in IDR options, they could have continued to make progress repaying their loans at an affordable amount.[10]

Borrowers report that when they attempt to recertify their IDR plan, their loans are placed into forbearance, despite their right to continue making IDR payments while their new payment amount is determined. Borrowers are required to annually recertify their income and family size in order to continue to qualify for an affordable monthly

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[8] *See also* CFPB, *CFPB Data Point: Student Loan Repayment* (Aug. 16, 2017), https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-student-loan-repayment (finding that 23 percent of small-loan borrowers (less than $20,000) are not making payments large enough to reduce their balances. Over half of this group is made up of borrowers who are delinquent or in default on their student loans.).

[9] Borrowers may use alternative documentation such as pay stubs to certify their income if their tax returns are not representative of their current income. *See, e.g.*, 34 C.F.R. §§ 682.215(e)(1)(ii), 685.209(a)(5)(B), (b)(3)(i), (c)(4)(B). As the Bureau previously reported, half of all borrowers enrolled in IDR plans used alternative documentation to certify their income. *See* CFPB, *Midyear update on student loan complaints* (Aug. 2016), files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf (reporting on complaints describing how student loan servicers may delay processing IDR applications and wrongfully reject borrowers seeking to enroll in IDR, resulting in increased interest charges and lost eligibility for certain federal benefits and protections).

[10] IDR options provide for loan forgiveness after 240 or 300 payments (20 or 25 years). *See* 34 C.F.R. §§ 682.215(f), 685.209(a)(6), (b)(3)(D), (c)(5)(iii)(A).

payment under an IDR plan.[11] Generally, servicers are expected to process borrowers' recertification applications in a few weeks.[12] However, when this process takes longer, borrowers are entitled under federal law to continue making income-driven payments at the same amount until their new payment is calculated.[13] Borrowers complain that when their recertification application is not timely processed by their servicers, rather than extending their current income-driven payments, servicers require that borrowers make their full, standard monthly payment amount, or direct them to enter forbearance. Borrowers complain that when their standard monthly payment is unaffordable, forbearance is their only realistic option. Borrowers further complain that their loans may spend months in forbearance while their recertification application is under review, preventing them from progressing towards loan forgiveness available through IDR forgiveness options or Public Service Loan Forgiveness (PSLF).[14]

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[11] *See* 34 C.F.R. §§ 682.215(e), 685.209(a)(5), (b)(1)(v), (c)(4); *see also* CFPB, *When you make student loan payments on an income-driven plan, you might be in for a payment shock* (Aug. 17, 2015), https://www.consumerfinance.gov/about-us/blog/when-you-make-student-loan-payments-on-an-income-drivenplan-you-might-be-in-for-a-payment-shock.

[12] In order to recertify an IDR plan, borrowers should submit recertification paperwork no later than 25 days before the end of each annual period. Servicers are then expected to process the paperwork and determine the borrower's payment amount for the next year before the next annual period begins. *See* 34 C.F.R. §§ 682.215(e)(3)(i), 685.209(a)(5)(iii)(A), (b)(3)(vi)(B)(1), (c)(4)(iii)(A); *see also* CFPB, *Education loan examination procedures* (June 22, 2017), http://content.consumerfinance.gov/policycompliance/guidance/supervision-examinations/education-loan-examination-procedures; CFPB, *Response Letter from Student Loan Ombudsman Seth Frotman to NCLC Director Persis Yu* (May 2, 2017), http://www.studentloanborrowerassistance.org/wp-content/uploads/2013/05/cfpb-idf-drt-response-letter.pdf.

[13] See 34 C.F.R. §§ 685.209(a)(5)(viii)(A), (b)(3)(vi)(E), (c)(4)(viii)(A), 685.221(e)(8)(i), (ii); see also CFPB, Staying on track while giving back: The cost of student loan servicing breakdowns for people serving their communities (Jun. 22, 2017), https://www.consumerfinance.gov/data-research/research-reports/staying-track-while-giving-back-cost-student-loan-servicing-breakdowns-people-serving-their-communities.

[14] Federal student loan borrowers can have their loans forgiven after 20 or 25 years of making payments under an IDR plan, or after 10 years of making qualifying payments while working in public service. *See* 34 C.F.R. §§ 682.215(f), 685.209(a)(6), (b)(3)(D), (c)(5)(iii)(A) (defining loan forgiveness requirements under IDR plans); 34

Borrowers with older federal student loans, including federally guaranteed bank-based loans, continue to complain about struggles accessing basic loan protections. In 2015, the Bureau documented how borrowers with older bank-based loans made under the Federal Family Education Loan Program (also known as commercial FFELP loans) experienced servicing roadblocks, particularly when seeking to enroll in an IDR plan.[15] During this reporting period, the Bureau continued to receive complaints from borrowers with commercial FFELP loans who reported experiencing a range of servicing problems, including struggling to access income-driven plans, facing delays when trying to consolidate their loans to become eligible for specific federal benefits, or not receiving accurate information from their servicer about their current eligibility for certain benefits. These borrowers complain that these servicing problems increase the cost of their loans over the long-term.

VULNERABLE GROUPS OF STUDENT LOAN BORROWERS ARE ACUTELY IMPACTED BY SERVICING BREAKDOWNS

Certain groups of borrowers may be acutely affected by servicing breakdowns that increase the burden of their student debt. Vulnerable borrowers, including older borrowers and borrowers with severe disabilities, complain about federal student loan servicing problems that can exacerbate their financial distress. This is particularly concerning given the increasing levels of debt owed by some of these borrowers.[16] The Bureau has reported how older consumers with federal student loans are particularly vulnerable to servicing breakdowns because the financial consequences of default can be particularly severe. For example, Social Security retirement

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C.F.R. § 685.219(d) (providing loan forgiveness for borrowers who make 120 qualified payments under the Public Service Loan Forgiveness (PSLF) program).

[15] *See* CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2015), http://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf.

[16] *See* CFPB, *A nationwide look at how student debt impacts older adults* (Aug. 18, 2017), https://www.consumerfinance.gov/about-us/blog/nationwide-look-how-student-debt-impacts-older-adults (finding that student debt owed by older borrowers has grown by 50 percent across the country over the last five years, the number of older borrowers increased by at least 20 percent in every state, and the rate of older borrowers in delinquency increased in all but five states).

benefits can be offset to repay federal student loans in default, which can be financially devastating for older borrowers living on fixed incomes.[17] The Bureau continues to hear complaints from older borrowers explaining how they struggle to access information about how to avoid default or how to cure a default.

Borrowers with permanent disabilities who receive Social Security disability benefits risk having their benefits offset if their federal student loans default.[18] All federal student loan borrowers who are totally and permanently disabled have a right to have their loans discharged through the Total and Permanent Disability (TPD) discharge process.[19] However, borrowers complain to the Bureau about issues related to many stages of the TPD discharge process, from knowing how or when to apply, to providing sufficient proof of their disability. When borrowers cannot afford their monthly payments and are unable to access their discharge protections, they become at risk of default. Borrowers who are disabled complain to the Bureau that when their federal student loans default and their Social Security disability benefits are offset, they struggle to afford basic necessities like housing and medication.[20]

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[17] *See* CFPB, *Snapshot of older consumers and student loan debt* (Jan. 2017), http://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf; *see also* Gov't Accountability Office (GAO), *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief* (Dec. 2016), http://www.gao.gov/assets/690/681722.pdf.

[18] *See* Social Security Administration, *The Treasury Offset Program (TOP)*, GN 02201.029 (Mar. 9, 2016), http://policy.ssa.gov/poms.nsf/lnx/0202201029 (establishing policies and procedures for implementing the Debt Collection Improvement Act of 1996). Federal student loans, generally, may not be discharged through bankruptcy, and upon default, the federal government may offset the borrower's Social Security benefits. In contrast, private student loan lenders cannot offset Social Security disbursements to collect the debt. *See* CFPB, *Consumer advisory: Your benefits are protected from garnishment* (May 13, 2015), http://www.consumerfinance.gov/about-us/blog/consumer- advisory-your-benefits-are-protected-from-garnishment.

[19] *See* 34 C.F.R. §§ 674.61, 682.402, 685.213.

[20] *See* GAO, *Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers Obtaining Permitted Relief*, GAO-17-45 (Dec. 19, 2016), https://www.gao.gov/assets/690/681722.pdf ("The Social Security benefits that the Treasury offsets are Federal Old-Age, Survivors, and Disability Insurance

Borrowers further complain that even when their loans do get discharged, the credit reporting can be inaccurate, causing continued financial strain. For example, one veteran with a service-connected disability reported that her discharged loans were inaccurately reported, and it took her nearly a year of phone calls, letters, and credit disputes to correct the error. She complained:

> *I am a 100% disabled veteran. My status was official through the Department of Veterans Affairs in 2011. I contacted [my servicer] and informed them of my disability status . . . I submitted all required documentation of my status. Somehow the process of discharging my student loan debt, slipped through the cracks and my account showed delinquent. My loans are currently discharged due to my disability status, but it should have never been reported as delinquent. [My servicer] discharged all student loan debt under Total and Permanent Disability application that I filed. The letter for approval states I was eligible as of [2011]. My family and I are suffering greatly by the reporting practices of all . . . major credit reporting bureaus.*[21]

Military borrowers continue to complain about problems accessing servicemember protections. Over the past several years, the Bureau has reported about the unique issues faced by military student loan borrowers.[22] These reports documented complaints from servicemembers who struggled to access student loan protections guaranteed by federal law, such as interest rate caps under the Servicemembers Civil Relief Act (SCRA), automatic

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Benefits, issued under Title II of the Social Security Act. Treasury does not differentiate among retirement, survivor, and disability benefits in administering Social Security benefit offsets, since all of these benefits are eligible for offset").

[21] https://data.consumerfinance.gov/dataset/2404146/e77b-5au3.

[22] *See, e.g.*, CFPB, *The Next Front? Student Loan Servicing and the Cost to Our Men and Women in Uniform* (Oct. 2012), https://www.consumerfinance.gov/data-research/research-reports/the-next-front-student-loan-servicing-and-the-cost-to-our-men-and-women-in-uniform-3; CFPB, *Overseas & Underserved: Student Loan Servicing and the Cost to Our Men and Women in Uniform* (July 2015), https://www.consumerfinance.gov/data-research/research-reports/overseas-underserved-student-loan-servicing-and-the-cost-to-our-men-and-women-in-uniform.

recertification of IDR plans, and zero percent interest rate reductions while serving in areas of hostility.[23] The Bureau continues to hear from military borrowers struggling to access basic protections. For example, military borrowers complain about difficulties when trying to recertify their IDR plans while on active duty. Borrowers report that they are unable to find solutions after repeated communications with their servicer about their application, resulting in them having to place their loans in forbearance. Military borrowers also complain that servicers may not apply SCRA benefits appropriately. For example, borrowers complain that servicers may fail to apply the interest rate cap starting as of the date on which borrowers' active duty started. Additionally, veterans with service-connected disabilities complain that they struggle to get their loans discharged after the Veterans Administration determines them to be totally and permanently disabled.

Low balance borrowers complain about servicing issues that raise barriers to accessing the benefits of affordable repayment plans. The Bureau has previously noted that for many low balance borrowers, the benefits of affordable payment options remain elusive.[24] Borrowers with loan balances of less than $20,000 complain that they are unable to access the full benefits of affordable repayment plans, facing delays and denials that result in them owing a higher monthly payment amount. Other low balance borrowers, including those who did not complete their degree, complain that they are driven into forbearance rather than

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[23] *See* 50 U.S.C. § 3937 (providing for a six percent interest rate cap on debt incurred before military service while a borrower is on active duty); 20 U.S.C. § 1098bb (providing the Secretary of Education with authority to waive certain administrative requirements related to student financial assistance programs, including annual IDR recertification requirements, in connection with a war or other military operation or national emergency); 20 U.S.C. § 1087e(o) (providing for no accrual of interest for active duty servicemembers "serving in an area of hostilities in which service qualifies for special pay"); *see also* CFPB, *Prepared Remarks of Seth Frotman, Student Loan Ombudsman, before the Judge Advocate General's Legal Center and School* (Oct. 18, 2016), http://files.consumerfinance.gov/f/documents/201610_cfpb_Frotman-Remarks-JAG-School.pdf (raising concerns about the challenges military borrowers face under current HEROES act waiver implementation).

[24] *See* CFPB, *Too many student loan borrowers struggling, not enough benefiting from affordable repayment options* (Aug. 16, 2017), https://www.consumerfinance.gov/about-us/blog/too-many-student-loan-borrowers-struggling-not-enough-benefiting-affordable-repayment-options.

receiving help to enroll in an IDR plan. These borrowers complain that a single servicing error that prevents timely approval of their IDR recertification application may result in interest capitalization that significantly increases their principal loan balance.[25]

Despite having a low balance, these borrowers complain that servicing breakdowns cause them to struggle to repay their debt, resulting in delinquency or default. For example, one borrower complained that after explaining her financial hardship to her servicer, the servicer never discussed any available repayment options, and only steered her into forbearance. Another low balance borrower claimed that after her servicer advised her to spend years in forbearance, her loans became delinquent because she had exhausted her allotted forbearance and was not advised of affordable repayment options.

2.2 Private student loan complaints

From September 1, 2016 through August 31, 2017, the Bureau handled approximately 7,700 private student loan complaints.

2.2.1 Private student loan complaint data

The following tables are based on complaints sent to companies from September 1, 2016, through August 31, 2017, as exported from the public Consumer Complaint Database as of October 1, 2017.[26]

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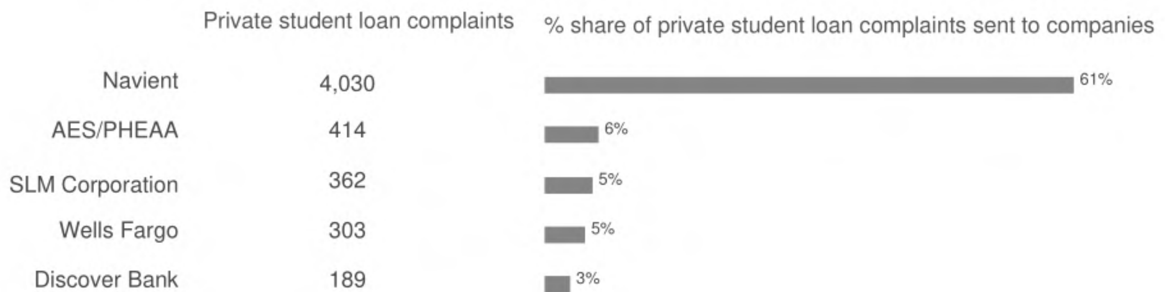
[25] *See also* CFPB, *CFPB Data Point: Student Loan Repayment* (Aug. 2017), https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-student-loan-repayment ("[F]ive years after starting repayment over 23% of these small-loan borrowers in recent cohorts are not making payments large enough to reduce their balances.").

[26] *See supra* note 2.

FIGURE 4: PRIVATE STUDENT LOAN ISSUES REPORTED BY CONSUMERS FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017

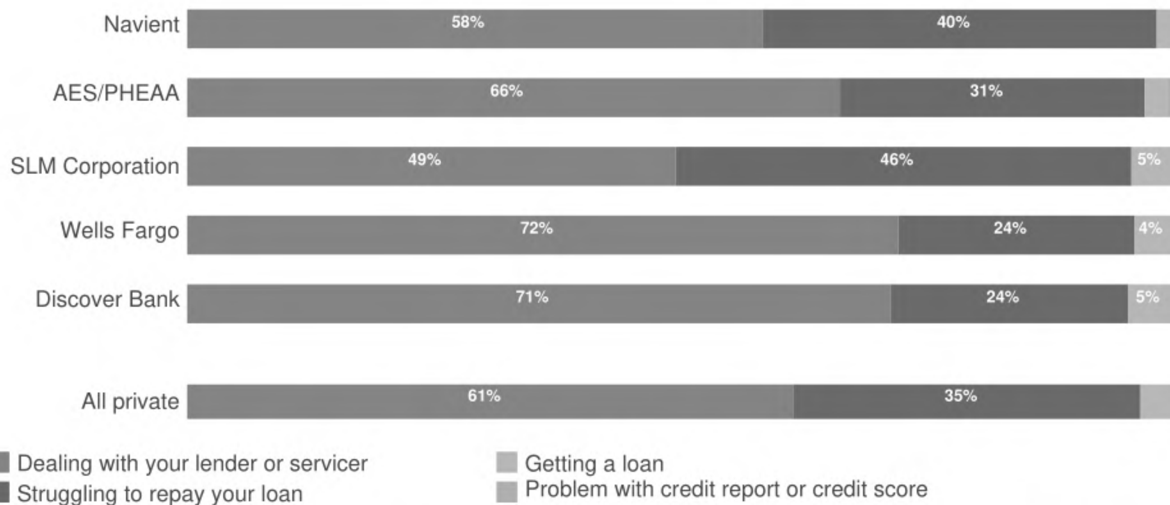
Note: Consumers submitting student loan complaints can select from the following three types of complaint categories: "Getting a loan," "Can't pay my loan," "Dealing with my lender or servicer," and "Problem with credit report or credit score." The Bureau first began to make it possible for consumers to submit complaints about credit reporting issues when submitting a complaint about another financial product in April 2017. This figure reflects the categories consumers selected when submitting a complaint.

FIGURE 5: COMPANIES WITH THE MOST PRIVATE STUDENT LOAN COMPLAINTS SENT TO COMPANIES RANKED BY VOLUME FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: This table reflects complaints where (1) the consumer identified the sub-product as a private student loan and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This table reflects the top companies by complaint volume for the period of September 1, 2016 through August 31, 2017.

FIGURE 6: ISSUES IDENTIFIED IN PRIVATE STUDENT LOAN COMPLAINTS BY COMPANY FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: This table reflects complaints where (1) the consumer identified the sub-product as a private student loan, (2) the consumer identified the issue and (3) the identified company responded to the complaint, confirming a relationship with the consumer. This table reflects the top companies by complaint volume.

2.2.2 Issues identified in private student loan complaints

Since 2012, the Bureau has repeatedly documented how private student loan borrowers complain that their repayment efforts are sidelined due to servicing errors.[27] These problems

[27] *See, e.g.*, CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2012), https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman (documenting private student loan complaints about improper payment application, untimeliness in error resolution, and inability to obtain an affordable monthly payment); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2013), http://files.consumerfinance.gov/f/201310_cfpb_student-loan-ombudsman-annual-report.pdf (documenting private student loan complaints and noting that just under half of private student loan complaints received during the reporting period were related to consumers seeking a loan modification or other option to reduce their monthly payment in a time of distress); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2014), https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2014 (documenting how the issues raised in private student loan complaints mirror the issues seen during the mortgage crisis); CFPB, *Annual report of the CFPB student loan ombudsman 2015* (Oct. 14, 2015), https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2015 (highlighting the problems experienced by

can occur whether borrowers are trying to get ahead on their loans, or are struggling to keep up with payments. The Bureau continues to hear from private student loan borrowers who struggle to access promised loan benefits, cannot obtain an affordable repayment plan during periods of financial distress, and cannot effectively direct their payments across multiple loans.[28] While the Bureau receives complaints about these issues from all types of borrowers, these problems may create acute challenges for the most vulnerable borrowers, including borrowers on parental leave or borrowers with severe disabilities.

Private student loan borrowers complain that there are limited options for payment relief during periods of financial distress. The Bureau has repeatedly documented how borrowers with private student loans may face additional struggles during times of economic hardship when they are unable to obtain a student loan payment that they can afford.[29] During the reporting period, private student loan borrowers complained that when they experienced short-term inability to pay, such as unpaid parental leave or employment furloughs, they struggled to temporarily modify their payments until their income was restored due to lack of available options. For example, one borrower with private student loans complained:

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student loan borrowers with older federal student loans made by private lenders); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 17, 2016), https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman (highlighting debt collection and servicing problems plaguing the federal programs designed to help defaulted student loan borrowers get on track and into affordable repayment plans).

[28] Many private student loans are serviced by non-bank entities. See Figure 5.

[29] *See, e.g.*, CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2012), https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman; CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2013), http://files.consumerfinance.gov/f/201310_cfpb_student-loan-ombudsman-annual-report.pdf; CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2014), https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2014.

I am scheduled to go on maternity leave next month, and will be on leave for 12 weeks. I asked that my payments be temporarily placed on deferment due to the change in my pay. Unfortunately, I was told there were no options to be offered. That I would continue to be responsible for the monthly payments. I have consistently made my payments on time for the last six years. This situation will create an unnecessary burden and stress to an already difficult situation.[30]

Private student loan borrowers complain about difficulties accessing advertised loan benefits and protections. Some private student lenders offer certain loan benefits to borrowers, such as interest rate reductions for on-time payments, to encourage successful repayment. Borrowers complain to the Bureau about difficulties accessing these benefits, saying that the requirements may be unclear or difficult to satisfy. For instance, borrowers complain about not being able to access repayment incentives when their loans are automatically deferred due to their enrollment status.[31] Borrowers complain that when servicing errors cause certain benefits to be removed from their loans, it can take months to reactive the benefits, increasing the cost of their loans in the interim.

Other borrowers complain about struggling to access certain programs designed to mitigate the burden of student loan payments during periods of financial hardship. Private student lenders may represent that they offer modified repayment options to borrowers experiencing economic hardship to help borrowers avoid defaulting on their loans. However, when borrowers try to access these modified repayment options, they report receiving inconsistent information on how to qualify from servicing representatives. These borrowers complain that the servicing representative may inaccurately represent that the borrowers qualify for the hardship program, and, in some instances, after relying on these representations and stopping their payments,

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[30] https://data.consumerfinance.gov/dataset/2155114/mk4w-kybk.

[31] For more information about enrollment status issues, see CFPB, *Student data & student debt* (Feb. 2017), https://www.consumerfinance.gov/documents/2640/201702_cfpb_Enrollment-Status-Student-Loan-Report.pdf.

borrowers only learn that they do not qualify for the program when they are subject to negative credit reporting once their loans become delinquent.

Borrowers and cosigners with severe disabilities complain that they have limited repayment options when they can no longer afford their monthly payment. Unlike federal student loans, there is no right under federal law to have private student loans forgiven if a borrower becomes totally and permanently disabled.[32] Private student loan borrowers who become disabled, including veterans with service-connected disabilities, complain that they cannot afford their student loan payments because of limited or inability to work.[33] These borrowers complain that there are limited options for modified repayment of their student loans that take into consideration their newly limited ability to repay.

While some private lenders will cancel a student loan if the primary borrower becomes totally and permanently disabled, borrowers with student loans from these lenders complain that the discharge process can be lengthy and confusing. Borrowers also report that the requirements around providing proof of their disability may be unclear. Other borrowers with disabilities complain that their lenders may not offer any options for loan cancellation in the event of disability.

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[32] Some private lenders include disability clauses in their student loan promissory notes. In the event the primary borrower becomes totally and permanently disabled, these disability clauses may allow for the primary borrower to be released from the loan obligation. In some cases, the loan may be cancelled entirely. In other cases, the cosigner will assume sole responsibility for the loan balance.

[33] *See* CFPB, *Hollister K. Petraeus Before the Senate Committee on Veterans' Affairs* (Jul 31. 2013), https://www.consumerfinance.gov/about-us/newsroom/hollister-k-petraeus-before-the-senate-committee-on-veterans-affairs ("It's a sad fact that some veterans with the most severe disabilities will never be capable of obtaining or performing a job that will enable them to repay that private student loan debt. However, as the law now stands, it is very difficult for them to discharge those debts despite the reality of their medical condition. It seems a shame that federal student loans have such a provision for those with 100 percent disability, but there is currently no such relief for those who have private student loans.").

Cosigners who have experienced severe disabilities complain that there are few available options that release them from their obligations on private student loans. They complain that while they are considered equally liable for the debt, they do not have the same protections as the primary borrower in the event that they become permanently disabled. These borrowers report that because they remain obligated on the student loans after becoming disabled, they struggle to access other forms of credit that they depend on to support them as they manage their disability.

Borrowers and cosigners complain that when servicers deny applications for cosigner release, they do not adequately explain how the borrower can successfully qualify for cosigner release. Currently, more than 90 percent of private student loans are made with a cosigner at origination, including 93 percent of all loans made to undergraduates and 60 percent of all graduate students during the 2016-17 academic year.[34] The Bureau has repeatedly documented the problems cosigners face when obligated on a student loan.[35] The Bureau continues to receive borrower complaints describing how after completing all the steps they believe necessary to qualify for cosigner release, borrowers' applications for cosigner release are still denied. Borrowers complain that when their servicer denies their cosigner release applications, the servicer fails to explain what steps borrowers must take to satisfy the requirements of cosigner release. Cosigners complain to the Bureau that their continued obligation on the loan negatively affects their ability to access other credit, like mortgage and home equity loans.

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[34] *See* MeasureOne, *Private Student Loan Report* (Q1 2017), https://www.measureone.com/psl.php.

[35] *See, e.g.*, CFPB, *CFPB Student Loan Ombudsman's Mid-Year Update on Student Loan Complaints* (June 2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf (finding that 90 percent of private student loan borrowers who applied for cosigner release were rejected); CFPB, *CFPB Finds Private Student Loan Borrowers Face "Auto-Default" When Co-signer Dies or Goes Bankrupt* (Apr. 22, 2014), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-private-student-loan-borrowers-face-auto-default-when-co-signer-dies-or-goes-bankrupt (finding that lenders were accelerating private student loan balances when a cosigner died or filed for bankruptcy, even when the loan was in good standing).

Borrowers complain that when submitting one payment to cover multiple private loans, their servicer does not allocate the payment according to the borrowers' instructions. Many borrowers choose to make extra payments on their loans in order to pay off their loans ahead of schedule. The Bureau has previously documented that when borrowers make extra payments on their loans in order to advance their financial goals, servicers may not apply the payments in the manner intended by the borrower, ultimately delaying repayment or increasing the cost of their loans.[36] The Bureau continues to hear from borrowers who complain about how their payments are applied to their loans. Borrowers complain that when they make extra payments on their loans and include instructions for payment application, their servicers disregard their instructions, or only follow the instructions intermittently. Other borrowers complain that after making extra payments on their loans, their servicer may re-disclose the loan, thereby lowering the monthly payment and extending the loan terms, but also increasing the overall cost of the loan.[37] For example, one borrower complained about his servicer extending his repayment term without notice:

> *I was repaying a student loan to [my lender] for about $300 a month when suddenly [my servicer] extended my loan for ten years and lowered payments without my permission. Now it seems that despite asking [my servicer] to remedy the changes they made without my permission, and despite paying the $300 a month the loan has been extended beyond the 10 years. I was supposed to pay based*

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[36] *See* CFPB, *We asked about your student loans and you answered* (Feb. 3, 2014), https://www.consumerfinance.gov/about-us/blog/we-asked-about-your-student-loans-and-you-answered; CFPB, *Letter from Rohit Chopra* (Feb. 3, 2014), http://files.consumerfinance.gov/f/201402_cfpb_letter_payment-processing.pdf (summarizing findings of a voluntary information request to industry about payment allocation policies); *see also* CFPB, *CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices* (Aug. 22, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices (finding that the bank processed payments in a way that maximized student loan borrowers' fees, and misrepresented the value of making partial payments).

[37] *See also* CFPB, *You have the right to pay off your student loan as fast as you can, without a penalty* (Sep. 26, 2016), https://www.consumerfinance.gov/about-us/blog/you-have-right-pay-your-student-loan-fast-you-can-without-penalty.

on what I believed to be the terms of the loan. . . . I believe by changing the loan the company intended to collect more interest and has somehow managed to do that despite never getting my permission to change the loan.[38]

2.3 Debt collection complaint data

From September 1, 2016 through August 31, 2017, the Bureau handled approximately 2,300 debt collection complaints about private and federal student loans.

2.3.1 Debt collection complaint data

The following tables are based on complaints sent to companies from September 1, 2016, through August 31, 2017, as exported from the public Consumer Complaint Database as of October 1, 2017.[39]

FIGURE 7: TOP RECIPIENTS OF STUDENT LOAN DEBT COLLECTION COMPLAINTS FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017

Federal Student Loans	Number of Complaints	Private Student Loans	Number of Complaints
Navient	195	Navient	168
AES/PHEAA	60	Transworld Systems Inc.	54
ECMC Group, Inc.	33	AES/PHEAA	41

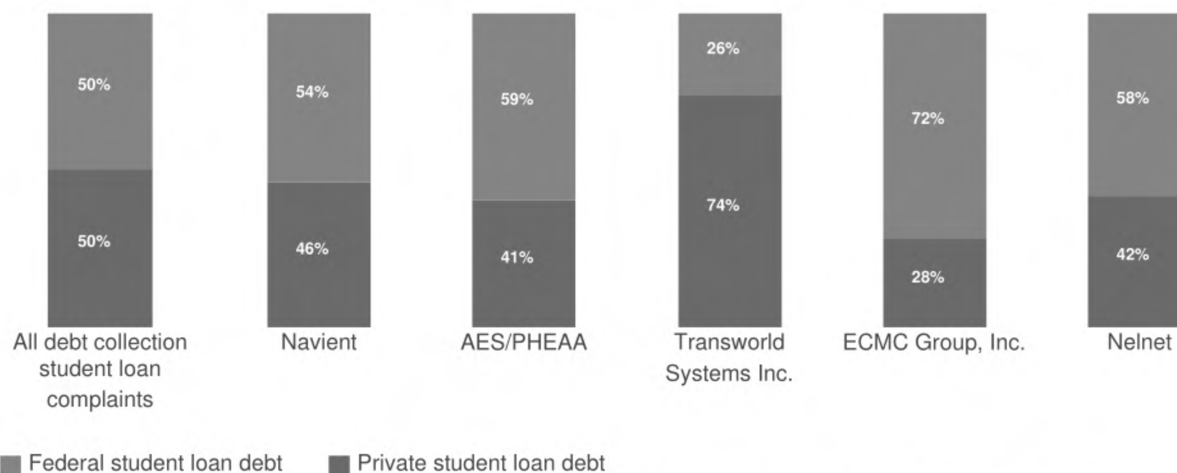
[38] https://data.consumerfinance.gov/dataset/2302598/nw7i-ifim.

[39] *See supra* note 2.

Great Lakes	30	Weltman, Weinberg & Reis Co., L.P.A.	20
ConServe	26	Ability Recovery Services, LLC	19

Note: This table reflects debt collection complaints where (1) the consumer identified the sub-product as a private or federal student loan debt and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This table also reflects aggregated complaints of subsidiary debt collection companies under the parent company.

FIGURE 8: DISTRIBUTION OF LOAN TYPE FOR STUDENT LOAN DEBT COLLECTION COMPLAINTS BY COMPANY FROM SEPTEMBER 1, 2016 THROUGH AUGUST 31, 2017



Note: This table reflects debt collection complaints where (1) the consumer identified the sub-product as a private or a federal student loan debt and (2) the identified company responded to the complaint, confirming a relationship with the consumer. This table was not adjusted to reflect each company's relative market share. This table reflects the top companies by complaint volume. This table also reflects aggregated complaints of subsidiary debt collection companies under the parent company.

2.3.2 Issues identified in debt collection complaints

The Bureau has previously reported how the inability to secure an affordable repayment plan can contribute to borrowers' financial distress, and may ultimately lead borrowers into default.[40] According to a recent estimate by the Department of Education, more than eight million borrowers have federal student loans in default.[41] The Bureau has shown how federal student

[40] *See, e.g.*, CFPB, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf (highlighting how the ability to access IDR plans is critical to repayment success); CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 17, 2016), https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman (explaining how IDR enrollment is essential to preventing previously defaulted federal student loan borrowers from re-defaulting on their loans).

[41] *See* U.S. Department of Education, *Federal Student Loan Portfolio* (accessed Oct. 2, 2017), https://studentaid.ed.gov/sa/about/data-center/student/portfolio; U.S. Department of Education, *Federal Perkins Loan Program Status of Default as of June 30,* 2016 (June 12, 2017),

loan borrowers who rehabilitate defaulted loans may struggle to access many of the consumer protections established under federal law that offer affordable monthly payments over the long-term.[42] Additionally, Bureau examiners have found student loan debt collectors using false, deceptive, or misleading statements to collect on a debt, in violation of federal law.[43] Once in default, the collection tactics used by debt collectors can vary based on whether the borrower has private or federal student loans.

Federal law provides collectors with a series of extraordinary tools to collect on defaulted federal student loan debt, including offsetting tax returns and federal benefits, pre-judgment garnishment of wages, and prolonged ineligibility for federal student aid.[44] During the reporting period, student loan borrowers with defaulted loans complained about aggressive collection

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https://ifap.ed.gov/perkinscdrguide/1516PerkinsCDR.html. There is limited data available about the number of unduplicated borrowers in default across the entire federal portfolio, so estimates may vary.

[42] *See* CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 17, 2016), https://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loan-ombudsman ("[M]any borrowers face significant headwinds when attempting to successfully exit rehabilitation, enter repayment, and success over the long term – indicating that the borrowers experiencing the most severe financial hardship are the most likely to re-default."); *see also* U.S. Department of Education, *Understanding Default* (accessed Sep. 18, 2017), https://studentaid.ed.gov/sa/repay-loans/default.

[43] *See* CFPB, *Supervisory Highlights: Issue 10, Winter 2016* (Mar. 2016), https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-winter-2016 ("Examiners determined that one or more debt collectors used false, deceptive, or misleading representations or means regarding administrative wage garnishment when performing collection services of defaulted student loans for the Department of Education"); CFPB, *Supervisory Highlights: Winter 2015* (Mar. 2015), https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-winter-2015 ("In one or more examinations of debt collectors performing collection services of defaulted student loans for the Department of Education, examiners identified collections calls, scripts and letters containing various misrepresentations to consumers. Examiners found that collection agents overstated the benefits of federal student loan rehabilitation."); *see also* Minnesota Commerce Department, *Minnesota Commerce Department announces action against improper student loan debt collections* (Aug. 11, 2017), https://mn.gov/commerce/media/news/#/detail/appId/2/id/307713.

[44] *See, e.g.*, 20 U.S.C. § 1095a (Administrative Wage Garnishment); 31 U.S.C. § 3720A (Tax Offset Program); *see generally* 34 C.F.R. § 685.200(d) (preventing a borrower from obtaining new Direct Loans until "satisfactory repayment arrangements" are made on any defaulted federal student loan).

tactics from debt collectors. Additionally, federal student loan borrowers reported difficulty accessing federal protections designed to assist borrowers in curing their defaults.

Debt collection practices cause financial distress

Student loan borrowers complain that debt collectors use aggressive and hostile tactics. Borrowers complain that collectors will repeatedly call them at work, even after the borrowers tell the collector to not call them at work. In addition, student loan borrowers with both private and federal student loans say debt collectors call their places of employment and threaten their employer with legal action. Borrowers also complain that collectors may call them early in the morning or late at night, and may use offensive language towards them.

Some borrowers report that debt collectors engage in similarly aggressive tactics when contacting borrowers' family members. Borrowers report that despite the collector having the borrowers' complete and accurate contact information, the collector will continually contact the borrowers' family members and disclose the defaulted debt. Borrowers further note that these collection tactics may persist despite repeatedly instructing the collector to not contact third parties.

Unlike federal student loans, when a borrower defaults on private student loans, the collector cannot attach or offset federal benefits such as Social Security disability or retirement payments.[45] However, borrowers with private student loans, including older borrowers receiving

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[45] *See also* CFPB, *Snapshot of older consumers and student loan debt* (Jan 5, 2017), https://www.consumerfinance.gov/data-research/research-reports/snapshot-older-consumers-and-student-loan-debt.

Social Security benefits, complain that collectors threaten to collect on their federally protected benefits.[46]

Borrowers complain that they struggle to realize the protections afforded to them under federal law. The Higher Education Act provides federal student loan borrowers in default with two options to "cure" a default and get back on track. Borrowers can "rehabilitate" their debt by entering into an agreement with a debt collector to make a series of nine on-time monthly payments based on their financial circumstances, or borrowers can opt to refinance their defaulted debt with a new Direct Consolidation Loan.[47] However, the Bureau has previously reported that many borrowers struggle to successfully rehabilitate their loans, and may not be aware of the options to consolidate their defaulted loans.[48]

Borrowers attempting to rehabilitate their student loan debt complain that their debt collector fails to send or process required paperwork, which delays their ability to start the rehabilitation program and get out of default. Other borrowers complain that their debt collector will unexpectedly disqualify payments months into their rehabilitation program, delaying their

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[46] CFPB, *Four tips to help older student loan borrowers navigate common problems with their student loans* (Jan. 5, 2017), https://www.consumerfinance.gov/about-us/blog/four-tips-help-older-student-loan-borrowers-navigate-common-problems-their-student-loans.

[47] *See* 34 C.F.R. §§ 682.405 (outlining rehabilitation for FFELP loans); 685.211(f) (outlining rehabilitation for Direct Loans), 685.220(d) (defining a defaulted federal student loan borrower's eligibility to consolidate his or her loans into a Direct Consolidation Loan). The Bureau has previously reported that many borrowers seeking to cure their federal student loan default will likely be entitled to make a $0 monthly IDR "payment" after successfully completing their student loan rehabilitation. *See* CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2016), http://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf ("Based on the formula to determine eligibility for a $5 rehabilitation payment, the vast majority of these borrowers [who were eligible for $5 rehabilitation payments] will also be entitled to make a $0 monthly IDR "payment" once they have cured their default.").

[48] *See* CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2016), http://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf.

ability to cure their default and get back on track with their loans.[49] Furthermore, federal student loan borrowers continue to complain that when collectors make errors when handling their loans, it causes needless and extended exposure to the negative consequences of default, leading some borrowers to accrue unnecessary interest charges or pay more than they otherwise would to a debt collector.[50]

Borrowers complain that certain collection practices may inhibit their ability to repay their defaulted debt. When borrowers default on their federal student loans, they have limited options for accessing federal student aid that may be necessary to complete their degree. Furthermore, schools will often withhold borrowers' academic records until the default is resolved.[51] Borrowers complain that this practice may prevent them from transferring

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[49] Borrowers with defaulted student loans may begin making rehabilitation payments under a verbal agreement with their collector, generally by agreeing to enroll in automatic payments. The Bureau has previously reported how borrowers who are making income-driven rehabilitation payments complain that they are knocked off track, often after several months of payments, when their collector invalidates these payments retroactively. Collectors can invalidate borrowers' payments when the monthly payment set by the collector is less than what is required based on income documentation subsequently provided by the borrower. Borrowers have complained that collectors will continue to automatically withdraw the incorrect payment amount from their accounts each month, despite having determined that the payment amount was invalid. Likewise, borrowers have also reported that they did not learn that their payments were invalid until they proactively contacted their collector after believing they made all nine required rehabilitation payments. *See* 34 C.F.R. §§ 682.405(b)(1)(iv), 685.211(f)(1)(ii) (permitting collectors to set monthly payments based on information provided orally by the borrower, provided that the borrower's income is later verified through documentation); *see also* CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2016), http://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf.

[50] Federal law also permits collectors to recover collection costs from borrowers by assessing a fee based on a percentage of borrowers' unpaid principal and accrued interest. *See* U.S. Department of Education, *Collections* (accessed Oct. 10, 2016), https://studentaid.ed.gov/sa/repay-loans/default/collections.

[51] *See* U.S. Department of Education, *Understanding Delinquency and Default*, https://studentaid.ed.gov/sa/repay-loans/default ("Your school may withhold your academic transcript until your defaulted student loan is satisfied. The academic transcript is the property of the school, and it is the school's decision—not the U.S. Department of Education's or your loan holder's—whether to release the transcript to you.").

academic credits to other schools, or prevent them from obtaining employment where potential employers are seeking official copies of the borrower's transcript.

In some states, borrowers with defaulted federal student loans also face the unique risk of professional licensure suspension.[52] Borrowers complain that when their student loans default, debt collectors may pursue suspension or revocation of professional licenses and certifications, causing additional financial distress. These borrowers complain that once their licenses are suspended, they cannot work in their chosen profession to earn enough income to repay the defaulted debt.

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[52] *See, e.g.*, Alaska Stat. § 14.43.148; Va. Code Ann. § 54.1-2400.5; Fla. Stat. §§ 456.072, 456.074.

3. Ombudsman's discussion

When consumers are provided with an effective channel to make their voices heard by speaking out about obstacles they face in the marketplace, policymakers, including regulators and law enforcement officials, can respond to individual and market-wide problems more effectively. Further, when policymakers use individual complaints to inform their actions, it can shape market-wide reforms that benefit these consumers.[53]

FIGURE 9: WHEN INDIVIDUAL COMPLAINTS STRENGTHEN STUDENT LOAN REPAYMENT FOR A BROAD SEGMENT OF BORROWERS

[53] Government agencies, including the Bureau, depend on a variety of inputs to prioritize action and deploy oversight, enforcement, and regulatory functions where appropriate. This discussion seeks to assess the role that consumer complaints can play when issues identified may be systemic in nature, particularly as they relate to these key government functions. Readers should also note that oversight, enforcement and regulation may, and frequently do, take place across federal and state governments without any formal role for consumer complaints. While consumer complaints on their own will not be sufficient to justify regulatory, supervisory or law enforcement action, in certain circumstances, complaints may serve as the impetus for this action and inform decision-making at critical points. Further, as this discussion demonstrates, when government has the tools to analyze consumer complaints and identify the appropriate opportunities to act, an agency may be able to better serve the public and advance its mission.

Individual student loan borrowers take action, which can set the policymaking process in motion

The Bureau's efficient and thoughtful approach to handling consumer complaints builds a robust record of the specific challenges consumers encounter when repaying student debt. This informs the Student Loan Ombudsman's approach to monitoring, analyzing, and reporting on issues identified by individual consumers. In addition, because of the interaction between the Bureau's complaint system and providers of financial products and services, consumers receive responses, and in some cases monetary and non-monetary relief, directly from companies by simply explaining their issue in a complaint. This functionality, especially on the scale implemented by the Bureau, is unmatched by any other federal or state agency complaint system. Through the Bureau's complaint process, complaints are sent to companies – typically in less than one day – allowing companies to respond to their customers about a problem or misunderstanding.[54]

From July 21, 2011 through August 31, 2017, CFPB handled over 50,700 private and federal student loan complaints, and about 9,800 debt collection complaints related to private or federal student loan debt. In addition to informing ongoing work by the Student Loan Ombudsman, information contained in these complaints is typically shared in near real-time with a wide range of federal and state government partners, including state attorneys general, banking agencies, and other federal financial regulators and consumer protection agencies, thereby allowing these agencies to leverage consumers' insights as they pursue their respective missions.

Complaints have served as the critical first step in a process that has halted industry practices that harmed some of the most vulnerable individuals, recovered hundreds of millions of dollars

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[54] Companies generally respond to complaints within 15 days. *See* CFPB, *Consumer Response Annual Report* (Mar. 2017), https://www.consumerfinance.gov/data-research/research-reports/2016-consumer-response-annual-report; *see also* CFPB, *Monthly Complaint Report* (Apr. 2017), http://files.consumerfinance.gov/f/documents/201704_cfpb_Monthly-Complaint-Report.pdf.

for tens of thousands of student loan borrowers, and strengthened aspects of the student loan repayment process to protect millions of consumers.[55]

For example, in 2012, the first annual report by the Student Loan Ombudsman observed that "many borrowers filing complaints and providing input to the CFPB obtained loans to attend for-profit colleges. . . . Some borrowers report that they have been unable to find adequate employment in order to service the debt offered by parties affiliated with the school, despite assurances to the contrary."[56] In 2015, the Bureau joined the Department of Education to take action against the now-defunct for-profit college chain, Corinthian Colleges, Inc., providing more than $480 million in relief to current and former students who had received predatory private loans to attend campuses operated by the company.[57] Earlier this year, the Bureau, in

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[55] *See supra* note 53.

[56] CFPB, *2012 Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2012), https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman ("Many borrowers filing complaints and providing input to the CFPB obtained loans to attend for-profit colleges. Some consumers described how school representatives provided information on loan programs in order for the borrower to quickly obtain financing for enrollment. Some borrowers report that they have been unable to find adequate employment in order to service the debt offered by parties affiliated with the school, despite assurances to the contrary.").

[57] *See* CFPB, *CFPB Secures $480 Million in Debt Relief for Current and Former Corinthian Students* (Feb. 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students, ("the Consumer Financial Protection Bureau (CFPB) and the U.S. Department of Education announced more than $480 million in forgiveness for borrowers who took out Corinthian College's high-cost private student loans. ECMC Group, the new owner of a number of Corinthian schools, will not operate a private student loan program for seven years and agreed to a series of new consumer protections."). In addition to the Bureau's work related to Corinthian Colleges' predatory private lending program, the Bureau also required Bridgepoint Education, another for-profit college operator, to provide $23.5 million in relief to current and former students harmed by its own private lending program and pay an $8 million penalty to the Bureau. *See* CFPB, *Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices* (Sept. 2016), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-bridgepoint-education-inc-illegal-student-lending-practices ("The Bureau is ordering Bridgepoint to discharge all outstanding private loans the institution made to its students and to refund loan payments already made by borrowers. Loan forgiveness and refunds will total over $23.5 million in automatic consumer relief. Bridgepoint must also pay an $8 million civil penalty to the Bureau."). The Bureau's orders often

coordination with a number of state attorneys general, also took action against Aequitas Capital Management for aiding Corinthian's predatory lending scheme, providing for another $180 million in debt relief to current and former students.[58]

Collectively, the Bureau estimates that complaints from individual student loan borrowers have informed law enforcement actions and policy changes that have produced more than $750 million in relief for student loan borrowers and strengthened key aspects of the student loan repayment process for millions more borrowers.[59]

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require certain conduct in addition to monetary relief. In the Bridgepoint matter, potential Bridgepoint students also benefited from a term in the Bureau's settlement that requires Bridgepoint to provide students with a robust online interactive financial aid disclosure prior to the students incurring financial obligations.

[58] *See* CFPB, *CFPB Takes Action Against Aequitas Capital Management for Aiding Corinthian Colleges' Predatory Lending Scheme* (August 17, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-aequitas-capital-management-aiding-corinthian-colleges-predatory-lending-scheme ("Under the CFPB's proposed settlement, if approved, about 41,000 Corinthian students could be eligible for approximately $183.3 million in loan forgiveness and reduction. In collaboration with the CFPB, several state attorneys general have also reached proposed settlements with Aequitas.").

[59] In addition to the examples provided in the following sections of this report, consumer complaints, as reported by the CFPB Student Loan Ombudsman, cover issues subsequently pursued through supervisory and law enforcement actions by a broad range of state and federal regulators and law enforcement officials, including the Bureau's own supervisory and enforcement divisions, state attorneys general, the United States Department of Justice, the FDIC, and the Department of Education. *See e.g.*, *supra* notes 57 and 58; *see also* FDIC, *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act* (May 13, 2014), https://www.fdic.gov/news/news/press/2014/pr14033.html ("The FDIC determined that Sallie Mae violated federal law prohibiting unfair and deceptive practices in regards to student loan borrowers through . . . inadequately disclosing its payment allocation methodologies to borrowers while allocating borrowers' payments across multiple loans in a manner that maximizes late fees."); CFPB, *2013 Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2013), https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2013 ("[U]nderpayments, in many cases, appear to be applied by student loan servicers in order to maximize late fees charged to borrowers."); CFPB, *CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices* (Aug. 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices ("If a borrower made a payment that was not enough to cover the total amount due for all loans in an account, the bank divided that payment across the loans in a way that maximized late fees rather than satisfying payments for some of the loans. The bank failed to adequately disclose to consumers how it allocated payments across multiple loans, and that

Borrowers benefit when consumer complaints shape public policy

For five years, the CFPB Student Loan Ombudsman has monitored consumer complaints and provided a pathway for individual consumers' concerns to shape public policy. Each year, reports by the Student Loan Ombudsman emphasize the individual challenges these borrowers identified in their complaints. These reports also highlight where challenges may be systemic in nature, and illustrate where law enforcement, regulatory action, or market-driven reform may be necessary to better protect similarly situated student loan borrowers.

In each of the following three examples, individual consumer complaints led to increased scrutiny by a regulator or law enforcement agency with the authority, tools, and will to take action on behalf of borrowers, after these complaints were highlighted by the CFPB Student Loan Ombudsman.

Servicemember complaints expose harmful servicing practices and policies, government agencies halt illegal practices, charting a path forward for automation-driven reform

Over the past two decades, policymakers have taken action on a number of fronts to protect consumers who are repaying student debt.[60] In particular, policymakers have frequently expanded the range of benefits and protections afforded to student loan borrowers under federal law.[61] In response, federal and state agencies have taken action to ensure borrowers are able to

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consumers have the ability to provide instructions for how to allocate payments to the loans in their account. As a result, consumers were unable to effectively manage their student loan accounts and minimize costs and fees.").

[60] *See, e.g.*, U.S. Department of Education, *U.S. Department of Education Announces Two Final Regulations to Protect Students and Help Borrowers* (Oct. 27, 2015), https://www.ed.gov/news/press-releases/us-department-education-announces-two-final-regulations-protect-students-and-help-borrowers.

[61] *See, e.g.*, P.L. 110-84 (establishing the Public Service Loan Forgiveness program and the Income-Based Repayment program); 20 U.S.C. § 1087e(e) (authorizing the Secretary of Education to establish income-driven repayment options); s*ee also* 34 C.F.R. § 685.209 (establishing regulations to implement various income-driven repayment options); U.S. Department of Education, *U.S. Department of Education Announces Availability of Additional*

effectively and efficiently invoke these rights.[62] Much of the Bureau's work in the student loan market has focused on the gap between borrowers' rights under federal law and the experiences that consumers report when repaying student debt.[63]

In the following example, individual complaints from servicemembers with student loans prompted a government-wide effort to narrow this gap for military borrowers, leading the Department of Education to write new rules in 2014 to automate the process of invoking key protections on behalf active duty servicemembers. This coordinated interagency work has led to more than 100,000 military borrowers automatically saving more than $20 million in student loan interest charges each year.[64] As discussed further below, this example also offers a roadmap as policymakers seek to strengthen many other aspects of the student loan repayment process.

The Bureau identifies and reports on consumer harm described in servicemember complaints. More than 200,000 servicemembers collectively owe more than $2.9 billion in

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Flexible Repayment Plan to Help Borrowers Manage their Student Loan Debt (Dec. 17, 2015), https://www.ed.gov/news/press-releases/us-department-education-announces-availability-additional-flexible-repayment-plan-help-borrowers-manage-their-student-loan-debt.

[62] *See, e.g., infra* notes 76 and 77; *see also* Illinois Attorney General, *Attorney General Madigan Sues Navient and Sallie Mae for Rampant Student Loan Abuses* (Jan. 18, 2017), http://www.illinoisattorneygeneral.gov/pressroom/2017_01/20170118.html; Washington State Office of the Attorney General, *AG Ferguson Files Suit Against Sallie Mae Offshoot Navient Corp., Announces Student Loan Bill of Rights Legislation* (Jan. 18, 2017), http://www.atg.wa.gov/news/news-releases/ag-ferguson-files-suit-against-sallie-mae-offshoot-navient-corp-announces-student; Attorney General of Massachusetts, *AG Healy Sues to Protect Public Service Loan Forgiveness* (Aug. 23, 2017), http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-08-23-pheaa-lawsuit.html.

[63] *See, e.g.*, CFPB, *Midyear update on student loan complaints* (Aug. 2016), files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf (reporting that student loan servicers may delay processing IDR applications and wrongfully reject borrowers seeking to enroll in IDR, resulting in increased interest charges and lost eligibility for certain federal benefits and protections).

[64] Estimates based on the Bureau's analysis of GAO, *Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, GAO-17-4 (Nov. 16, 2016), https://www.gao.gov/products/GAO-17-4; *see also* U.S. Department of Education, Office of Inspector General, *Servicemembers Civil Relief Act* (Feb. 29, 2016), https://www2.ed.gov/about/offices/list/oig/misc/scrareport02292016.pdf.

student debt.[65] Shortly after the Bureau began handling private student loan complaints in 2012, it received a series of complaints from individual servicemembers about student loan problems related to the Servicemembers Civil Relief Act (SCRA).[66] The SCRA is a key consumer protection meant to alleviate certain financial burdens from pre-service obligations on active duty servicemembers.[67] One provision of the SCRA lowers the interest rate on higher-interest, pre-service loans during periods of active duty service.[68] This protection covers a range of different types of consumer debt, including private student loans. In 2008, Congress expanded this protection to apply to federal student loans.[69]

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[65] Estimates are based on the Bureau's analysis of data provided in GAO, *Student Loans: Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, GAO-17-4 (Nov. 15, 2016), https://www.gao.gov/products/GAO-17-4.

[66] For complaint purposes, a servicemember includes anyone who self-identifies as active duty, National Guard, or Reservist, as well as those who previously served and identify as a Veteran or retiree. Servicemember complaints can be submitted by or on behalf of a servicemember or the spouse or dependent of a servicemember.

[67] 50 U.S.C. § 3902(2). Oftentimes, recruits will join the military or reservists will be called to active duty with prior financial obligations, like car loans, mortgages, and, in particular, student loans. The Servicemembers Civil Relief Act ("SCRA") was created in 1940 (originally as the "Soldiers' and Sailors' Civil Relief Act") to provide protections for servicemembers in the event that transactions and judicial proceeding adversely affect the rights of a servicemember during their military service. The Department of Justice has the specific authority to enforce the SCRA and accepts referrals from other federal agencies, including the CFPB, for possible SCRA violations. When the CFPB identifies potential SCRA violations in consumer complaints or during the course of its supervision work, through which it monitors for potential violations of the federal consumer financial law defined in its statute, the CFPB may refer the issues to other federal law enforcement agencies, including the DOJ. *See* CFPB, *How We Use Complaint Data* (accessed on Sept. 30, 2017), https://www.consumerfinance.gov/complaint/data-use ("We share complaint data with state and federal agencies.").

[68] *See* 50 U.S.C. § 3937(a). The SCRA covers a variety of contractual obligations. Section 3937(a) establishes a cap on interest at six percent for debts incurred prior to an individual entering active duty military service.

[69] *See* 20 U.S.C § 1078(d).

Complaints from borrowers described a range of student loan servicing practices that appeared to impede them from accessing their right to the SCRA interest rate reduction.[70] One complaint from a military borrower described communication with his servicer regarding his struggle to invoke this right:

> *[Servicing personnel] are very unfamiliar with the difference between a reserve soldier that (receives orders to active duty status) compared to Active duty soldiers who can deploy anywhere in the world in 18hrs (who do not get these orders on your whim). We chose to serve our country in full active duty status in a time of war and don't appreciate the run- around that [servicer's] customer service gives continually.*

Informed by these and other complaints from military borrowers, in 2012, the CFPB Student Loan Ombudsman and Office for Servicemember Affairs released a report highlighting the range of problems servicemembers face when repaying their student loans.[71] The report documented how military borrowers described that servicers established unnecessary or incorrect requirements for borrowers pursuing SCRA interest rate protections,[72] improperly removed

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[70] *See* CFPB, *The Next Front? Student Loan Servicing and the Cost to Our Men and Women in Uniform* (Oct. 2012), https://www.consumerfinance.gov/data-research/research-reports/the-next-front-student-loan-servicing-and-the-cost-to-our-men-and-women-in-uniform-3.

[71] *See id.*

[72] *See id.* at 8 (documenting how servicemembers were incorrectly being told incorrectly that they must provide a letter from their commanding officer or "certified" orders in order to receive the interest-rate reduction to six percent. The report also showed officers being told to provide orders with an end date in order to receive the interest-rate reduction. Officers' orders usually do not have end dates – they are indefinite.).

SCRA protections from borrowers' loans prematurely, and placed borrowers in forbearance rather than applying SCRA protections to some borrowers' loans.[73]

Driven by initial observations suggesting that these challenges were widespread and systemic in nature, the Bureau shared these complaints with other federal regulators and law enforcement agencies.[74]

Bureau complaints lead to action by federal law enforcement agencies and regulators. In 2013, following referral by the Bureau, the DOJ and the FDIC began an investigation into the servicing practices of one large student loan company related to the application of SCRA protections to military borrowers' private and federal student loans.[75] The following year, DOJ entered into an order with the servicer and its former student loan servicing business unit.[76] The order provided $60 million in compensation for more than 77,000 servicemembers to address the companies' alleged pattern and practice of failing to properly apply protections under the SCRA to active duty military with private student loans, federal Direct Loans, and older federal loans made by banks and other private lenders.[77] At the same

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[73] *See supra* note 70 (documenting how servicers terminated the interest-rate reduction at the end of one year when the servicemember does not provide proof of continuing active-duty service - proof that is not required under the SCRA, and how servicers placed servicemembers in forbearance automatically when SCRA rights were invoked, rather than simply providing the requested interest-rate reduction).

[74] *See* U.S. Department of Justice, Justice Department Reaches $60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014), https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations- ("The department's investigation of Sallie Mae was the result of a referral of servicemember complaints from the CFPB's Office of Servicemember Affairs. . .").

[75] In 2013, Sallie Mae disclosed to shareholders that it was being investigated by the DOJ, FDIC, and CFPB. https://www.sec.gov/Archives/edgar/data/1032033/000119312513481234/d647469d8k.htm.

[76] In 2014, Sallie Mae separated into Sallie Mae Bank and Navient Corporation.

[77] *See* Consent Order, *U.S. v. Sallie Mae et. al.* (D. Del., May 2014), https://www.justice.gov/crt/about/hce/documents/salliesettle.pdf.

time, the FDIC entered into an order with these companies for violations of the SCRA, as well as the prohibition on unfair acts and practices under Section 5 of the FTC Act.[78]

Government agencies coordinate policy reform efforts to protect all current and future military borrowers. In 2014, following action by the DOJ and FDIC, the Department of Education issued SCRA guidance for federal student loan servicers that was informed by the issues identified by the Bureau and exposed in the DOJ and FDIC investigation.[79] This guidance instructed federal student loan servicers to regularly check for borrowers who are eligible for the SCRA interest rate reduction by using the Defense Manpower Data Center (DMDC) database and to proactively apply the protection for eligible borrowers.[80] In effect, the Department of

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[78] *See* FDIC, *FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act* (May 13, 2014), https://www.fdic.gov/news/news/press/2014/pr14033.html ("The FDIC determined that Sallie Mae violated federal laws regarding the treatment of servicemembers (SCRA and Section 5) through the following actions: Unfairly conditioning receipt of benefits under the SCRA upon requirements not found in the Act; Improperly advising servicemembers that they must be deployed to receive benefits under the SCRA; Failing to provide complete SCRA relief to servicemembers after having been put on notice of these borrowers' active duty status.").

[79] *See* U.S. Department of Education, *Improved Administration of the Servicemembers Civil Relief Act for Borrowers Under the William D. Ford Direct Loan and Federal Family Education Loan Programs*, GEN-14-16 (Aug. 25, 2014), https://ifap.ed.gov/dpcletters/GEN1416.html ("We have also been working with the U.S. Department of Justice and other federal agencies to find ways to ease the process for loan holders to confirm servicemembers' eligibility for the benefits of § 527 of the SCRA. As a result of those efforts, the Department has adopted new procedures for determining which borrowers are eligible for benefits under the SCRA and for what periods. The Department is implementing these procedures for the loans it holds and, in this letter, is authorizing FFEL lenders to adopt similar procedures. . . . [W]e have directed the Department's servicers to check the names of borrowers against the DMDC and to apply the interest rate limitation to the accounts of eligible borrowers without a request from the borrower."); *see also* 34 C.F.R § 682.208(j) (requiring FFELP loan holder to automatically determine military borrower eligibility for interest rate reductions pursuant to the SCRA as of July 1, 2016).

[80] *See* U.S. Department of Education, *Improved Administration of the Servicemembers Civil Relief Act for Borrowers Under the William D. Ford Direct Loan and Federal Family Education Loan Programs*, GEN-14-16 (Aug. 25, 2014), https://ifap.ed.gov/dpcletters/GEN1416.html.; *see also* U.S. Department of Education, *Retroactive Adjustments for Servicemembers Civil Relief Act (SCRA) from August 14, 2008*, FEN-16-20 (Nov. 15, 2016), https://ifap.ed.gov/dpcletters/GEN1620.html ("In April [2016], the Department directed its Federal loan servicers to expand the previous match of the DoD database for servicemembers and directed the servicers to

Education removed application requirements from military borrowers by developing an automated solution, thus ensuring all eligible servicemembers could benefit from this protection by placing the burden of identification, application, and invocation on servicers and loan holders, rather than on individual military borrowers.

This newly automated process for identifying borrowers eligible for interest rate reductions pursuant to the SCRA has dramatically increased the number of servicemembers receiving their SCRA protections. A recent audit by the Government Accountability Office (GAO) found that, as a result of policy changes that relieved eligible borrowers of the burden of applying for SCRA protections, the number of servicemembers benefiting from the SCRA interest rate cap grew from approximately 100 beneficiaries in 2008 to more than 100,000 in 2015.[81] By 2015, military borrowers were automatically saving more than $20 million in student loan interest charges each year.[82] Additionally, the Department of Education has announced that it would implement a process to identify all borrowers who were previously eligible for the rate cap on their federal student loans as far back as 2008.[83]

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match data for servicemembers who were in the servicer's loan portfolio on or after August 14, 2008. The Federal loan servicers have identified thousands of servicemembers in the Department's loan portfolio who entered active duty status on or after August 14, 2008. As the Department works to complete the identification of these servicemembers' active accounts to retroactively apply the SCRA interest rate limitation, we request that FFEL Program loan holders begin to do the same.").

[81] *See* GAO, *Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, GAO-17-4 (Nov. 16, 2016), https://www.gao.gov/products/GAO-17-4; *see also* U.S. Department of Education, Office of Inspector General, *Servicemembers Civil Relief Act* (Feb. 29, 2016), https://www2.ed.gov/about/offices/list/oig/misc/scrareport02292016.pdf.

[82] Estimates based on the Bureau's analysis of GAO, *Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, *supra* note 81; *see also* U.S. Department of Education, Office of Inspector General, *Servicemembers Civil Relief Act*, *supra* note 81.

[83] *See* U.S. Department of Education, *Secretary John King's responses to Questions for the Record from the U.S. Senate Committee on Health, Education, Labor and Pensions* (Feb. 26, 2016), https://www.help.senate.gov/download/king_responses ("I am pleased to report that we have initiated a process to conduct a data match and automatically provide credit for any service member who was on active duty since

Servicers voluntarily adopt automated administration of SCRA protections for private student loans. In 2015, following the announcement of new policies for administering SCRA interest rate protections for federal student loan borrowers, several private lenders and servicers voluntarily adopted the practice.[84] One government study found that following this change in private lenders' policies, the number of servicemembers who received the interest rate cap on at least one of their private student loans more than doubled, from 14,970 to 33,309.[85]

OPPORTUNITIES AND IMPLICATIONS

This example offers a roadmap for policymakers considering reforms to strengthen the implementation of a broad range of consumer protections available to student loan borrowers. As individual servicemembers with student debt first explained to the Bureau in 2012, an application process that requires proactive engagement from military borrowers coupled with manual handling by student loan servicers creates substantial risk for errors and makes it harder than necessary for servicemembers to invoke their rights.

Policymakers and market participants may find this example instructive as they consider steps to strengthen policies or practices where invocation of other benefits and protections depends on a similar process. This holds true for military borrowers, including those serving in "areas of hostility" and seeking to invoke their rights to a zero percent interest rate for post-2008 Direct

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federal student loans became eligible for the benefit. This would provide the benefit to any service member who was on active duty, going back to 2008, whether or not they had applied for the benefit.").

[84] *See supra* GAO, *Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, *supra* note 81.

[85] *See supra* GAO, *Oversight of Servicemembers' Interest Rate Cap Could Be Strengthened*, *supra* note 81.

Loans, and those veterans who have been rated 100 percent disabled by the Department of Veterans Affairs and who are entitled to loan forgiveness.[86]

This also holds true for their civilian counterparts, including those borrowers who may be eligible for payment relief,[87] interest rate reductions,[88] or loan forgiveness or discharge under a wide range of federal programs and protections.[89] In each of these instances, borrowers must self-identify their eligibility in order to invoke their rights and servicers rely on manual processing to apply benefits and protections to borrowers' accounts. This likely widens the gap between the total population of eligible beneficiaries for each of these protections and the segment of borrowers able to successfully invoke their rights. As the Bureau's research has noted in the past, it is often the most vulnerable student loan borrowers who fall through this gap.[90]

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[86] *See* 20 U.S.C. §§ 1087e(o) (providing for no accrual of interest for active duty servicemembers serving in an area of hostilities in which service qualifies for special pay), 1098d (permitting veterans with service-connected disabilities to have their federal student loans discharged). Under current law, discharge of student debt under the Total and Permanent Disability program may be treated as income for federal income tax purposes. Policymakers may wish to consider the tax treatment of discharged debt when evaluating opportunities to further automate this process.

[87] *See, e.g.*, 34 C.F.R. §§ 682.215 (defining IBR for FFELP borrowers); §685.209 (defining PAYE, ICR, and REPAYE for Direct Loan borrowers), §685.221 (defining IBR for Direct Loan borrowers).

[88] *See, e.g.*, 34 C.F.R. §§ 682.200, 685.211.

[89] *See, e.g.*, 20 U.S.C. § 1087(a) (authorizing disability discharge for FFELP loan borrowers), 34 C.F.R. §§ 682.215(f), 685.209(a)(6), (b)(3)(D), (c)(5)(iii)(A) (defining loan forgiveness requirements under IDR plans), 685.206(c) (providing borrowers with a defense to repayment of federal student loan in the event in situations where an act or omission by the school attended would give rise to a cause of action under applicable state law), 685.214 (providing for the discharge of borrowers' Direct Loans where the program of study could not be completed because the school closed), 685.219(d) (providing loan forgiveness for borrowers who make 120 qualified payments under the Public Service Loan Forgiveness program).

[90] *See, e.g.*, CFPB, *Too many student loan borrowers struggling, not enough benefiting from affordable repayment options* (August 2017), https://www.consumerfinance.gov/about-us/blog/too-many-student-loan-borrowers-struggling-not-enough-benefiting-affordable-repayment-options ("Lower debt borrowers—likely including many who did not complete college—do not appear to gain the full benefits of affordable payment plans. We saw that among borrowers with less than $20,000 in student debt, those who are not paying down their student loan debt

The coordinated interagency work to assist servicemembers described in the preceding example may offer insight as policymakers and market participants consider steps to assist other segments of borrowers who may also be denied or deterred from pursuing key programs and protections – particularly where automation could be used to close this gap. For example, the Bureau has repeatedly reported on barriers to affordable student loan payments, including for borrowers eligible for a zero dollar payment under an IDR plan.[91] The Bureau has also explored how the income recertification process can lead to payment shock, increased loan costs, and surprise delinquencies for IDR borrowers.[92] Following the Bureau's reporting on these topics, policymakers and industry both have looked to automation to address these problems by exploring options like multi-year income certification, automatic income verification using Internal Revenue Service (IRS) tax data, and automatic enrollment for borrowers with very low

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are three times more likely to be delinquent than to be in good standing. In total, fewer than 30 percent of these borrowers are in good standing after five years. This was generally true for earlier groups of these borrowers, as well as more recent ones, even as access to affordable payment plans expanded rapidly in recent years—suggesting many are not benefiting from these programs."); *see also* CFPB, *CFPB Data Point: Student Loan Repayment* (Aug. 16, 2017), https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-student-loan-repayment.

[91] *See, e.g.* CFPB, *2015 Annual Report of the CFPB Student Loan Ombudsman* (Oct. 16, 2015), http://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf ("Borrowers who attend for-profit colleges or two-year colleges make up 70 percent of all borrowers in default, according to one recent analysis. Yet the median debt burden and median wages of these borrowers suggest that the average borrower likely would qualify for a $0.00 or a substantially lower loan payment under an income-driven repayment plan.").

[92] *See CFPB, When you make student loan payments on an income-driven plan, you might be in for a payment shock* (August 2015), https://www.consumerfinance.gov/about-us/blog/when-you-make-student-loan-payments-on-an-income-driven-plan-you-might-be-in-for-a-payment-shock; *see also* CFPB, *Midyear update on student loan complaints* (Aug. 2016), files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf (reporting that student loan servicers may delay processing IDR applications and wrongfully reject borrowers seeking to enroll in IDR, resulting in increased interest charges and lost eligibility for certain federal benefits and protections); CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2016), http://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf ("Based on the formula to determine eligibility for a $5 rehabilitation payment, the vast majority of these borrowers [who were eligible for $5 rehabilitation payments] will also be entitled to make a $0 monthly IDR "payment" once they have cured their default.").

incomes as potential policy options to improve repayment success for borrowers experiencing financial hardship.[93] Some have suggested that automation may both better protect consumers and offer opportunities to the lower administrative costs of student loan servicing.[94]

Borrowers call for timely, actionable, and accurate information about how to access protections, providing an alternative path for reform as steps are considered to streamline repayment options

Even as policymakers pursue efforts to expand automatic application of certain protections, borrowers will continue to depend on customer service personnel to provide basic information about available options, respond to borrower inquiries, and, in the current system, manually process and evaluate applications for certain benefits and protections. Where borrowers are pursuing an affordable student loan payment for the first time, they may be particularly vulnerable in the absence of timely, actionable borrower communication and accurate processing by their servicer.

As the following example illustrates, for borrowers experiencing financial hardship, timely, actionable borrower communication and accurate manual processing can be the difference between immediate payment relief and delinquency. Processing applications for borrower protections is a core duty of student loan servicers and is a function on which millions of

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[93] Observers considering automation to address implementation challenges with regard to these protections or programs have also noted the importance of preserving consumer choice, particularly where enrollment in certain benefits or protections may have long term financial consequences for consumers. In particular, observers have noted the importance of preserving an avenue for consumers to "opt-out" of automatic IDR enrollment or recertification initiatives, especially where regular income-driven payments may result in greater lifetime interest charges for borrowers who enroll or significant tax consequences following loan forgiveness. *See, e.g.*, CFPB, *Student Loan Servicing* (Sept. 2015), https://www.consumerfinance.gov/data-research/research-reports/student-loan-servicing (analyzing comments from policymakers and industry related to student loan servicing practices).

[94] *See id.*; *see also* U.S. Department of Education, *Treasury and Education Announce Progress Toward Multi-Year Income Certification System for Student Loan Borrowers in Income-Driven Repayment Plans* (Jan. 17, 2017), https://www.ed.gov/news/press-releases/treasury-and-education-announce-progress-toward-multi-year-income-certification-system-student-loan-borrowers-income-driven-repayment-plans.

consumers rely each year as they apply for IDR, for a private student loan modification, or for many of the other rights a borrower may have under law or contract.

Individual complaints describe how servicing practices delay or deter access to federal protections, increasing borrowers' loan costs and frustration. In 2015 and 2016, individual borrowers with federal student loans submitted complaints to the Bureau describing servicing practices related to the process of applying for, and enrolling in, the wide range of affordable repayment options established under federal law. In particular, borrowers reported that student loan servicers denied IDR applications that may have been incomplete or missing required documentation – in some cases without communicating to the borrower that an application had been denied, the reason for denial, or whether the borrower had an opportunity to correct the application.

In August 2016, the CFPB Student Loan Ombudsman published a report describing a range of challenges borrowers encounter when pursuing their rights under the Higher Education Act to obtain an affordable monthly payment.[95] This report was informed by a series of consumer complaints that described a range of student loan repayment obstacles, including:

- **Unexpected or unnecessary application denials.** Borrowers reported being rejected because their application had missing information or because their servicer lost paperwork, without ever being notified by their servicer that their application was incomplete or being given a chance to fix the problem. Other borrowers reported being rejected simply for checking the wrong box on the application and not being given the opportunity to submit a corrected form. Consumers described how errors discourage

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[95] *See* CFPB, *Midyear update on student loan complaints: Income-driven repayment plan application issues* (Aug. 2016), http://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf.

them from restarting the application process, and how some borrowers chose to stop making payments, instead of remaining on the road to repayment.[96]

- **Repeated obstacles when re-applying for an income-driven payment.** Some borrowers who successfully enrolled in an IDR plan described how they re-encountered the same obstacles each year when they needed to certify their income and family size annually in order to keep an income-driven payment. These borrowers described how servicing practices related to "recertification," particularly processing delays and wrongful rejections, can drive substantial and unnecessary increased costs for borrowers.[97]

Taken together, these individual complaints offered insight into a part of the student loan repayment lifecycle that had, until that point, received minimal attention from policymakers, regulators, and law enforcement officials. Bureau Supervision then incorporated IDR application processing into its examination procedures, instructing Bureau examiners to include these processes during routine oversight of the largest student loan servicers.[98]

Bureau examiners cite illegal application processing practices by student loan servicers related to those practices identified in consumer complaints. In 2016, building on the issues identified in individual consumer complaints, CFPB examiners

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[96] *See id.*

[97] *See id.*

[98] In October 2016, the Bureau released updated Education Loan Examination Procedures. *See* CFPB, *CFPB Supervision Recovers $11 Million for 225,000 Harmed Consumers* (Oct. 31, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervision-recovers-11-million-225000-harmed-consumers (announcing updated Education Loan Examination Procedures, "These procedures build on the ongoing work by federal agencies and regulators to strengthen student loan servicing practices, and note that servicers' adherence to Department of Education contracts and regulations may figure into Bureau compliance reviews. They also provide a roadmap for state and local partners implementing student loan servicing examination programs.").

determined that one or more servicers were engaging in the unfair practice of denying, or failing to approve, IDR applications that should have been approved on a regular basis.[99]

Bureau Supervision periodically publishes "Supervisory Highlights" reports to share key examination findings in order to help industry limit risks to consumers and comply with federal consumer financial law.[100] In the Fall 2016 edition of Supervisory Highlights, Bureau Supervision noted that "when servicers fail to approve valid IDR applications, borrowers can be injured by having to make higher payments, losing months that would count towards loan forgiveness, or being subjected to unnecessary interest capitalization."[101] This report indicated that examiners directed one or more servicers to "remedy borrowers who were improperly denied, and significantly enhance policies and procedures to promptly follow up with consumers who submit applications that are incomplete, prioritize applications that are approaching recertification deadlines, and implement a monitoring program to rigorously verify the accuracy of IDR application decisions."[102]

Policymakers take action to strengthen contracts with servicers and improve borrower access to critical protections. In 2016, the Department of Education's Office of Federal Student Aid (FSA) responded to concerns related to IDR application processing by strengthening its contractual requirements for servicers handling federal student loans held by

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[99] *See* CFPB, *Supervisory Highlights Issue 13: Fall 2016* (Oct. 2016), http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf.

[100] *See generally* CFPB, *Supervisory Highlights* (accessed Oct. 6, 2017), https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-highlights.

[101] CFPB, *Supervisory Highlights Issue 13: Fall 2016* (Oct. 2016), http://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf.

[102] *Id.*

the federal government.[103] Through this action, servicers are required to proactively communicate with student loan borrowers who submit an incomplete IDR application and, consequently, servicers are prohibited from summarily denying these applications. As a result of FSA's reforms, student loan borrowers are protected from certain kinds of improper IDR denials and have greater insight into the IDR application review process. These revisions protected borrowers from many of the practices initially identified by individual consumers in complaints submitted to the Bureau. Directing servicers to provide timely, actionable information about the status of borrowers' IDR applications helps borrowers who are applying for an affordable payment for the first time, as well as those seeking to maintain a payment based on their income.

OPPORTUNITIES AND IMPLICATIONS

The borrower complaints about difficulties encountered when applying for and getting into IDR show that when the burden is on borrowers, rather than their servicers, to navigate a wide array of complex options or paperwork requirements without adequate information, borrowers may fall through the cracks.[104] Further, this example shows how robust, borrower-friendly servicing requirements, including requirements that servicers provide timely, accurate, and actionable information, can empower borrowers to navigate application or paperwork requirements and get on track when seeking to invoke their rights to key protections.

In 2016, the Bureau sought to build on this insight when partnering with the Department of Education to develop and refine a series of personalized prototype disclosures for borrowers

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[103] *See* U.S. Department of Education, *FSA Training Conference for Financial Aid Professionals: Servicing Update* (2016), http://fsaconferences.ed.gov/conferences/library/2016/2016FSAConfSession14.ppt (and accompanying audio, available at http://fsaconferences.ed.gov/2016sessions.html).

[104] *See* CFPB, *Too many student loan borrowers struggling, not enough benefiting from affordable repayment options* (Aug. 16, 2017), https://www.consumerfinance.gov/about-us/blog/too-many-student-loan-borrowers-struggling-not-enough-benefiting-affordable-repayment-options.

repaying federal student loans.[105] Consumers who provided feedback to the Bureau on this disclosure project, including borrowers who self-identified as experiencing financial distress, strongly preferred simplified, plain language written communications about available repayment options that, to the maximum extent possible, were personalized to reflect borrowers' individual financial circumstances.[106] The Bureau observed that borrowers could better describe their repayment rights and options – even where the universe of available options was complex – when the information presented was simple, easy to understand, actionable, and personalized, and where written communications employ the principles of user-centered design.[107]

These key insights may also assist government agencies seeking to address the proliferation of predatory student loan "debt relief" companies. In many cases, consumers pay high up-front or recurring fees in exchange for "debt relief" that may prove illusory, or may solely stem from enrollment in IDR options otherwise available for free to these borrowers.[108] Strengthened

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[105] *See* CFPB, *CFPB Unveils Student Loan 'Payback Playbook' to Provide Borrowers With Personalized Snapshot of Repayment Options* (Apr. 28, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-unveils-student-loan-payback-playbook-provide-borrowers-personalized-snapshot-repayment-options; *see also* U.S. Department of Education, *A New Vision for Serving Student Loan Borrowers* (Apr. 4, 2016), https://blog.ed.gov/2016/04/a-new-vision-for-serving-student-loan-borrowers.

[106] *See* CFPB, *Letter to Under Secretary Ted Mitchell from CFPB Student Loan Ombudsman Seth Frotman Regarding the Revised Payback Playbook Transmittal* (Jan. 13, 2017), http://files.consumerfinance.gov/f/documents/201701_cfpb_payback-playbook-cover-letter-education-undersecretary-mitchell.pdf.

[107] *Id.*

[108] *See* CFPB, *Student Loan Servicing* (2015) http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf ("As discussed previously, federal student loans are unique relative to other consumer financial products in that borrowers have a legal right to a monthly payment driven by their income . . . commenters suggest that awareness of these protections among borrowers who could potentially benefit is limited, making borrowers in distress particularly susceptible to marketing by these debt relief companies. Limited awareness also raises questions about whether outreach and information provided by student loan servicers is sufficient to ensure borrowers are readily able to access these consumer protections.").

individual borrower communications related to the availability of IDR and other free federal programs that provide payment relief, particularly when targeted to borrowers experiencing financial distress, may offer government agencies an opportunity to assist consumers who would otherwise fall victim to scams.

As noted above, consumers depend on servicers to handle applications for a broad range of benefits and protections, including affordable repayment options, loan forgiveness programs, loan discharge in the event of total and permanent disability, and cosigner release benefits for private student loans. A broad segment of student loan borrowers may benefit from timely and actionable borrower communication and accurate processing under a range of analogous circumstances in the student loan repayment lifecycle. For example, borrowers in default could use well-designed information to make informed choices between options to get back on track with repayment.[109] Similarly, certain Social Security beneficiaries and military veterans could receive actionable and personalized information necessary to invoke their rights to loan discharge if they are totally and permanently disabled.[110]

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[109] In 2016, the Bureau conducted a series of structured interviews with individual student loan borrowers, as part of the iterative user testing process related to a proposed personalized student loan repayment disclosure. These interviews offered additional evidence that borrowers experiencing financial distress may benefit from high-quality servicing, including personalized, proactive outreach by student loan servicers to assist borrowers who may be unable to afford their student loan payment. *See* Fors Marsh Group, *Qualitative Testing of Prototype Student Loan Disclosure: Prepared for the Consumer Financial Protection Bureau* (Nov. 30, 2016), http://files.consumerfinance.gov/f/documents/201701_cfpb_payback-playbook-user-testing-summary.pdf.

[110] *See* CFPB, *Understand your options: Tips for student loan borrowers with disabilities* (Sept. 20, 2017), https://www.consumerfinance.gov/about-us/blog/understand-your-options-tips-student-loan-borrowers-disabilities. In 2016, the Department of Education, in coordination with the Social Security Administration (SSA), took steps to match student loan borrowers with federal Direct Loans against a database of social security beneficiaries who have been identified by SSA as meeting the Department of Education's eligibility criteria for loan discharge. These borrowers were automatically provided with notices describing how to access this protection, but, due to concerns about the tax consequences of the cancellation of debt, were required to "opt-in" to discharge their debt. Should concerns about the tax consequences of loan discharge become no longer relevant, these borrowers would benefit most from automatic matching and loan discharge. However, under the current system, these

As policymakers consider how strengthened servicing practices can complement the automation-driven reforms described in the SCRA example above, this illustration offers a roadmap to enhance the delivery of timely, accurate, actionable information and improve customer service. Servicers are best-positioned to understand the range of options available to individual borrowers, and the specific actions necessary for borrowers to invoke their rights under federal law or their private loan contract. The preceding example may also be instructive before considering steps to "streamline" repayment assistance options by limiting the range of benefits and protections available to consumers with student debt. Clear, plain language disclosures and "just-in-time" communication about available and applicable options can simplify the presentation of information and strengthen the student loan repayment process.

Private student loan complaints identify little-known servicing practice; Bureau takes action and private lenders shift away from enabling harmful practice

The following example seeks to illustrate where borrower complaints can expose an industry practice that harms consumers and that may not serve an essential market function. It also shows circumstances where standard industry practices drive an outcome that is not in the economic interest of lenders, loan holders, or borrowers.[111] In this example, individual

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borrowers would benefit from incremental improvements to borrower communications and strengthened manual processing.

[111] In many circumstances, private student lenders may elect to sell loans to investors following origination, including circumstances where a lender or loan holder may choose to package these loans into securities and sell bonds backed by these loans to bondholders. In these circumstances, the lender may no longer have a business relationship with the borrower and a student loan servicer may be servicing and collecting on a loan on behalf of a trust with no day-to-day operational role in the repayment process. As the Bureau has discussed in prior publications, this structure may lead to circumstances where servicers' economic incentives may not align with those of loan holders or borrowers – potentially leading to unnecessary borrower distress. *See, e.g.*, CFPB, *Mid-Year Update on Student Loan Complaints* (June 2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf ("However, once the loan is sold or securitized, the contractual arrangements and incentive structures can create the conditions for servicers to limit their discretion and enforce the provisions – even if it is not in the long-term interest of the bondholders – unless servicers are sufficiently

consumer submitted complaints about a private student loan "auto default." Subsequently, Bureau Supervision scrutinized the practice, and ultimately the largest private lenders largely abandoned this practice. As discussed further below, this example illustrates how complaints and robust oversight can inform the market, and market participants can move to mitigate risk of unanticipated borrower harm through consumer-driven reforms to product features.[112]

Borrowers complain about a little-known practice that drives private student loan defaults. Private student loan promissory notes often contain a "Whole Loan Due" clause. Prior to the 2016-2017 academic year, this clause frequently included a provision that had been interpreted by some in the student loan industry to permit the loan holder to immediately accelerate the loan into default upon the death of, or a bankruptcy filing by, a cosigner. In effect, for some borrowers with cosigned private student loans who were current on their payments, if a cosigner died or filed for bankruptcy, a student loan servicer would immediately demand that the borrower repay the full outstanding balance of the loan. This process was known as a student loan auto-default.[113] This provision caused borrowers with cosigned loans to be called into default even when these borrowers had been making their monthly payments on time and

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indemnified."); *see also* CFPB, *2015 Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2015), http://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf. ("The fixed fee structure may create an economic disincentive to address borrower distress since compensation remains fixed irrespective of the services a borrower needs in a given month and the servicer will likely incur unreimbursed costs when seeking to mitigate default.").

[112] In October 2015, the U.S. Department of Education called on Congress to prohibit the practice of "auto-defaulting" borrowers with private student loans. *See* U.S. Department of Education, *Strengthening the Student Loan System to Better Protect All Borrowers* (Oct. 2015), http://www2.ed.gov/documents/press-releases/strengthening-student-loan-system.pdf.

[113] Many consumer loan contracts or promissory notes contain provisions interpreted to permit the loan holder to accelerate a loan balance under certain circumstances – known as an "acceleration clause" or "whole loan due clause" – demanding payment-in-full for the outstanding debt. Typically, these provisions are exercised in the event of nonpayment, triggering circumstances where a loan holder may seek to recover an outstanding debt through debt collection or by seeking a garnishment order from a court. However, where a private student loan is cosigned—a feature of more than 90 percent of all recent private student loans—consumer complaints submitted to the Bureau described surprise at a specific type of loan default following the death or bankruptcy of their loan cosigner, even when the loan is current and being paid on time.

in full. One private student loan borrower described grieving for the loss of his recently deceased father, while struggling to navigate this process, explaining:

> *[A] little over a month ago my father passed away unexpectedly. He was the co-signer of a couple of my student loans . . . I haven't missed a payment on any of my loans in 3-4 years at this point. I got a call yesterday . . . alerting me that one of my loans that was co-signed by my father was referred to [a third party debt collector] and that they were responsible for collecting . . . [the remaining balance] that was left. . . . They referred this loan to a debt collector when nothing was wrong!! . . . This is completely uncalled for, and something that should not have happened. I am at risk of hurting my credit score for something completely out of my control.*

Between 2012 and 2014, the Bureau received a series of complaints against multiple lenders and servicers describing similar outcomes.[114] Borrowers reported that after the death of a parent, lenders would send condolence notices followed by collection notices. Borrowers also described facing bureaucratic barriers to releasing cosigners from their loans, a commonly advertised benefit that could have helped some borrowers avoid these auto-defaults.

Report by the CFPB Student Loan Ombudsman highlights complaints, raising awareness of auto-default after the death of or bankruptcy by a cosigner. The Bureau's Student Loan Ombudsman sought to highlight the range of problems related to auto-defaults as described in complaints by individual private student loan borrowers.[115] For example, the report detailed how, even when borrowers successfully made months or years of on-time payments, they reported receiving demands from debt collectors for the full balance of

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[114] *See* U.S. Department of Education, *Secretary John King's responses to Questions for the Record from the U.S. Senate Committee on Health, Education, Labor and Pensions* (Feb. 26, 2016), https://www.help.senate.gov/download/king_responses.

[115] *See* CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 16, 2014), https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2014.

their private student loans following the death of, or a bankruptcy filing by, a cosigner. The report also explained how lenders obtained information about cosigners' deaths and bankruptcy filings,[116] and detailed how the credit reporting of the auto-defaulted loans had ramifications across these borrowers' personal finances.[117]

Bureau examiners scrutinize these industry practices, identifying illegal practices at one or more student loan servicers. Following publication of the Student Loan Ombudsman's report, Bureau Supervision included in its Winter 2016 edition of *Supervisory Highlights* a detailed description of a set of circumstances where examiners halted illegal auto-defaults at one or more student loan servicers.[118] Bureau Supervision reported that examiners found that one or more student loan servicers were engaged in the unfair practice of auto-defaulting borrowers when the cosigner filed for bankruptcy.[119] Bureau examiners determined "the practice of auto-defaulting private student loan borrowers to be unfair in cases where the where the 'Whole Loan Due' clause was ambiguous on this point because reasonable consumers would not likely interpret the promissory notes to allow their own default based on a [cosigners'] bankruptcy."[120] The Supervisory Highlights also reported that examiners found that one or more servicers did not notify either borrower or the cosigner that the loan was placed in default.[121]

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[116] These auto-defaults may be occurring when data from probate and other court record scans are matched with a financial institution's customer database, without regard to whether the borrower is in good standing.

[117] These defaults are also typically reported to credit bureaus and negatively impact the credit profile of a borrower.

[118] *See* CFPB, *Supervisory Highlights: Issue 10, Winter 2016* (Mar. 2016), https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-winter-2016/.

[119] *See id.*

[120] *See id.*

[121] *Id.* ("Examiners determined that one or more servicers engaged in an unfair practice in violation of the Dodd-Frank Act relating to auto-default. When a private student loan had a borrower and a cosigner, one or more servicers would auto-default both borrower and cosigner if either filed for bankruptcy. These auto-defaults were unfair where the whole loan due clause was ambiguous on this point because reasonable consumers would not

Some consumers only learned that a servicer placed their loan in a default status when they identified adverse information on their consumer reports, the servicer stopped accepting loan payments, or they were contacted by a debt collector.[122]

Industry participants voluntarily improve the repayment process for student loan borrowers. Following publication of the Bureau's initial report on this topic, the largest private student lenders informed the Bureau that they had halted auto-defaults in their own portfolios, explaining that the practice of calling into default a performing loan did not make sound financial sense for loan holders. However, lenders continued to include contract terms that could permit these practices in the future, either by the lenders themselves or by future loan holders.[123] During this period, the Bureau continued to receive complaints from consumers who had encountered auto-defaults, typically where loans had been securitized and sold to investors after origination.[124]

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likely interpret the promissory notes to allow their own default based on a co-debtor's bankruptcy. Further, one or more servicers did not notify either co-debtor that the loan was placed in default. Some consumers only learned that a servicer placed the loan in a default status when they identified adverse information on their consumer reports, the servicer stopped accepting loan payments, or they were contacted by a debt collector. Supervision directed one or more servicers to immediately cease this practice. Additionally, since the CFPB's April 2014 report first highlighted auto-defaults as a concern, some companies have voluntarily ceased the practice.").

[122] *See id.*

[123] CFPB, *CFPB Student Loan Ombudsman's Mid-Year Update on Student Loan Complaints* (June 2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf ("Subsequent to last year's report, we asked certain market participants about current industry practices and policies related to co-signed private student loans. We received six responses to the information request from respondents representing many corporate forms, including large depository institutions and third-parties servicing loans held by banks or in a securitized pool.").

[124] In 2015, a subsequent report by the CFPB Student Loan Ombudsman described how these practices persist where loans are held in trust and serviced by nonbank student loan servicers that have no business relationship with the original private student lender. *See* CFPB, *Mid-Year Update on Student Loan Complaints* (June 2015), https://www.consumerfinance.gov/data-research/research-reports/2015-mid-year-update-on-student-loan-complaints ("For example, if the originating private student lender includes clauses that it interprets as permitting an auto-default in the case of co-signer death even when a loan is current, the lender might make a business

Contemporaneous with the publication of the Bureau supervisory findings, the Student Loan Ombudsman highlighted the issue of auto-defaults in remarks to the Consumers Bankers Association.[125]

> *Many banks and other lenders have told the Bureau that they do not plan to auto-default borrowers—that, in effect, this practice is not or is no longer a problem for their customers. This promise is of little solace to the student loan borrowers who, because their loans have been securitized and sold, find themselves in default when their co-signer parent or grandparent dies. . . . By introducing uncertainty, these clauses may also impede a well-functioning student loan servicing marketplace. If you believe that defaulting a borrower who is otherwise paying off her loans makes bad business sense, then the clauses that allow this practice should not be a contractual obligation for your customers.*

Over the following six months, individual private student lenders informed the Bureau that they had removed contract provisions that could be interpreted to permit auto-defaults from all new private student loans. In October 2016, the Consumer Bankers Association further informed the Bureau that its members, including the nation's largest private student lenders, had modified provisions in their loan contracts that could be interpreted to permit auto-defaults.[126] In effect,

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decision to refrain from enforcing the provision, but only if the loan is held by the lender. However, once the loan is sold or securitized, the contractual arrangements and incentive structures can create the conditions for servicers to limit their discretion and enforce the provisions – even if it is not in the long-term interest of the bondholders – unless servicers are sufficiently indemnified.").

[125] In particular, these remarks reinforced concerns about how these practices may persist when loans are sold, where loan contracts may be interpreted by a future holder to permit this practice. *See also* CFPB, *CFPB Student Loan Ombudsman's Mid-Year Update on Student Loan Complaints* (June 2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf.

[126] *See* CFPB, *Prepared Remarks of CFPB Director Richard Cordray at the Consumer Advisory Board Meeting* (Oct. 27, 2016), https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-consumer-advisory-board-meeting ("I am pleased to be able to share a communication I received last week from the Consumer Bankers Association, written on behalf of the nation's largest private student lenders. They

lenders had removed any avenue in which a current or future lender or servicer could demand full payment on a performing loan due to the death of, or bankruptcy filing by, a cosigner for these new borrowers. Without these provisions, new borrowers with these private student loans do not have to worry about auto-default after the death of, or bankruptcy filing by, a cosigner.

OPPORTUNITIES AND IMPLICATIONS

This example demonstrates that, where standard industry practices may drive outcomes that are not in the financial interests of borrowers or loan holders, individual consumer complaints can raise awareness, focus oversight, and lead the student loan industry to reassess a practice. In this case, the response by the largest private student lenders eliminated a practice identified by borrowers as harmful, and that may also have been contrary to the industry's own economic interests.

Consumer complaints from borrowers with private student loans have identified a range of other practices that may be harmful to consumers and may not be in the economic interest of noteholders or lenders, such that a change in industry practice may also present an opportunity for a similar "win-win." In particular, access to a modification of loan terms under certain circumstances may offer private student loan borrowers experiencing financial hardship the opportunity to successfully repay their debts, thereby avoiding a loan default that is costly for both borrowers and loan holders.[127]

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informed the Bureau that these banks have now taken further action by ensuring that their new loan contracts do "not provide a basis for accelerating or placing a good-standing loan in default" upon the death or bankruptcy of a co-signer. This means that even when these new loans are sold or securitized, the terms of the loans will protect borrowers from these harmful practices in the future."). In the 2016-2017 academic year, the six largest private lenders originated more than $7.8 billion in private student loans. *See* MeasureOne, *Private Student Loan Report* (Q1 2017), https://www.measureone.com/psl.php.

[127] For further discussion, see Board of Governors of the Federal Reserve System, *Testimony of Todd Vermilyea, Senior Associate Director, Division of Banking Supervision and Regulation before the Senate Committee on Banking, Housing and Urban Affairs* (June 2013), https://www.federalreserve.gov/newsevents/testimony/vermilyea20130625a.htm ("When conducted in a prudent

This holds true for borrowers experiencing financial hardship and may also hold true for borrowers who become disabled and may default on a private student loan where there is no flexibility in repayment terms. Some lenders have developed disability discharge or modification programs when private student loan borrowers become disabled—either driven by the same economic incentives that have led other lenders to expand modification options, or, in the case of loan discharge, potentially seeking to mitigate headline or reputational risks stemming from collections against disabled borrowers. However, the Bureau continues to receive complaints suggesting that these options may not be widely available or well understood.

As policymakers consider future action that may provide an increased role for private student lending, this illustration also reveals how the complex nature of the private student loan market can lead to misaligned economic incentives and outcomes that may cause significant harm to student loan borrowers.

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In each of the preceding examples, individual consumer complaints led to increased scrutiny by a regulator or law enforcement agency with the authority, tools, and will to take action on these borrowers' behalf, after these complaints were highlighted by the CFPB Student Loan Ombudsman. In each of these examples, a broader segment of borrowers benefited from a policy or market shift that halted harmful practices and improved the customer experience. Taken together, these examples offer policymakers a roadmap for how to obtain and use the experiences of borrowers as reported in complaints to identify a problem, and to encourage

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manner, modifications of problem loans, including student loans, are generally in the best interest of both the institution and the borrower, and can lead to better loan performance, increased recoveries, and reduced credit risk."); *see also* Federal Financial Institution Examination Council, *Guidance on Private Student Loans with Graduated Repayment Terms at Loan Origination* (Feb. 2, 2015), https://www.fdic.gov/news/news/financial/2015/fil15006.html; CFPB, *Student Loan Affordability* (May 8, 2013); http://files.consumerfinance.gov/f/201305_cfpb_rfi-report_student-loans.pdf; CFPB, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2014), https://www.consumerfinance.gov/data-research/research-reports/annual-report-of-the-cfpb-student-loan-ombudsman-2014.

action and reform in the student loan market. This approach mitigates borrower distress and drives better outcomes over the long-term.

4. Recommendations

Policymakers and market participants may wish to consider the following recommendations to address the specific issues identified in this report.

Student loan borrowers benefit from robust, coordinated, and consumer-driven oversight of the student loan industry by federal and state agencies.

In each of the preceding examples, the regulators and law enforcement agencies responsible for providing oversight over student loan companies used consumer complaints to inform and shape this oversight. These consumer complaints revealed systemic issues that informed supervisory and enforcement actions that ultimately ended harmful industry practices and halted violations of law across the student loan industry. Subsequently, policy changes and market shifts led to protections for a broader segment of student loan borrowers.

FIGURE 10: BORROWERS BENEFIT WHEN COMPLAINTS INFORM CONSUMER-DRIVEN OVERSIGHT

Consumer-driven oversight sits at the nexus between consumer complaints and systemic reform. Borrowers benefit from five key features of this process, each of which depends on specific actions by agencies responsible for oversight. Borrowers benefit when 1) they are empowered to submit complaints to agencies with supervisory and/or enforcement authority; 2) servicers are subject to routine examinations informed by information about the experiences of borrowers; 3) agencies responsible for oversight have the necessary tools and authority to take

action to halt harmful practices; 4) agencies share critical information about problems and practices across the community of government entities responsible for oversight, regulation, and law enforcement in this market; and 5) public policy is shaped by information identified through this oversight.

Consumers benefit when the student loan industry is subject to coordinated oversight by regulators at both the federal and state levels. As the Bureau has noted in the past, a robust state-federal partnership offers tangible benefits to student loan borrowers by providing rigorous oversight in every corner of the student loan servicing market, both through analysis of data leading to recommendations for better practices, and where the knowledge and insights from oversight inform federal and state policymaking.[128]

Student loan borrowers would benefit from standards to strengthen servicing practices for the servicing of all student loans and to have servicers held accountable for meeting these standards.

For more than five years, the Bureau has worked with federal and state agencies, law enforcement officials, and other stakeholders to assist individual borrowers and to address a wide range of harmful or illegal practices in the $1.4 trillion student loan market.[129] In conjunction with this work, the Bureau has also documented how student loan borrowers would be well served by industrywide standards for quality service that cover all types of student

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[128] *See* CFPB, *Prepared Remarks of Seth Frotman Before the California State Senate Banking and Financial Institution Committee* (Mar. 22, 2017), http://files.consumerfinance.gov/f/documents/201703_cfpb_Frotman-Testimony-CA-Senate-Banking-Committee.pdf; *see also* State of Connecticut Department of Banking, *Response to CFPB Request for Information on Student Loan Servicing* (July 13, 2015), https://www.regulations.gov/document?D=CFPB-2015-0021-0381.

[129] *See* Section three.

loans.[130] Policymakers, regulators, and law enforcement officials seeking to improve the student loan repayment process may draw on the approaches outlined above when seeking to set and strengthen practices. As the examples in the prior section of this report illustrate, borrowers benefit when servicing reforms reflect their experiences and address with precision the discrete obstacles identified across the student loan repayment process. Standards to strengthen servicing practices, particularly where servicers provide timely, actionable communications related to available repayment options, may also empower vulnerable borrowers to avoid third-party "debt relief" scams.

FIGURE 11: BORROWERS BENEFIT WHEN REFORMS ARE SHAPED BY BORROWERS' EXPERIENCES

To this end, as policymakers consider efforts to reform the student loan repayment process, borrowers would benefit from industrywide standards to strengthen servicing practices and rigorous oversight for meeting these standards. If and when servicers fall short, borrowers, regulators, and law enforcement officials should have access to appropriate channels for recourse.

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Section two of this report describes a range of servicing and collections practices reported by consumers that continue to cause student debt stress and may increase the cost of student loan

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[130] *See* CFPB, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

repayment or drive borrowers into default. Section three of this report offers examples of how a series of student loan complaints identifying similar patterns about specific experiences, issues, or problems led to action to improve student loan repayment for a broader segment of consumers, offering policymakers and market participants an effective roadmap to enact necessary reforms.

It is clear that there is still much work to be done to improve the student loan system for millions of borrowers. Industrywide standards to strengthen servicing practices, coupled with robust oversight across federal and state agencies, can help to shape a student loan repayment process that meets borrowers' needs by ensuring that borrowers are treated fairly, that they can access the benefits and protections guaranteed under law or contract, and that they can successfully satisfy their student debt.

5. Contact information

To reach the CFPB's Student Loan Ombudsman:

By phone (844) 611-4260

By email students@cfpb.gov

By mail Consumer Financial Protection Bureau
Attn: Seth Frotman
1700 G Street NW
Washington, DC 20552

To submit a complaint:

Online consumerfinance.gov/complaint

By phone 180+ languages, M-F 8am-8pm EST
Toll-Free: (855) 411-CFPB (2372)
TTY/TDD: (855) 729-CFPB (2372)

By mail Consumer Financial Protection Bureau
PO Box 2900
Clinton, Iowa 52733

By fax (855) 237-2392

Press and media requests:

By email press@consumerfinance.gov

Congressional inquiries:

By phone (202) 435-7960

Consumer Financial Protection Bureau

1700 G Street NW, Washington, DC 20552

August 11, 2017

I have approved, but give it more careful reads. Sample edits noted on pp 3-6 + 41. Also, when did the "Office for Students" change its name? I was unaware that it is now also adding "and Young Consumers" (see cover) or perhaps "and Young Americans" (see p. 41). Not sure that is wise or desirable — doesn't Students now come in all ages? And affected co-signers and co-borrowers? Let me know more about that before we make a change please. Thx RC

Recommendation Memorandum for the Director

FROM	Seth Frotman (b)(6) Assistant Director, CEE – Students Moira Vahey, Project Catalyst
THROUGH	Gail Hillebrand, Associate Director, CEE
SUBJECT	*Third-party student loan repayment programs*

Recommendation(s)

We recommend that the Bureau publish the attached report on third-party student loan repayment programs ("Innovation highlight: Emerging student loan repayment assistance programs") on or about August 15, 2017. This report will highlight common features of these programs, discuss the benefits of these initiatives for student loan borrowers, and outline potential obstacles to innovation, including helping to ensure consumer access to repayment benefits and certain student loan servicing breakdowns that may reduce benefits for consumers.

If YOU approve publication of this report (Tab 1), we plan release this report with a press release on or about August 15th, paired with a Data Point on student debt issued by the Office of Research.

The attached version has addressed most of the reconciled comments received during clearance, but additional minor revisions may take place between this version and publication, subject to review and approval by Seth Frotman and Gail Hillebrand as well as the Project Catalyst team.

Background and overview: Third-party student loan repayment programs

In the 2015 Mid-Year Update on Student Loan Complaints, the Bureau first documented difficulties consumers experience when student loan servicers do not have processes in place to facilitate simple, accurate, and timely payments from third-parties when borrowers seek to refinance their student loans. Since then, a growing number of public and private sector actors, including financial technology companies, financial institutions, employers, and state governments, have launched a range of new initiatives to help student loan borrowers manage

and pay down their student loan debt. Borrowers participating in these new initiatives are also dependent on the timely, accurate handling of third-party payments by student loan servicers. Outreach and review of complaints suggests continued servicing problems in this market segment, similar to those identified by the Bureau in 2015 related to student loan refinance.

To further explore these concerns, the Bureau hosted a series of discussions with private- and public-sector actors that offer, administer, or receive payments made under student loan repayments programs, including fintech companies, banks, nonbank student loan servicers, large and small employers, and not-for-profit student finance companies, in order to learn more about challenges when making or handling payments sent on behalf of student loan borrowers. The discussions were convened jointly by the Office for Students and Young Consumers, CLRC Markets, and Project Catalyst.

On or about August 8, 2017, the Office for Students and Young Consumers and Project Catalyst plan to publish *Innovation highlight: Third-party student loan repayment programs,* providing the public with an analysis of common themes identified in these discussions with industry, and documenting as well as themes from complaints submitted to the Bureau by individual student loan borrowers. The report also includes a brief discussion and recommendations to address these issues.

The report will be released with a press release and paired with a Data Point on student debt issued by the Office of Research.

Next Steps

Project Catalyst, the Office for Students, and CLRC Markets hosted a joint "Office Hours" in San Francisco on August 8th to meet with financial technology and other companies working on a range of student finance issues, including third party student loan repayment programs. These offices will continue to engage with these and other companies in this market, to further explore these issues and identify opportunities to improve service for consumers.

Attachments

Tab 1: Decision Memo - Third-party student loan repayment programs
Tab 2: *Innovation highlight: Emerging student loan repayment assistance programs*

Recommendation Memorandum for Decision Clearance Sheet

Subject/Document Title ***Innovation highlight: Emerging student loan repayment assistance programs***		
Name of Document Owner **Mike Pierce**	Office **Students**	Telephone Extension (b)(6)
Approved by (name of Associate or Assistant Director) **Gail Hillebrand**		
Legal Division	Name of Clearer Martha Fulford	Date 7/20/2017
Office **RMR**	Name of Clearer Pat Scherschel, Vanessa Megaw, Lisa Cole, Nora Rigby, Tom Conkling, Tom Oscherwitz	Date 7/20/2017
Office **EA**	Name of Clearer Jeff Swartz, David Mayorga	Date 7/20/2017
Office **SEFL**	Name of Clearer Veronica Spicer, Allison Brown, Pax Tirell	Date 7/20/2017
Office **Consumer Response**	Name of Clearer Marta Pineda	Date 7/20/2017
Office **CEE**	Name of Clearer Gail Hillebrand, Seth Frotman, Rich Williams	Date 7/20/2017
Office **Catalyst**	Name of Clearer Mo Vahey, Dan Quan	Date 7/20/2017
Office **DO**	Name of Clearer Brian Shearer	Date 7/20/2017

1700 G Street NW, Washington, DC 20552

Decision Memorandum from the Director

FROM	Richard Cordray
TO	Seth Frotman
SUBJECT	*Third-party student loan repayment programs*

I approve publication of a joint Project Catalyst-Office for Students report on third-party student loan repayment programs ("*Innovation highlight: Emerging student loan repayment assistance programs*").

____________________________________ ________________________

Richard Cordray
Director
Consumer Financial Protection Bureau

Date

August 2017

Innovation highlights: Emerging student loan repayment assistance programs

Office for Students and Young Consumers

&

Project Catalyst

Consumer Financial Protection Bureau

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1. Introduction

Over the last decade, the amount of outstanding student loan debt has nearly tripled.[1] Today, more than 44 million Americans collectively owe more than $1.4 trillion in student debt.[2] Rising debt can be a roadblock to a full financial life for many consumers, creating significant financial stress, especially for those struggling to repay.

Significant debt can have a domino effect on major choices throughout a consumer's life, such as the decision whether to take a particular job, to move, to buy a home, and more. For many, student debt can lead to financial hardship, and for some, make traditional milestones in life

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[1] In 2016, federal student loan borrowers, on average, owed more than $30,000 in federal student loan debt—up from less than $19,000 in 2007. Student loan debt, driven by soaring college costs, now makes up 10.6 percent of total household debt, up from 5 percent in the third quarter of 2008. *See* Fed. Res. Bank of NY (FRBNY), *2016 Student Loan Update* (2016), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/xls/sl_update_ 016; Fed. Res. Board, *Consumer Credit* (Jan. 2017), https://www.federalreserve.gov/releases/g19/current/; Fed. Res. Board, *Historical Data: Consumer Credit Outstanding (Levels)* (accessed Mar. 7, 2017), https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html; For further discussion, see Consumer Financial Protection Bureau, 2016 Annual Report of the CFPB Student Loan Ombudsman (October 2016).

[2] For further discussion, see Consumer Financial Protection Bureau, *Prepared Remarks of Seth Frotman Before the California State Senate Banking and Financial Institutions Committee* (2017), http://files.consumerfinance.gov/f/documents/201703_cfpb_Frotman-Testimony-CA-Senate-Banking-Committee.pdf.

seem out of reach.[3] Research shows that financial distress can decrease employee productivity, increase their absenteeism, and may even undermine their health. [4] Since the recession, financial distress remains particularly acute among certain segments of the American workforce, including young workers.[5]

A growing number of public- and private-sector actors recognize the far-reaching impact of the unprecedented level of student debt on consumers' lives, and have taken steps to address some of the myriad challenges posed by this mounting debt. These entities include including large and small private-sector employers, state and local governments, financial institutions, and colleges and universities (collectively called "providers"). To date, they have launched a number of programs that promise to assist student loan borrowers manage the burden of rising student loan debt.

These student loan repayment assistance programs ("third-party student loan repayment assistance programs" or "third-party repayment assistance programs") include:[6]

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[3] *See* Consumer Financial Protection Bureau, *Student Loan Affordability* (2013), files.consumerfinance.gov/f/201305_cfpb_rfi-report_student-loans.pdf.

[4] *See* Consumer Financial Protection Bureau, *Wellness at Work* (Aug. 2014), http://files.consumerfinance.gov/f/201408_cfpb_report_financial-wellness-at-work.pdf [hereinafter *Wellness at Work*].

[5] *See Wellness at Work, supra* note 4.

[6] Readers should note that colleges and universities, particularly Law Schools, may also offer Loan Repayment Assistance Programs or LRAPs, which may have a similar structure to the programs described in this report. Other school-based LRAPs also offer assistance in the form of a forgivable loan that may be cancelled following some required action by the borrower (typically by completing a defined period of "public service" work). For further discussion of Public Service LRAP programs, *see* Consumer Financial Protection Bureau, *Public Service & Student Debt* (2013); *see also* infra note 9.

- Employer-paid benefits designed for recruitment or retention and workplace fringe benefits (collectively "employer-sponsored third-party repayment assistance programs");
- Government-administered initiatives to provide financial assistance to citizens with student debt ("state or local government third-party repayment assistance programs"); and
- Targeted student loan repayment assistance programs offered directly to individual borrowers by companies ("direct-to-consumer third-party repayment assistance programs"). These are often a marketing tool or product feature offered by issuers of credit cards or other financial products that feature student loan repayment assistance as a "reward" for customers, and developers of applications that assist borrowers in targeting regular, small supplemental payments to accelerate student loan repayment.

The Bureau has observed that the increasing availability of third-party repayment assistance programs may benefit borrowers who are managing student debt. Borrowers can use these third-party repayment assistance programs to potentially save hundreds or thousands of dollars in interest payments over the lifetime of a loan by prepaying principal on high-rate loan debt or increase their monthly financial flexibility by using their benefits to replace all or a portion of their monthly student loan bill.

However, providers of third-party student loan repayment assistance programs ("third-party repayment assistance program providers"), observe that making third-party payments toward student loans may be more complicated than issuing employee pay checks or providing other financial benefits such as making deposits into 401(k) or other retirement accounts. For example, typically, student loan borrowers simultaneously repay multiple student loans that can have different terms, conditions, and repayment schedules, even when a single loan servicer

handles all loans owed by a borrower.[7] Submitting third-party payments to a variety of student loan servicers is often further complicated by a range of student loan servicing practices and student loan program requirements, including individual servicers' practices related to accepting and processing payments.

The dramatic rise in student debt, an increased understanding about the impact of this debt on consumers' lives, and the complex challenges associated with transmitting student loan payments have driven new opportunities and demand for technical expertise for aspiring third-party repayment assistance program providers. These third-party repayment assistance programs, including large-scale workforce recruitment or retention programs, are frequently administered for third-party repayment program providers by a variety of large and small financial technology companies ("program administrators").

Despite the benefits to borrowers from these third-party student loan repayment assistance programs, many third-party repayment assistance program providers and administrators note a range of practices that could potentially reduce benefits intended for borrowers or create roadblocks for consumer-friendly developments that could better support the most vulnerable borrowers.[8]

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[7] *See* Consumer Financial Protection Bureau, *Defining Larger Participants in the Student Loan Servicing Market-Final Rule* (December 2013), https://www.federalregister.gov/documents/2013/12/06/2013-29145/defining-larger-participants-of-the-student-loan-servicing-market.

[8] Many of these practices are substantively similar to those faced by borrowers and providers during the emergence of the student loan refinance industry—a key center of innovation in the student lending market. In 2015, the Bureau warned that certain servicing practices can "frustrate the ability for new market entrants to meaningfully compete, since bureaucratic barriers can create additional costs, complexity, and customer service challenges, without apparent justification and with self-serving results." As discussed further in this report, a similar set of factors may discourage incumbent student loan servicers from making the investments in customer service and information technology necessary to mitigate consumer harm, foster consumer-centered innovation, and strengthen the

These entities note that student loan repayment assistance programs may be a promising way to reduce more borrowers' overall financial stress, but potential barriers to additional innovation exist. Industry stakeholders highlight a complex process for making third-party payments driven by student loan servicers' legacy information technology, too-frequent payment processing errors, and the servicing industry's lack of a standardized process for handling third-party payments.

The next section of this report offers a review of increasingly common approaches to delivering borrower benefits under a third-party repayment assistance program, including an overview of the potential benefits and protections these programs seek to provide to individual student loan borrowers. The third section of the report provides a review of feedback from borrowers, third-party repayment assistance program providers, and program administrators. This section highlights the various opportunities and challenges that all three constituencies face when seeking to maximize third-party repayment assistance program benefits. The fourth section of this report features a discussion about how policymakers and participants in the student loan system can reduce potential barriers to innovation and growth for programs that can provide substantial financial benefits and relief to borrowers facing the weight of historic student loan debt.

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customer experience. *See* Consumer Financial Protection Bureau, *Mid-Year Update on Student Loan Complaints* (June 2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf.

2. Common approaches to delivering third-party student loan repayment assistance programs

For more than two decades, third-party student loan repayment assistance programs have been offered to a small subset of student loan borrowers. These programs, historically offered by federal and state government agencies, hospitals, and some not-for-profit employers, have generally been designed to address potential workforce shortages. Most commonly, these programs target certain high-debt graduates of professional schools who pursued "public service" careers (e.g., physicians servicing in high-need, under-served areas).[9] These programs

[9] Over time, repayment programs have been offered by public and private entities, including federal and state governments, schools, and employers. These programs have aimed to support a variety of goals, including encouraging individuals to enter particular occupations like public service, provide retention incentives for employees (or borrowers) to remain employed in a certain occupation or position, provide relief to borrowers making high monthly payments compared to their income, and incentivize borrowers to use certain financial products or services. For example, as of October 1, 2015, there were over 50 loan forgiveness and loan repayment programs authorized by Congress to assist borrowers repaying their student loans. Most programs are designed to benefit a specific population of borrowers, like borrowers working in public service or those in high demand health

are distinct from common repayment plans available to struggling borrowers that provide student loan payment relief, such as the income-driven repayment options provided under federal higher education law to most borrowers with federal student loans, or loan modification programs offered by some private student lenders to borrowers in distress.[10]

2.1 A GROWING SHARE OF STUDENT LOAN BORROWERS HAVE ACCESS TO THIRD-PARTY STUDENT LOAN REPAYMENT ASSISTANCE PROGRAMS

The number and diversity of third-party repayment assistance programs aimed at helping borrowers repay their student loans appear to be increasing.[11] Providers of third-party repayment assistance programs often rely on program administrators to manage the day-to-day operations of their programs. Program administrators are often fintech or technology platform companies with expertise issuing third-party payments to student loan servicers.

Employer-sponsored third-party student loan repayment assistance programs are projected to grow quickly in the future. While data on the growth of employer-sponsored third-party repayment assistance programs is limited, industry-wide surveys of employers show the number of companies offering repayment assistance programs has increased over the last several years. Employer-sponsored student loan repayment assistance is being offered by a wide range of employers, including Fortune 500 companies, small businesses, and state governments, to borrowers from all income-levels and who are facing a variety of financial circumstances and challenges. One industry survey shows that nearly 1-in-10 employers with over 40,000

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care fields. Many states offer similar repayment programs for residents of their states. *See e.g.*, Congressional Research Service, *Federal Student Loan Forgiveness and Loan Repayment Programs* (July 28, 2016) [hereinafter *Forgiveness and Repayment Programs*].

[10] For further discussion, *see* Consumer Financial Protection Bureau, *Student Loan Servicing* (Sept. 2015), http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

[11] *See Forgiveness and Repayment Program, supra* note 9.

employees offer a third-party repayment assistance program. [12] In 2017, an industry analyst noted that employers of all sizes now offer third-party repayment assistance programs. [13] Another industry analyst predicted that the number of employers offering third-party repayment assistance programs may grow dramatically in the coming years, with as many as 26 percent of employers offering programs by 2018. [14]

Employers increasingly recognize the value of offering financial well-being benefits. In the wake of the great recession, employers observed that financial distress reduces worker productivity, increases absenteeism, and undermines employees' health. [15] For many workers, managing debt and credit wisely has a direct impact on their job. A recent survey found that forty percent of millennial employees have a student loan and over eighty percent of them say that their student loans have a moderate or significant impact on their ability to meet their other financial goals. [16] Recognizing that significant student debt can have a domino effect on

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[12] *See* WorldatWork, *Inventory of Total Rewards Programs & Practices* (Jan 2017), https://www.worldatwork.org/adimLink?id=81143.

[13] *See* Society for Human Resource Management, *2017 Employee Benefits* (2017), https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/2017%20Employee%20Benefits%20Report.pdf (The survey found the number of employers offering student loan repayment programs increased from 3 percent in 2015 to 4 percent in 2017).

[14] Industry analysts note generally that the pace of growth for employer-sponsored third-party student loan repayment programs may be contingent on efforts to align the tax treatment of benefits provided to borrowers under these programs to that of other employer provided benefits. Certain employer-provided educational assistance or savings plans may offer tax benefits to employees, however, payment provided under employer-sponsored third-party student loan repayment programs do not share the same favored tax status. S*ee, e.g.*, 26 U.S.C § 127, 26 U.S.C. § 529. [hereinafter *tax benefits*]; *see also* Willis Towers Watson, *Employers expand use of voluntary benefits* (March, 2016), https://www.willistowerswatson.com/en/press/2016/03/employers-expand-use-of-voluntary-benefits.

[15] *See Wellness at Work, supra* note 4.

[16] *See* PricewaterhouseCoopers, LLC, *Employee Financial Wellness Survey* (April, 2017), https://www.pwc.com/us/en/private-company-services/publications/assets/pwc-2017-employee-wellness-survey.pdf.

consumers' financial lives and overall financial wellness, reports suggest an increased interest by both large and small employers in exploring benefits to help pay down student debt or help manage their employees' student debt stress.[17] These programs may be designed to support recruiting efforts, improve retention, or supplement wellness benefits, among other goals.[18]

A growing number of specialized program providers, including many fintech companies, are enabling employers to offer third-party repayment assistance programs. Over the past five years, fintech firms and other program administrators have launched new offerings over the past five years, seeking to lower the administrative and technological barriers for employers that wish to offer these benefits to their employees.[19] These companies tell the Bureau that new offerings are poised to drive further growth of employer-sponsored third-party repayment assistance programs. Consumers benefit when student loan repayment assistance programs are run efficiently, payments are timely and accurate, and programs are designed to strengthen borrowers' overall financial wellbeing. In this vein, fintech companies describe developing and hosting scalable software platforms that enable employers to contribute to their employees' student loan repayment via an customizable online platform.

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[17] *Id.*

[18] *Id.*

[19] In preparation of this report, the Bureau engaged in discussions with a number of fintech and other companies that recently launched these offerings. These discussions informed, in part, the subsequent sections of this report. *See infra* note 36.

2.2 HOW THIRD-PARTY STUDENT LOAN REPAYMENT ASSISTANCE PROGRAMS WORK

As illustrated in Figure 1, third-party repayment assistance program[20] features can vary greatly. Despite variations across programs, these programs share a common structure—third-parties remit student loan payments directly to a student loan servicer, which accepts and applies these payments to private or federal student loans serviced on behalf of lenders or loan holders.

In general, third-party repayment assistance programs:

- Make loan payments on behalf of affiliated borrowers eligible for the program;
- Contribute cash payments toward one or more student loans— often made as monthly installments, as periodic non-monthly payments, or as an annual lump sum payment—where payments can either supplement or replace some or all of borrowers' monthly installment payments;[21] and,

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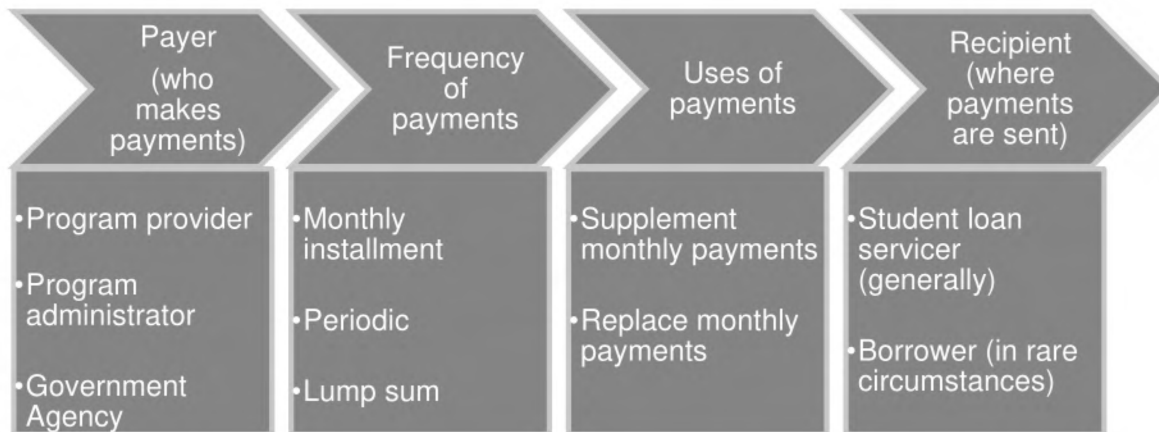
[20] Readers should note that the third-party student loan repayment programs discussed in this report provide additive benefits to help student loan borrowers repay their student loans. There are a number of other products and services offered by privates companies and non-profit organizations aimed at assisting borrowers in managing their student loans, including those that allow borrowers to authorize their employer to make loan payments using the borrowers' earned income or helping federal loan borrowers invoke their right to make affordable payments under federal Income-Driven Repayment plans. Many of these products do not provide additional financial support to borrowers repaying their loans or may require a fee for service. Some 'debt relief' companies charge struggling borrowers upfront fees to manage their student loans. The Bureau, the Federal Trade Commission, and a growing number of state attorneys general have taken action to shut down debt relief companies that violate federal or state consumer law. *See, e.g.,* Consumer Financial Protection Bureau, *CFPB Takes Action to Shut Down Illegal Student Debt Relief Scheme* (Mar. 25, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-shut-down-illegal-student-debt-relief-scheme/.

[21] As noted above, the structure of third-party student loan repayment programs can vary greatly by provider. For example, some borrowers may receive a fixed payment toward their loans each month, paid by their employer as a workplace benefit; other borrowers may receive small periodic payments toward their loans paid by a financial services company as an incentive to use a specific financial product for retail purchases, or as an incentive to shop at specific vendors.

- Direct payments to the borrower's student loan servicer, generally by paper check or electronic payment.

Figure 1: Varying types of student loan repayment assistance programs



Borrowers with student debt who are enrolled in a third-party repayment assistance program may receive and use their benefits in several ways, including:[22]

[22] Readers should note that, in most cases, entities offering third-party student loan repayment programs encourage borrowers to make regular monthly payments over-and-above the amount of the cash payment made on a borrower's behalf through the program. However, these programs also permit borrowers to continue to receive benefits even when they have not made a regular monthly payment for the full installment payment required on the loan. In effect, some borrowers may treat "supplemental" payments as replacement payments for all or part of their required monthly student loan payment. As discussed throughout this report, borrowers may value the financial flexibility third-party student loan repayment programs provide to pay higher-cost debts or prioritize personal and retirement savings. A 2016 survey of student loan borrowers found that-over one-third of respondents would use a repayment assistance program from their employer to cover part of their currently monthly payment. *See* Student Loan Hero, *More Companies Need to Offer Student Loan Help According to the Results of This New Survey* (April 2016), https://studentloanhero.com/featured/employer-sponsored-student-loan-repayment-assistance-survey-results-2016/.

- **Supplementing regular monthly payments.** Third-party repayment assistance programs may be targeted to help pay down borrowers' student debt faster. When using repayment assistance programs to pay down student loans faster, borrowers continue to make their normal monthly payments and use benefits paid through a third-party repayment assistance program as secondary, supplemental payments targeted to quickly pay down loan principal.[23] As noted earlier, borrowers can potentially save hundreds or thousands of dollars over the life of their loan when making additional payments toward their principle over time, particularly when these payments are targeted towards prepaying principal on high interest-rate loans.[24] For example, the city of Memphis, Tennessee provides employees with student loans a $50 supplemental loan payment each month as a fringe benefit, targeted to supplement borrowers' regular monthly payment.[25]

- **Replacing all or part of regular monthly payments.** Other third-party repayment assistance programs target payments to help borrowers meet their regular monthly

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[23] As noted earlier, the federal tax code considers payments under most employer-sponsored third-party student loan repayment programs as taxable income, and, as a result, this may affect borrowers' eligibility for certain federal protections, such as the calculation of monthly payments under Income-Driven Repayment plans. Subsequent sections of this report provide further discussion on the intersection of third-party student loan repayment programs and federal benefits, including Public Service Loan Forgiveness. *See tax benefits, supra* note 14.

[24] The Bureau has previously noted how servicing practices can hinder borrowers trying to get ahead on their student loan payments. *See, e.g.,* Consumer Financial Protection Bureau, *Consumer Advisory: Stop Getting Sidetracked by your Student Loan Servicer* (Oct. 2013), https://www.consumerfinance.gov/about-us/blog/consumer-advisory-stop-getting-sidetracked-by-your-student-loan-servicer/; Consumer Financial Protection Bureau, *You have the right to pay off your student loan as fast as you can, without a penalty* (Sept. 2016), https://www.consumerfinance.gov/about-us/blog/you-have-right-pay-your-student-loan-fast-you-can-without-penalty/.

[25] *See, e.g.,* The City of Memphis, *Student Loan Reduction Program* (accessed July 9, 2017), *http://www.memphistn.gov/Government/HumanResources/StudentLoanReductionProgram.aspx.*

payment obligation.[26] Borrowers using third-party repayment assistance programs to replace part or all of their monthly payment may strengthen their household finances by unlocking greater financial flexibility, particularly early in their careers when cash flow may be more limited. These borrowers can use funds that would normally go toward their student loan payments instead to build wealth, support personal and retirement savings, or accumulate funds for a down payment on a home.[27] For example, the state of New York's "Get on Your Feet" program makes recurring monthly payments targeted to alleviate eligible borrowers' need to make monthly student loan payments for a period of up to two years following graduation, so long as the borrower remains enrolled in a federal income-driven repayment assistance program.[28] In this example, by aligning state resources with federal repayment assistance programs, the state of New York's third-party repayment assistance program is able to replace certain borrowers' regular monthly payments, providing a cost-effective way for the state to help certain residents establish a strong financial footing when beginning their repayment.[29]

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[26] Readers should note that, generally, where a borrower's third-party payment does not cover their full monthly bill, borrowers are still expected to make a secondary payment to satisfy the remaining balance.

[27] *See, e.g.,* Robert Hiltonsmith, *At what cost? How student debt reduces lifetime wealth,* Demos (Aug. 2013), www.demos.org/what-cost-how-student-debt-reduces-lifetime-wealth.

[28] *See* New York State Higher Education Services Corporation (HESC), *NYS Get on Your Feet Loan Forgiveness Program Fact Sheet* (2016), https://www.hesc.ny.gov/repay-your-loans/repayment-options-assistance/loan-forgiveness-cancellation-and-discharge/nys-get-on-your-feet-loan-forgiveness-program.html.

[29] *Id.* In addition, in 2017, other states considered legislation to take a similar approach. See, *e.g.,* California Kickstart My Future Loan Forgiveness Program, 2017 Bill Text CA AB 379, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB379; Get on Your Feet Loan Forgiveness Program, 2017 Bill Text RI H. 2558, webserver.rilin.state.ri.us/BillText/BillText17/HouseText17/H5889.pdf.

2.3 OPPORTUNITIES AND GROWING DEMAND FOR THIRD-PARTY REPAYMENT ASSISTANCE PROGRAMS AS STUDENT DEBT LEVELS CONTINUE TO CLIMB

As the volume of outstanding student debt continues to grow, there remains a substantial opportunity and continued demand for further expansion of third-party repayment assistance programs, particularly where employers and other third-parties wish to provide expanded financial support to student loan borrowers.[30] For the past three years, the number of borrowers repaying federal Direct Loans (the most common type of student loan) grew by more than 1.5 million people per year on average.[31] In total, the Department of Education reports that more than 5 million additional borrowers were repaying Direct Loans in mid-2017 than were in repayment three years prior, and projects that another 1.4 million Direct Loan borrowers will exit their grace period and begin making payments on their loans by the end of 2017. [32]

However, as discussed in the next section of this report, borrowers, third-party repayment assistance program providers and existing and emerging program administrators describe a range of issues that can reduce program benefits for borrowers, driven, in part, by inconsistent industry practices, economic disincentives, reliance on outdated technology, and existing policies affecting how student loan servicers accept and process third-party payments. Taken together, if unaddressed, these servicing problems could reduce benefits intended for borrowers and create roadblocks for potentially consumer-friendly developments, especially those that could better support the most vulnerable borrowers.

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[30] *See also tax benefits, supra* note 14.

[31] *See* U.S. Department of Education, *Federal Student Aid Data Center: Portfolio by Loan Status (DL, FFEL, ED-Held FFEL, ED-Owned)* (accessed on July 10, 2017), https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls.

[32] *Id.*

3. Industry and student loan borrower observations

When making third-party payments on student loans, there are a wide range of operational and technological factors that third-party repayment assistance program providers and administrators must consider. For example, student loan borrowers typically simultaneously repay multiple student loans that can have different terms, conditions, and repayment schedules, even where a single loan servicer handles all loans owed by a borrower. Issuing third-party payments to a variety of student loan servicers can become complicated by a range of student loan industry practices, including servicing practices related to accepting and processing payments.

For the past five years, the Bureau has documented how student loan borrowers face a wide array of servicing breakdowns at all stages of repayment – beginning before they ever need to pay a student loan bill and extending to the payoff process.[33] Student loan servicing problems

[33] *See, e.g.,* Consumer Financial Protection Bureau, *Consumer Advisory: Bad information about your college enrollment status can cost you* (2017), https://www.consumerfinance.gov/about-us/blog/consumer-advisory-bad-information-about-your-college-enrollment-status-can-cost-you/; Consumer Financial Protection Bureau, *Mid-Year Update on Student Loan Complaints* (2015), https://www.consumerfinance.gov/data-research/research-reports/2015-mid-year-update-on-student-loan-complaints/.

can affect borrowers of all types, whether they are struggling to manage monthly payments or trying to get ahead by paying down their loans more quickly.[34]

As part of this ongoing work, the Bureau has received a broad range of complaints from individual student loan borrowers that raise concerns about how student loan servicers process payments in general. These consumer complaints about servicing practices include borrowers who are the beneficiaries of third-party repayment assistance programs.[35]

To better understand how these issues can affect potentially consumer friendly-innovation, the Bureau engaged with a variety of third-party repayment assistance program providers, program administrators mainly consisting of fintech companies, and student loan servicers.[36] Through these efforts, the Bureau has heard student loan repayment assistance programs may be a

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[34] *See, e.g.,* Consumer Financial Protection Bureau, *CFPB Warns Student Loan Servicing Problems Can Jeopardize Long-Term Financial Security for Older Borrowers* (2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-student-loan-servicing-problems-can-jeopardize-long-term-financial-security-older-borrowers/. *See also, e.g.,* Consumer Financial Protection Bureau, *CFPB Report Finds That 9 in 10 of the Highest-Risk Student Loan Borrowers Were Not Enrolled in Affordable Repayment Plans* (2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-9-10-highest-risk-student-loan-borrowers-were-not-enrolled-affordable-repayment-plans/ and Consumer Financial Protection Bureau, Yo*u have the right to pay off your student loan as fast as you can, without a penalty* (2016), https://www.consumerfinance.gov/about-us/blog/you-have-right-pay-your-student-loan-fast-you-can-without-penalty/.

[35] *See infra.* note 36, 37.

[36] CFPB's Project Catalyst and the CFPB Student Loan Ombudsman have heard feedback from a range of private- and public-sector actors offering third-party student loan repayment programs, as well as a number of incumbent student loan servicers, including large specialty non-bank financial services companies, smaller non-bank lenders and servicers, and large depository institutions that originate and service private student loans. During our discussions, the Bureau met with nearly a dozen third-party student loan repayment program providers and administrators. Companies that met with the Bureau include third-party student loan repayment assistance providers and administrators making loan payments for fewer than 50 borrowers and several established program administrators making payments for companies with over 100,000 employees. In addition, the Bureau met with student loan companies that include entities that originate and service private student loans, or service Direct Loans, ED-held FFELP loans, and privately held (commercial) FFELP loans.

promising tool for helping to reduce borrowers' overall financial stress, but is also an area where potential barriers to additional innovation that could benefit consumers exist.

The following sections of this report identify common observations made by industry stakeholders, along with an inventory of related issues identified in complaints submitted to the Bureau by individual student loan borrowers.[37] This inventory of issues may be helpful in further understanding how programs can operate in a way that will maximize their value for consumers.

3.1 OBSERVATIONS BY THIRD-PARTY REPAYMENT ASSISTANCE PROVIDERS, PROGRAM ADMINISTRATORS, AND STUDENT LOAN SERVICERS

Third-party repayment assistance program providers and administrators have noted student loan servicing breakdowns throughout the repayment process can delay when borrowers receive credit for their third-party payment. Companies note that if third-party payments are delayed, borrowers cannot maximize their third-party repayment assistance benefits. This is because student loans are "daily simple interest" loans, meaning interest continues to accrue on a borrowers' loan balance every day between when a third-party repayment assistance provider or

[37] To illustrate the range of issues faced by student loan borrowers, this report draws upon complaints handled by the Bureau. We also reviewed other information, such as comments submitted by the public in response to requests for information, submissions to the "Tell Your Story" feature on the Bureau's website, and input from discussions with consumers, regulators and law enforcement agencies, and market participants. Readers should note that, where the following discussion draws upon consumer complaints and other qualitative input provided directly by borrowers, it does not suggest the prevalence of the issues described as they relate to the entire student loan market. The information provided by borrowers helps to illustrate where there may be a mismatch between borrower expectations and actual service delivered. We do not verify the facts alleged in these complaints, but we take steps to confirm a commercial relationship between the consumer and the company.

administrator initiates a payment and when a servicer credits the payment to a borrowers' loans.[38]

Additionally, these companies also note that current servicing practices can create roadblocks for additional potentially consumer-friendly developments that could expand access and availability of third-party repayment assistance programs that could better support the most vulnerable borrowers. Student loan servicers also discussed contractual features and public policies that underpin some of the servicing practices related to accepting and processing payments highlighted by third-party repayment assistance program providers and program administrators. Collectively, these observations cover three broad categories of student loan servicing problems: 1) program setup, including the reliable flow of information between payer and servicer; 2) payment transmittal; and 3) payment processing.

3.1.1 ESTABLISHING PAYMENT RELATIONSHIPS BETWEEN PROVIDERS AND STUDENT LOAN SERVICERS

Third-party repayment assistance program providers and administrators note that the benefits of their programs are maximized for consumers when loan payments are quickly accepted and reliably processed by student loan servicers. The initial process (establishing a relationship with the student loan servicer) generally requires third-party repayment assistance program providers or administrators to validate that a borrower has eligible student loans and then initiate payment via a method that servicers accept (generally by paper check or an electronic method). After initial validation, third-party repayment assistance program providers or

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[38] For example, consider a borrower who receives a $15,000 annual lump sum loan payment from their employer, directed toward loans with a 4.5% interest rate. For each day it takes for a third-party repayment assistance provider or administrator and a servicer to transmit, receive, process and post a payment, this borrower will incur nearly $2 in interest charges. Where a provider offers this benefit to a large number of workers, the collective costs of these delays quickly scale. Consider, for example, a large organization offering a similar benefit to a workforce with 1,000 eligible student loan borrowers. In this example, this single program provider may encounter processing delays that could, collectively, cost its employees nearly $2,000 per day in unnecessary interest charges.

administrators continue to interact with loan servicers, monitoring borrower eligibility for continued repayment benefits and issuing payments.

Where third-party repayment assistance program providers and administrators issue payments for dozens, hundreds, or thousands of borrowers each month, these entities often seek to establish processes for sending batch payments with instructions and receiving electronic confirmation when payments are applied to borrowers' accounts. Some note that, in other markets, loan servicers or card issuers commonly offer streamlined processes for handling batch third-party payments. However, third-party repayment assistance program providers and administrators expressed frustration that student loan servicers do not always provide clear or responsive communication when they attempt to establish processes for making payments, potentially leading to costly delays or dead ends for borrowers.

Third-party repayment assistance programs currently comprise a relatively small share of all borrower payments, so determining when and how to engage with third-party providers may not yet be a priority for some servicers. Unlike other markets where incumbents may compete in a race to integrate with emerging technologies and improve product offerings, student loan servicers need not compete to attract or retain borrowers based on servicing quality, and do not have the same economic incentive to innovate.[39]

Student loan servicers, third-party repayment assistance program providers, and program administrators identified the following issues when seeking to establish payment relationships between payers and servicers.

Third-party repayment assistance program providers and administrators note legacy information systems can make processing payments unnecessarily complicated. Consumers benefit when payments are timely, processed quickly, and applied

[39] Most student loans are placed with third-party servicers contracted by loan holders that pay monthly servicing fees. The performance metrics and requirements of these contracts may help determine servicers' priorities for investing in system enhancements and service innovations.

accurately—faster payments can save borrowers unnecessary interest charges on student loans, where, as discussed above, interest accrues daily. However, third-party repayment assistance program providers and administrators note that not all student loan servicers accept electronic payments—the fastest way to make a payment— from third-party payers. Multiple third-party repayment assistance program providers and administrators expressed frustration that as many as 15 to 30 percent of their monthly payments cannot be sent electronically. Third-party repayment assistance program providers and administrators note that they have to implement expensive manual processes to accommodate limitations in some student loan servicers' antiquated payment processing systems. These manual processes can increase the risk of processing errors and reduce the value of these programs for borrowers. One third-party repayment assistance program provider told the Bureau that making payments by check quickly increases operating expenses for the payer as well, expenses that could be largely avoided through electronic payments. Another program administrator explained that variations in payment handling policies between servicers is so great, as a workaround, it only issues paper checks to ensure all servicers can process payments—potentially increasing handling times, but lowering the likelihood of rejected payments.

Third-party repayment assistance program providers and administrators also described the lack of procedures for processing batch payments, particularly when making payments to student loan servicers for hundreds or thousands of individual student loan borrowers at a time. These entities expressed frustration that some servicers do not always cooperate in accepting batch payments, requiring payers to initiate multiple individual electronic or paper transactions, adding unnecessary costs and complexity to the payment process.

Third-party repayment assistance program providers and administrators note that lack of access to consumer-permissioned information prevents more reliable repayment benefits and improved financial management tools. When a borrower and a third party are both making payments to one or multiple loans in a single account, providers explain that they believe it is helpful for repayment assistance program administrators to have visibility into account information, such as loan balances, interest rates, and repayment plan information, when authorized by the borrower. Some note that this consumer-permissioned account access can better ensure payments are being made appropriately, especially as loans are near payoff status.

These entities note challenges obtaining this information even in circumstances where third-party repayment assistance program providers and administrators are responsible for making

recurring monthly payments on borrowers' behalf. For example, several third-party repayment assistance program providers and administrators told the Bureau that payments are frequently returned because an individual loan has been paid-in-full, noting that this information is not accessible to these companies prior to notice of a returned payment. These third-party repayment assistance program providers and administrators also note that, in some cases, third-party payments are returned even when a borrower owes other loans serviced by the same company in the same student loan account. These companies explained that servicers will return funds to the company several weeks later, even as borrowers continue to accrue unnecessary interest.

Servicers note that, in some circumstances, secure authorized third-party access to borrower data may be limited by privacy or information security restrictions, including those required by the Department of Education. This may be particularly relevant where borrower data includes information about loans held by the Department of Education, including Direct Loans.

3.1.2 TRANSMITTING PAYMENTS

Once third-party repayment assistance program providers or administrators establish relationships with student loan servicers, they begin to transmit periodic payments on behalf of individual student loan borrowers. These entities may seek to transmit hundreds or thousands of payments per month to a variety of different student loan servicers. Third-party repayment assistance program providers and administrators described a range of potential barriers to accurate and timely transmittal of student loan payments, describing how variation in servicing practices, routine servicing errors, and servicer rejection of third-party payments may delay borrowers' access to their third-party repayment assistance program benefits, even as student loan interest continues to accrue.

Third-party repayment assistance program providers and administrators note that differences in the way servicers receive and post borrowers' payments can reduce the value of these programs for otherwise similarly situated borrowers, driven solely by the identity of their student loan servicer. Third-party repayment assistance program providers and administrators tell the Bureau that servicers do not always credit borrowers' accounts on the date a payment is received, but rather on the date it is processed and posted, a process that can reportedly take up to two weeks. These entities explain that, because student loans accrue interest daily, the gap in time between when a payment is received by a

servicer and when it is posted to a borrower's account can cause unnecessary interest accrual. Taken together, third-party repayment assistance program providers and administrators stated their belief that servicers may pass on thousands of dollars in interest charges to their customers, particularly if funds are not consistently being retroactively credited to the date received by servicers. These entities point out that lack of consistent payment processing policies across student loan servicers may cause two borrowers at the same employer to receive different value from the same third-party repayment assistance program— despite being entitled to the same monthly student loan payment benefit— solely because each borrower has a different servicer and those servicers follow different procedures.

Some student loan servicers, however, note that they protect their customers from additional interest accrual by retroactively crediting accounts back to the date a payment was received, irrespective of the timeline for payment posting.

Third-party repayment assistance program providers and administrators describe servicing delays and errors that can lead to unnecessary payment rejections. As the Bureau has described in prior publications, payment processing errors are routinely one of the most-complained-about servicing issues noted by student loan borrowers.[40] Similarly, third-party repayment providers and administrators note payment processing errors may cause their payments to be rejected by student loan servicers. Many of these entities note receiving a substantial number of rejected monthly payments (including payments made by paper check and electronic ACH), despite the payments often being issued to accounts where borrowers' account information has been verified as accurate. Several other program administrators

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[40] *See e.g.,* Consumer Financial Protection Bureau, *Annual report of the CFPB Student Loan* Ombudsman (Oct. 2016), http://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf.

explained that third-party payment errors can surpass one percent of their total payments.[41] One program administrator described how student loan servicers reject payments at rates higher than payment rejection rates in many other markets. [42] As a result, this company asserts these errors are entirely preventable and can cause real consumer harm when there shouldn't be any. A third-party repayment assistance program provider that issues annual lump sum checks also noted that five to six percent of checks are returned due to "errors". This entity expressed frustration that high error rates create further delays in providing borrowers benefits, ultimately taking away from the value of their program.

Third-party repayment assistance program providers and administrators describe notification delays when payments are rejected. Third-party repayment assistance program providers and administrators tell the Bureau that when servicers reject payments—a common occurrence when, for example payer-provided account information does not match servicer records— slow notification and refund processes can lead borrowers to accrue weeks or more of unnecessary interest. Currently, even when authorized, these entities do not have access to borrower account information, which, these entities assert, would allow them ability to quickly respond to errors.

One program administrator explained that when payments are returned to the program administrator by a servicer, the rejected payment is typically returned by check, even when the initial payment was made by electronic transfer. This entity explained that in some cases a rejected payment can be returned up to 4-6 weeks later. In certain cases, by the time the entity is notified of the error, additional payments have already been issued and that may ultimately be rejected too, resulting in additional unnecessary interest charges for borrowers who face a delay in receiving their third-party repayment assistance program benefits.

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[41] One company executive notes that consumers making payments or financial transactions in other financial markets should expect errors on fewer than 1 in 10,000 transactions.

[42] Readers should note that the Bureau has not independently compared data on rejection rates associated with third-party payments to student loan servicers to others.

Additionally, third-party repayment assistance program providers and administrators explain that they are not always notified when a payment is rejected and that rejected payments are not always returned. These entities note instances where servicers have accepted or cashed payments but fail to apply these funds to the correct borrowers' accounts. [43]

Third-party repayment assistance program providers and administrators also note receiving rejected payments that do not identify the borrower for whom the payment was intended, including basic information about the original date of payment, borrower account details, or the check number associated with the payment.

3.1.3 BORROWER ACCESS TO BENEFITS & PROTECTIONS

The timing and process through which student loan servicers track, post, and apply payments greatly affects how much a borrower pays over time. It also can greatly impact borrower progress toward other student loan benefits and protections. Certain benefits available to federal and private student loan borrowers rely on borrowers making a specific number of timely payments. For example, eligible borrowers must make a series of 120 qualifying payments in order to obtain loan forgiveness under the Public Service Loan Forgiveness (PSLF) program.[44] Under PSLF, payments must be made in-full and on time, making accurate payment processing and recordkeeping critical servicing functions for these borrowers.[45] Similarly, borrowers with

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[43] Servicers tell the Bureau that the payment processing policies established for federal loan servicers can result in delayed handling of rejected payments. Servicers may receive limited information about these payments, making it harder to resolve in a timely manner.

[44] For further discussion, see Consumer Financial Protection Bureau, *Staying on Track While Giving Back: The cost of student loan servicing breakdowns for people serving their communities* (June 2017), files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf [hereinafter *Staying on Track*].

[45] *Id.*

co-signers on private student loans may be eligible for "co-signer release" after a certain number of on-time payments.[46]

Industry stakeholders noted the payment processing challenges discussed in this report limits the ability to offer consumer-friendly innovations designed to help borrowers most in need. In particular, third-party repayment assistance program providers and administrators expressed reservations about offering programs that replace borrower's primary payments, noting that they did not believe servicers could consistently and safely process third-party payments for borrowers, particularly for borrowers that rely on accurate payment processing for federal and private student loan repayment benefits.

Third-party repayment assistance program providers and administrators describe inconsistent implementation of payment instructions by student loan servicers, which can reduce benefits intended for borrowers. Third-party repayment assistance program providers and administrators that make payments for borrowers who have multiple loans handled by a single servicer may seek to provide specific or standing instructions governing how to allocate third-party payments, where permitted. These entities explained that instructions help borrowers maximize the benefits of third-party repayment assistance programs and can help borrowers ensure they are making payments that count toward other student loan repayment benefits. However, when these instructions are not followed, borrowers can accrue unnecessary interest charges and can encounter challenges pursuing other valuable repayment benefits.[47]

Several program administrators told the Bureau that they provide specific payment instructions to servicers, some of which borrowers can customize, accompanying every payment issued, but explain that servicers do not always follow these payment instructions. Several companies noted

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[46] For further discussion, *see* Consumer Financial Protection Bureau, *Mid-Year Update on Student Loan Complaints* (2015), http://files.consumerfinance.gov/f/201506_cfpb_mid-year-update-on-student-loan-complaints.pdf.

[47] *See, e.g., Id.*

frustration that some enrolled borrowers needed to call their servicers repeatedly to provide the same set of instructions directly.

Third-party repayment assistance program providers and administrators also note that some servicers do not accept standing instructions, requiring updated payment instructions to accompany each payment provided—increasing the need for manual processing and elevating the risk of servicing errors.

Lack of comprehensive, publicly available federal guidance regarding "qualified" payments can limit borrowers' ability to access repayment benefits and may inhibit consumer-friendly innovation. Third-party repayment assistance program providers, program administrators, and student loan servicers tell the Bureau that borrowers who rely on third-party payments to satisfy the entirety or a portion of their normal monthly payment are at risk of missing out on qualifying payments toward PSLF, particularly when payment instructions are not followed. These entities point to program requirements that cause borrowers who pay more than the amount due, including those who make multiple payments in a billing cycle, to forfeit credit toward qualifying payments if their third-party payment "overpays" their monthly bill, or if partial payments are not credited at specific times in the billing cycle.[48] These challenges are driven by distinct, but related, features of the federal student loan repayment process:

- **Paid Ahead Status**: Participants in the student loan market note that when payments are issued to borrowers' loans that are more than their monthly payment, the servicer may advance borrowers' due date to a future billing cycle, effectively "paying ahead"

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[48] *See* 34 CFR 685.211 (Direct Loans) *and* 34 CFR 682.209 (FFELP Loans); *see, also,* U.S. Dept. of Education, *Public Service Loan Forgiveness: Questions and Answers for Federal Student Loan Borrowers* (accessed July 10, 2017), https://studentaid.ed.gov/sites/default/files/public-service-loan-forgiveness-common-questions.pdf [hereinafter *PSLF FAQ*].

their loans (called "paid-ahead" status).[49] Third-party repayment assistance program providers and administrators note that servicers often place borrowers in "paid ahead" status even when servicers are provided with explicit instructions to the contrary. Because a borrower's account is considered "paid ahead," subsequent payments, whether made by a borrower or a third party, cannot be counted as qualifying payments under PSLF, even if they are both on time and for the correct amount.[50] Program administrators expressed concern that borrowers receiving third-party payments, particularly where these borrowers are also seeking to pursue PSLF, may remain in "paid ahead" status for an extended period of time and miss credit for months or years of otherwise-qualifying payments. These companies emphasized that lack of third-party access to basic account information, even when authorized by borrowers, compounds this risk.

- **Multiple payments during a single billing cycle**: Third-party repayment assistance program providers, program administrators, and student loan servicers caution that borrowers who rely on their third-party payments to replace part of borrowers' required monthly installment payment may also make payments that cannot be counted as qualified payments under PSLF, even if they are made on time and, cumulatively, cover the full amount due in billing cycle. According to the Department of Education, multiple partial payments that total at least the borrowers' required monthly

[49] *See* 34 CFR 685.211 (Direct Loans) *and* 34 CFR 682.209 (FFELP Loans). The Department of Education notes: If you make a payment for more than the scheduled payment amount, the excess amount may be applied to cover all or part of one or more future payments, unless you request otherwise. Depending on how much extra you pay, it's possible that your next due date could be a month or more in the future from the date you made the extra payment amount. If you make subsequent payments during a period when you are not required to make a payment (that is, when your account is paid ahead), those payments will not count toward PSLF. *See PSLF FAQ, supra* note 48.

[50] *Id.*

payment amount, and received no later than 15 days after the scheduled payment due date, may be considered a qualifying payment under PSLF.[51] However, these companies tell the Bureau that the Department of Education does not provide specific guidance on the treatment of payments issued before a borrower's billing cycle opens. Without additional guidance, companies are unclear whether payments made before a borrower's monthly bill is generated will still count towards a qualifying payment. Student loan servicers generally observe that the direction provided by the Education Department governing the application of multiple payments made during a billing cycle (including applicable federal regulations) are rigid and present operational challenges that make it more difficult for consumers to stay on track for loan forgiveness. Third-party repayment assistance program providers and administrators also note that, to the extent that clear direction does exist, it is not publicly available, and these entities may face challenges obtaining a clear explanation about how to remit these payments in a manner that provides the most benefit to the borrower.

3.2 ISSUES IDENTIFIED BY INDIVIDUAL STUDENT LOAN BORROWERS

Echoing many of the issues highlighted above by third-party repayment assistance program providers and administrators, borrowers have submitted complaints to the Bureau noting that student loan servicing problems related to their third-party repayment assistance program payments can create processing delays that undermine the benefits of their third-party student loan program and make it difficult to coordinate with other federal student loan benefits. Borrowers describe encountering these servicing problems when attempting to set up their participation in a third-party repayment assistance program, during the transmittal of third-

[51] The Department of Education notes: If you make multiple partial payments that total at least your monthly payment amount, and you make those payments no later than 15 days after the scheduled payment due date for that month's payment, the series of partial payments will count as a one qualifying payment for PSLF. *See PSLF FAQ, supra* note 48.

party payments, and when third-party payments are processed, applied to their accounts, and tracked for the purpose of determining eligibility for borrower benefits and protections.

Borrowers report enrollment delays for third-party repayment assistance programs. As noted above, borrowers are often eager to access benefits provided by repayment assistance programs. However, enrollment delays caused by slow responses from servicers can cause borrowers to lose out on valuable student loan payments made on their behalf by providers. Borrowers eligible for student loan repayment benefits have complained to the Bureau of delays lasting months, despite frequent attempts to help facilitate communication between third-party repayment assistance program providers and student loan servicers.

Borrowers complain that servicing errors during transmittal of third-party payments can take months to years to resolve. Borrowers tell the Bureau that payment errors can take extended periods of time to resolve while their loans continue to accrue interest. This is particularly true where servicers accept a third-party payment made by a repayment assistance program provider or administrator, but fail to credit the funds to a borrower's student loan account. For example, one borrower told the Bureau a large lump sum payment from their employer in January 2015 was accepted by their servicer but never applied to their loan. It took until the end of 2016 for the funds to be properly applied. Compounding the economic harm caused by this error, this borrower described how they paid income taxes on their lump sum third-party payment in 2015, but received none of the benefits of a lower principal in the interim. Another borrower employed as a healthcare provider told the Bureau that one servicer cashed but never applied a $16,000 lump sum payment from their employer toward their loans, resulting in a four month delay before the payment could finally be processed and correctly credited to their account. With a 4.5 percent interest rate, this error forced the borrower to accrue an additional two dollars a day in debt service—almost $250 in unnecessary interest charges, in total.

Borrowers also complain of recurring payment processing errors that make it difficult to coordinate their benefits under federal loan repayment programs. Borrowers echo complaints by third-party repayment assistance program providers and administrators, explaining that servicers allocate payments incorrectly, despite providing payment instructions or confirming payment instructions that accompany third-party payments. In addition to creating unnecessary interest charges, payment processing errors can complicate eligibility for or progress toward other benefits and protections intended to assist certain borrowers.

As described in detail above, borrowers making payments while in "paid ahead" status cannot get credit for these payments toward PSLF. Borrowers complain that, after providing payment instructions to their servicer indicating that excess payments should not advance their due date, student loan servicers may not follow these instructions, and, instead, will "pay ahead" their loans. Other borrowers, particularly those with automatically debited payments, complain that they are never informed by their servicer that payments made while in "paid ahead" status are not qualifying payments. In some cases, borrowers note that they do not discover that timely monthly payments are not "qualifying" for PSLF until years later, when they learn that several months or years of prior payments did not result in progress toward loan forgiveness. As one borrower seeking PSLF explains:

> *I am a nurse and have worked full time since 2012 aside from maternity leave. I was fortunate to qualify for [employer-based loan repayment assistance], which helps me make payments for 3 years, providing me more money each month than I am required to pay to [my servicer]. Recently I submitted my Public Service Loan Forgiveness (PSLF) certification but was shocked to see that I have only made 14 qualifying payments in the 4 years that I have been working at my [employer]. [My servicer's] justification is that the extra money that I paid on top of what was due, automatically was put towards the next month, disqualifying ALL of those payments from PSLF. . . . I find it outrageous and disheartening that by default, overpaying your bill each month would result in "Paid Ahead" disqualifying payments from the PSLF program, unless I had taken additional steps to personally request that the money not be put towards the following month. I feel like the last 3 years of my payments have been wasted, and my [employer-based loan repayment assistance] program actually extended my PSLF months. This results in 3 years of additional payments, which is real money.*[52]

Additionally, some programs offered by federal agencies only permit funds to be applied to loan

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[52] For further discussion about challenges for consumers pursuing PSLF when "paid ahead," *see Staying on Track, supra* note 48.

principal and may also prohibit payments to private loans, causing borrowers additional headaches and risking their eligibility for repayment benefits when servicers do not follow payment instructions.[53] One borrower working for the federal government and receiving federal loan payments under a congressionally authorized repayment assistance program expressed concern that their servicer was jeopardizing their benefit by ignoring their standing payment allocation instruction:

> *As part of the program, the government would provide a certain amount each month to pay back my loans. By law, ONLY my [federal] loans were eligible for the program -- NOT my private loans. I soon found out that despite having all the correct information, [servicer] was applying my federal loan payments to my [private] loans. I called them and had them apply to the money toward the [federal] loan. Then it happened again the next month. And then again the month after that. I spent hours on the phone with [servicer] each month and no one at [servicer] could fix the problem nor explain why it was happening... The problem persisted literally for YEARS and was never fully resolved. I complained often enough that [servicer] eventually assigned me a dedicated customer service rep whose job it was to reapply the payments each month (she told me that she had a reminder in her outlook calendar. That band-aid solution worked for a few months until the customer service rep left [servicer] (no one from [servicer] informed me) and then I was back to square one.*[54]

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[53] *See* Office of Personnel Management, *Student Loan Repayment Program* (accessed on July 12, 2017), https://www.opm.gov/policy-data-oversight/pay-leave/student-loan-repayment/ and Department of Defense, *Student Loan Repayment Program* (accessed on July 12, 2017).

[54] *See* CFPB-2015-0021-0320 (July 2015), https://www.regulations.gov/document?D=CFPB-2015-0021-0320.

4. Policy considerations

As noted earlier in this report, rising levels of student loan debt and growing monthly payments may present financial challenges for individual consumers and may pose risks for the broader economy. Third-party repayment assistance programs targeted to assist borrowers with high levels of student debt may offer an opportunity to ease student debt burdens for some borrowers. Policymakers and market participants may wish to consider taking a number of steps to develop programs that can best meet the needs of borrowers. Taking steps to address student loan servicing practices could improve the repayment experience for all borrowers and foster further growth of third-party repayment assistance programs.

4.1 RECOMMENDATIONS FOR STUDENT LOAN COMPANIES AND POLICYMAKERS

In particular, borrowers could benefit from immediate action by policymakers and market participants to better ensure accurate, timely, and transparent processing of third-party payments—measures that could address many of the issues described in this report. These steps could include:

A clear and easily accessible process for third parties to direct electronic payments to borrowers' individual student loans. Borrowers benefit when third parties can quickly

and easily make electronic payments when authorized to do so on borrowers' behalf. When third-party repayment assistance program providers and administrators struggle to find information on third-party payment policies, borrowers may lose out on months of valuable repayment benefits, driven by handling and processing delays. Student loan servicers can make it easier for borrowers to maximize third-party repayment benefits by developing and publicly communicating third-party payment processing procedures and consider creating a streamlined process to authorize third-party payers to make electronic payments on borrowers' behalf.[55] Additionally, borrowers enrolled in third-party repayment assistance programs would likely benefit from clear, proactive communication to program providers and administrators by servicers regarding any changes to payment processing policies. This may mitigate potentially negative consequences for the borrowers who rely on a third-party repayment assistance program as the primary source of loan payments, and who would become delinquent should their third-party payments be misdirected following a change in payment processing policies.

Consistent, industry-wide standards for processing payments, including payments made by third parties. Borrowers depend on student loan servicers to handle payments, and process payments and payment instructions, in a way that facilitates successful repayment, maximizes value to consumers, and ensures consistency. Daily accrual of interest can reduce the benefit of third-party repayment programs if a payment is not posted quickly and accurately. As the Bureau has previously stated, all borrowers would be well served by a consistent, industry-wide approach to payment processing. Borrowers and, consequently, third-party repayment assistance program providers and administrators, may be well served if:

- Servicers adhere to third-party payment instructions. Borrowers should be able to expect payments made on their behalf by a third-party to be handled in a manner consistent with any instructions provided by the entity or person making the payment, unless those

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[55] As noted above, the programs discussed in this report provide additive benefits to borrowers repaying student debt. 'Debt relief' companies may charge borrowers high upfront and recurring fees to enroll borrowers in free, widely available federal consumer protections. The Bureau, the Federal Trade Commission, and a growing number of state attorneys general have taken action to shut down debt relief companies that violate federal or state consumer law. *See supra* note 20.

instructions conflict with borrower instructions. Borrowers would benefit from servicers accepting and honoring standing instructions—ensuring that servicers have a clear understanding of borrowers' preferences, even where no new instructions accompany a student loan payment. If no new instructions have been provided by a payer, the borrower should expect the payment to be handled in accordance with any previously provided standing instructions.

- Payments are applied by servicers in a way that saves borrowers the most money and protects eligibility for federal repayment benefits. Unless otherwise instructed by the borrower or payer, generally borrowers benefit when any third-party payment in excess of the total monthly amount due is directed to the loan bearing the highest interest rate. Where the borrower has provided instructions otherwise, a third-party payment should not place an account in "paid ahead" status.[56] If a third- party payment is sufficient to pay off a loan in full, generally borrowers would benefit when any remainder is directed to each successive loan bearing the next highest interest rate, until the payment is exhausted.

- Third-party payments are credited effective to the date on which the servicer receives the funds. To avoid unnecessary interest charges, borrowers benefit when third-party payments are accurately credited to borrowers' accounts as of the date a payment is received by the servicer, including both payments sent by U.S. mail and electronic payments.

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[56] *See* U.S. Dept. of Education, Public Service Loan Forgiveness (accessed Mar. 9, 2017), https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service ("If you make a monthly payment for more than the amount you are required to pay, you should keep in mind that you can receive credit for only one payment per month, no matter how much you pay. You can't qualify for PSLF faster by making larger payments. However, if you do want to pay more than your required monthly payment amount, you should contact your servicer and ask that the extra amount not be applied to cover future payments. Otherwise, you may end up being paid ahead, and you can't receive credit for a qualifying PSLF payment during a month when no payment is due.").

- Payment processing errors are resolved quickly and transparently. Borrowers, third-party repayment assistance program providers and administrators, and student loan servicers benefit when errors are quickly resolved and payments are reprocessed accurately. Borrowers benefit when servicers promptly notify third parties if a payment cannot be applied to a borrower's account, and when erroneous or denied electronic payments are promptly returned through ACH or wire transfer. All stakeholders benefit when servicers provide the payer with basic information about any error, including information about the identity of the account to which the payment was directed and an explanation of the payment error. Borrowers would also be well served by a more consistent, transparent approach to addressing payment errors and communications around error resolution, including errors related to third-party payments.

Modernize and publish clear direction for servicers and third-party payers related to payment processing, particularly where payments affect existing federal student loan benefits and consumer protections. When third-party repayment assistance programs and existing federal protections work in concert, the benefit to consumers can be large—particularly for borrowers working in public service professions. As described in detail above, the Higher Education Act, implementing rules, guidance, and federal contracts affect aspects of servicers' policies and procedures related to payment processing. This is particularly true where payment processing policies intersect with federal loan forgiveness programs, including PSLF. In particular, servicers, third-party repayment assistance program providers and administrators, and borrowers may benefit from clear, updated direction related to:

- **Paid Ahead Status**: Where borrowers are pursuing PSLF, this can cause future on-time monthly payments to be deemed ineligible. Absent changes to federal rules requiring borrowers be put into "paid ahead" status, borrowers would benefit from clearer direction related to communications between servicers and payers, particularly when a borrower has been placed in paid ahead status and has also indicated intent to pursue PSLF. Borrowers, third-party repayment assistance program providers, administrators, and student loan servicers may all benefit from greater clarity when determining which payments "qualify" for PSLF, particularly where a borrower is receiving regular third-party payments made on their behalf and may be unaware that their loan status has jeopardized their pursuit of loan forgiveness—any effort to modernize regulations or guidance governing this process should consider this need for additional flexibility.

- **<u>Multiple payments in a single billing cycle</u>:** As described above, many borrowers participating in third-party repayment assistance programs will make payments on their own, in addition to those third-party payments made by their program provider. Consequently, servicers must determine how to aggregate and credit multiple payments made during a single billing cycle for the purposes of tracking borrower progress toward borrower benefits and protections that require borrowers to make a series of "on time" monthly payments, such as for PSLF. Borrowers, providers, and student loan servicers would all benefit from the publication of direction developed by the Department of Education, ensuring that all parties are following the same set of guidelines and minimizing the likelihood that borrowers will inadvertently forfeit qualifying months of payments toward PSLF when they elect to participate in a third-party repayment assistance program. Any effort to modernize regulations or guidance governing this process should also consider the unique challenges presented by a growing number of third-party payments and provide additional flexibility to ensure that this process appropriately protects the greatest number of student loan borrowers.

Explore ways to improve safe and secure access to student loan data by properly authorized third parties. As previously noted by the Bureau, the secure sharing by consumers of financial account data has begun to power a wave of new financial products and services. For example, consumer-permissioned data access has formed the basis for personal financial management tools and mechanisms to reduce the time to verify consumers' accounts so benefits can be delivered more quickly and accurately.

Borrowers participating in student loan repayment plans may benefit from a safe and secure, real time source for information about borrowers' student loan accounts for authorized third-parties. Greater transparency in this regard can allow third-party repayment assistance providers and administrators to deliver payments in a more timely and accurate manner. Additionally, secure, authorized third-party access to student loan information could provide properly authorized third parties with real time information about payment processing, potentially reducing the costly delays associated with payment errors.

4.2 RECOMMENDATIONS FOR THIRD-PARTY REPAYMENT ASSISTANCE PROGRAM PROVIDERS AND ADMINISTRATORS

Support all borrowers struggling to repay student loan debt. Student loan debt affects broad segments of the population. For example, the Bureau has consistently noted the fastest growing segment of borrowers is older Americans, a population segment increasingly borrowing (or co-signing) student loans used to finance their children's and grandchildren's college education.[57] Bureau reports show these borrowers experience many of the same financial struggles as other borrowers with student loan debt.[58] Some federal agencies permit these borrowers to earn benefits under their own third-party repayment plans, noting it is a valuable tool for retaining very experienced employees.[59] Many program administrators tell the Bureau these borrowers are not always eligible to receive benefits through existing employer programs. Providers, including individual employers, state agencies, and others, should consider whether expanding these programs to better serve borrowers with parent loans and borrowers who co-sign private student loans can further achieve their objectives.

Additionally, many third-party repayment assistance programs only issue payments to student loan servicers, putting benefits out of reach for the more than eight million student loan borrowers in default who are struggling to repay $140 billion in debt. These borrowers' loans are

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[57] *See* Consumer Financial Protection Bureau, *Data Point: Student Loan Repayment* (August 2017), and Consumer Financial Protection Bureau, *Snapshot of Older Consumers and Student Loan Debt* (Jan. 2017), https://www.consumerfinance.gov/data-research/research-reports/snapshot-older-consumers-and-student-loan-debt/ (The number of consumers age 60 and older with student loan debt has quadrupled over the last decade in the United States, and the average amount they owe has also dramatically increased. This trend is not only the result of borrowers carrying student debt later into life, but also the growing number of older consumers participating in the financing of their children's and grandchildren's college education.").

[58] *Id.*

[59] *See* U.S. Office of Personnel Management, *Federal Student Loan Repayment Program Calendar Year 2014* (Sept. 2015), https://www.opm.gov/policy-data-oversight/pay-leave/student-loan-repayment/reports/2014.pdf.

managed by a student loan debt collector and not a student loan servicer.[60] Third-party benefits could be particularly impactful in breaking what the Bureau has identified as a disturbing cycle of default for these borrowers.[61] The Bureau will continue to engage with third-party repayment assistance program providers and administrators to identify opportunities for amplifying the positive effects of their programs by expanding program eligibility to defaulted borrowers.

Ensure access to existing federal benefits and protections for student loan borrowers and provide tailored enrollment information to employees. In 2013, the Bureau recommended that government agencies, not-for-profit employers, and other public service organizations seeking to offer third-party payments consider tailoring these programs to support borrowers pursuing existing federal "payment relief" and loan forgiveness programs, including income-driven repayment plans and PSLF.[62] As noted previously, the State of New York's "Get on Your Feet" program is structured in this manner, but third-party repayment assistance program providers, program administrators, and student loan servicers tell the Bureau that this structure is relatively rare. Borrowers working in public service would benefit from third-party repayment assistance programs customized to replace their required income-driven payments, rather than receiving supplemental or lump sum payments that pay more than is required each month. This can provide employees working in public service both short-term payment relief and loan forgiveness over the long-term—guaranteeing that borrowers who

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[60] After a borrower defaults on a federal or private student loan, the loan is then transferred or placed with a collection agency. For further discussion on student loan collections, *see* Consumer Financial Protection Bureau, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2016), http://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf.

[61] *See* Consumer Financial Protection Bureau, *New data documents a disturbing cycle of defaults for struggling student loan borrowers* (May 2017), https://www.consumerfinance.gov/about-us/blog/new-data-documents-disturbing-cycle-defaults-struggling-student-loan-borrowers/.

[62] *See* Consumer Financial Protection Bureau, *Public Service & Student Debt* (2013), http://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf.

spend at least a decade serving their communities are not also overburdened by student loan debt.[63]

Providers and administrators offering programs designed to supplement a borrowers' monthly payment should still establish a payment process that takes existing payment processing procedures into account, and also inform beneficiaries of issues that could arise, particularly for borrowers that may be eligible for PSLF. As discussed earlier in the report, many borrowers may choose to use their program benefits to replace their normal monthly payments, even when participating in a program designed to supplement monthly payments.[64]

Finally, as third-party repayment assistance programs continue to grow, program providers and administrators may also wish to make it easier for borrowers to consider their entire financial picture when participating in these programs. Consumers' decisions about student loan repayment are not made in isolation - household balance sheets include more than just student loans, and borrowers must make tradeoffs that consider their total financial circumstances. To maximize program benefits, third-party repayment assistance program providers may wish to support this holistic decision-making process by advising borrowers to consider their entire financial situation when choosing whether to have a provider supplement or replace their student loan payment. This approach can help borrowers better evaluate how to maximize their benefits, particularly where tradeoffs include participation in other employer-sponsored benefits, such as 401(k) contributions with an employer match.

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[63] In 2013, the Bureau recommended that public service organizations consider this approach. Since that time, a number of organizations have expanded third-party student loan repayment programs, but this approach has not been widely utilized. *See*, Consumer Financial Protection Bureau, *Public Service & Student Debt* (2013), http://files.consumerfinance.gov/f/201308_cfpb_public-service-and-student-debt.pdf.

[64] *See supra* note 20.

5. Conclusion

that

Taken together, the challenges consumers, third-party repayment assistance program providers, and program administrators face when initiating, transmitting, and processing third-party payments could reduce benefits intended for borrowers, potentially causing borrowers to miss out on the maximum value of such programs, or create roadblocks for consumer-friendly developments that could better support the most vulnerable borrowers.

As third-party student loan repayment assistance programs are offered to a growing number of student loan borrowers by employers and other providers, program providers and administrators may wish to continue to consider the unique and varying needs of the millions of student loan borrowers who may stand to benefit from such offerings. The diverse range of consumer circumstances and industry practices, including servicing breakdowns, should be at the forefront as companies, employers, government agencies, and others weigh best practices and program features. Importantly, student loan borrowers often must consider a range of repayment factors—from determining how to pay down multiple loans and which loan to pay down first, to evaluating repayment options such as income-based payments or loan forgiveness programs for public servants.

CFPB's Project Catalyst and the Office for Students and Young Americans will continue to assess the effects, and potential benefits and risks of innovation as they relate to the issues identified in this report. In particular, the Bureau will continue to work to strengthen student loan servicing practices to better protect student loan borrowers. The Bureau will also continue to foster the development of and innovative financial services that benefit student loan borrowers.

United States Senate

WASHINGTON, DC 20510

January 19, 2018

Ms. Leandra English
Acting Director
The Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Acting Director English and Director Mulvaney:

The Consumer Financial Protection Bureau (CFPB) has provided valuable oversight and transparency to the college financial product marketplace, protecting students and promoting best practices for institutions of higher education and financial service providers. Last year's annual report to Congress on student banking built on that work by adding information and analysis on financial products offered by or in conjunction with colleges and universities to the required report on college credit card agreements. We are concerned that this year's report omits this critical information and request that the CFPB submit an updated analysis of college debit card and bank account agreements.

The Credit Card Accountability, Responsibility and Disclosure Act requires the CFPB to report on agreements between credit card issuers and institutions of higher education, but this is only one piece of the agency's broader mandate to monitor risks to consumers in the offering or provision of consumer financial products or services. College students are vulnerable consumers, and the institutions of higher education they attend have considerable influence on their students' financial choices, from student loans to credit cards to bank accounts and other financial products. CFPB plays an important role in disclosing information on these financial products to students. Providing the bare minimum when reporting on credit card agreements fails to meet CFPB's responsibility to student consumers.

Last year's report found that "certain agreements between colleges, financial institutions, and other vendors present continued risk to students." The CFPB identified dozens of general marketing agreements that featured higher fees or fewer protections than widely available alternatives. Some agreements failed to provide the institution of higher education with information on fee changes and data on product use and cost. Others spelled out in detail revenue-sharing agreements and other payments made in exchange for exclusive marketing access on campus. These troubling findings call into question whether the financial services accounts offered under these agreements are meeting the legal requirement that they are "not inconsistent with the best financial interests of the students."

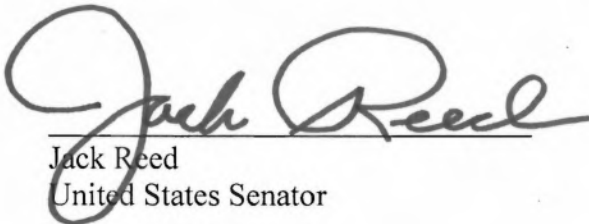
The CFPB must continue to shine a light on the risks to student consumers from campus financial product agreements as well as promote best practices that put students' financial interests first. As such, we request that you provide Congress the following information by March 1, 2018:

- An explanation of the process used to develop this year's report and the rationale for limiting the report to college credit card agreements; and

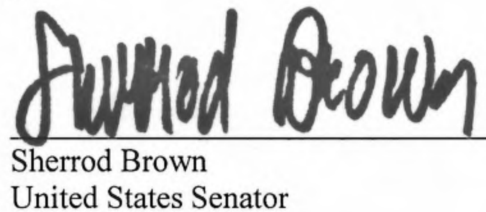
- An updated analysis on college debit card and bank account agreements.

Thank you for your attention to this important request.

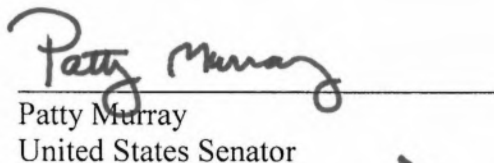
Sincerely,



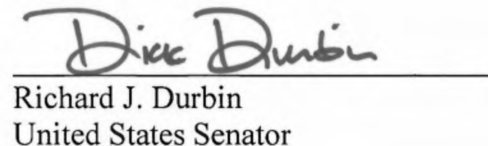
Jack Reed
United States Senator



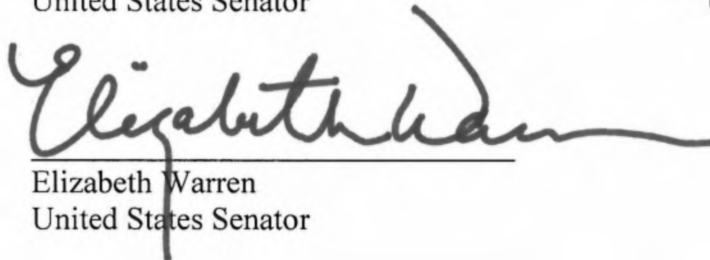
Sherrod Brown
United States Senator



Patty Murray
United States Senator



Richard J. Durbin
United States Senator



Elizabeth Warren
United States Senator

1700 G Street NW, Washington, DC 20552

February 7, 2018

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate
728 Hart Senate Office Building
Washington, D.C. 20510

Dear Ranking Member Reed:

I received your letter of January 19, 2018, regarding the Bureau of Consumer Financial Protection's (Bureau) annual report to Congress about college credit card agreements. In your letter, you seek information relating to the process used to develop the most recent report and an analysis on college debit card and bank account agreements.

As the Bureau set out in the first sentence of the January 2018 report, section 305(a) the Credit Card Accountability, Responsibility, and Disclosure Act requires that each annual report to Congress list information submitted to the Bureau concerning college student credit card agreements between credit card issuers and institutions of higher education or certain organizations affiliated with such institutions.[1] The statute does not refer to debit card or bank account agreements or other information that you and your colleagues suggest has been omitted from the Bureau's report. Please be assured that I will continue to fulfill the requirements of the law as written.[2]

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[1] Pub. L. No. 111–24, § 305(a), codified at 15 U.S.C. § 1637(r).

[2] Including, for example, market monitoring activities in support of the Bureau's rulemaking and other functions under 12 U.S.C. 5512(c).

Thank you for your interest in this matter. Should you have further questions about this issue, please do not hesitate to have your staff contact Matthew Pippin in the Bureau's Office of Legislative Affairs. Mr. Pippin can be reached at (b)(6)

Sincerely,

Mick Mulvaney
Acting Director

United States Senate

WASHINGTON, DC 20510

September 13, 2018

The Honorable Mick Mulvaney
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Dear Mr. Mulvaney,

We are alarmed by statements the Consumer Financial Protection Bureau (CFPB) Student Loan Ombudsman made in his letter of resignation which appear to confirm longstanding concerns raised by advocates for seniors, students, servicemembers, and all hardworking families that access consumer marketplaces. The resignation letter suggests that under your leadership, supervisory and enforcement activities, marketplace reporting, and interagency cooperation are governed by political expediency rather than strict adherence to the congressionally mandated mission of the CFPB. We seek additional information so that we may evaluate the independence and effectiveness of the Ombudsman's office under your tenure.

Over the last ten months, the CFPB has effectively disbanded the Office for Students and Young Consumers and removed student loan servicing reforms from its regulatory agenda. The resignation letter suggests that, in addition to these rollbacks, the CFPB has also failed to maintain rigorous supervisory oversight of student loan servicers. At the same time, this Department of Education, which has consistently failed to hold servicers accountable, has challenged states' oversight authorities as well. The Ombudsman's concern that the CFPB is abandoning consumers is evidenced by your recently reported decision to stop protecting servicemembers and their families by ending supervisory programs for violations of the Military Lending Act. Taken together, this leaves millions of families with more than $1.5 trillion in student loan debt forced to fend for themselves against an industry with an abundance of well-documented predatory practices and abusive behaviors.

Members of Congress and consumer advocates have raised concerns that CFPB's recent pattern of siding with special interests, whether payday lenders, lenders that rip off servicemembers, or student loan servicers, has been exacerbated by the politicization of the agency. In addition to your controversial installation as Acting Director, you appear to have rerouted key decision-making processes away from career staff in favor of input from your hand-picked political appointees. It is especially concerning that your political hires might overrule the independent judgment of the Ombudsman's office. As Director of the Office of Management and Budget, it is in your political interest to shield from criticism other agencies you oversee, such as the Department of Education. It appears that this conflict of interest has not only inhibited CFPB enforcement actions, but even the sharing of data with other federal regulators and the United States Congress.

So that we may better understand the departing Ombudsman's concerns and the CFPB's plans for protecting borrowers and ensuring a fair marketplace, please respond to the following questions no later than October 1, 2018:

1) What actions has the CFPB taken to restore the Memoranda of Understanding with the Department of Education?

2) What actions has the CFPB taken to work with federal and state agencies to support "consumer-driven oversight of the student loan industry" and standards to strengthen the servicing practices for all student loans as recommended in the 2017 Annual Report of the CFPB Student Loan Ombudsman?

3) How many supervisory examinations of larger participants in the student loan servicing market has the CFPB performed in the last 10 months pursuant to the Bureau's 2013 rulemaking? Did the examinations include the servicing of both private and federal loans?

4) In the last ten months, how many student loan related complaints submitted to the CFPB have resulted in investigations or enforcement actions?

5) In the last ten months, how many enforcement actions have career staff recommended be undertaken against student loan servicers?

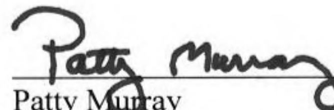
6) Have any of these recommendations have been acted upon to date? Please provide the number of such actions you or any Bureau political appointees have approved or declined to approve.

7) What are your political appointees' roles in determining the scope and timing of supervisory examinations of student loan servicers? Do the career staff of the Office for Students and Young Consumers provide input to Bureau examiners regarding scope or content of supervisory examinations?

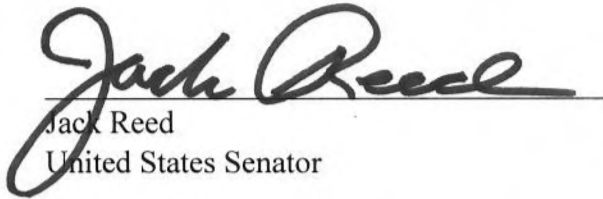
8) The letter states that the CFPB suppressed a staff report "showing that the nation's largest banks were ripping off students...by saddling them with legally dubious account fees." Are you or any of your political appointees aware of this report? Please provide the report, any documentation relevant to the report, and an explanation for the contents of this report being withheld from Congress.

Sincerely,

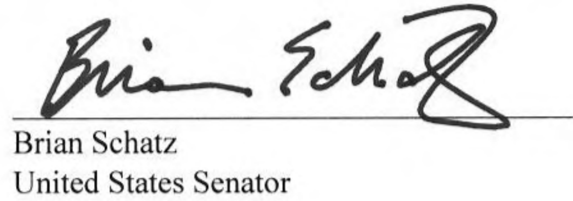
Sherrod Brown
United States Senator



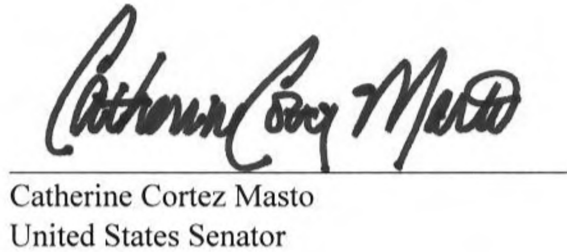
Patty Murray
United States Senator



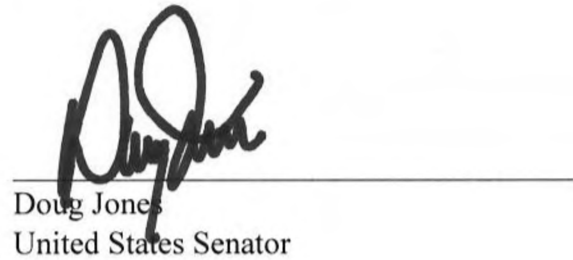
Jack Reed
United States Senator



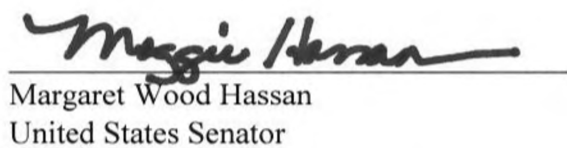
Brian Schatz
United States Senator



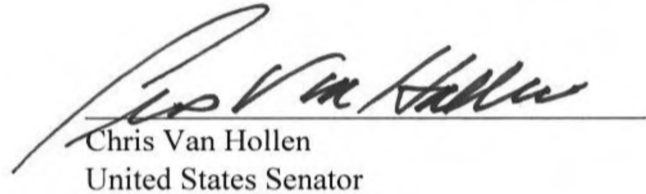
Catherine Cortez Masto
United States Senator



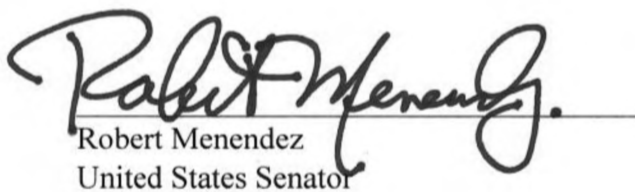
Doug Jones
United States Senator



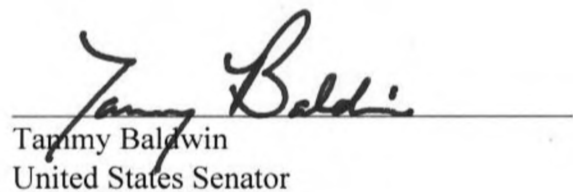
Margaret Wood Hassan
United States Senator



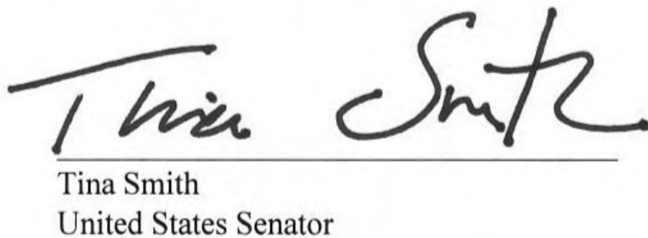
Chris Van Hollen
United States Senator



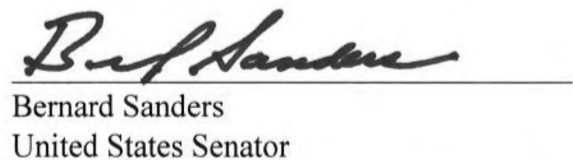
Robert Menendez
United States Senator



Tammy Baldwin
United States Senator

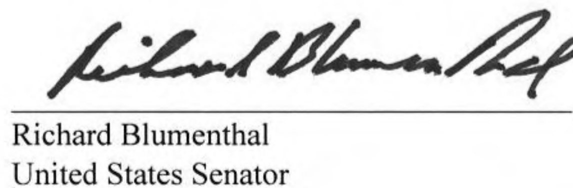


Tina Smith
United States Senator



Bernard Sanders
United States Senator

Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator

Richard J. Durbin
United States Senator

1700 G Street NW,
Washington, DC 20552

November 1, 2018

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Brown and Mrs. Murray:

Thank you for your letter about the Bureau of Consumer Financial Protection's (Bureau's) efforts to protect borrowers, particularly student loan borrowers, and ensure a fair marketplace. The Bureau creates opportunities for all people, including young adult consumers, to make choices about money that best serve their own life goals.

As you may know, I have been working to ensure that the Bureau's operations are conducted in a way that hews to the Bureau's statutory mandate and best enables us to fulfill efficiently and effectively all of the Bureau's statutory requirements.

With respect to the Bureau's collaboration with the Department of Education on student loan servicing complaints, information sharing between the Bureau and the Department of Education was governed by an October 19, 2011 Memorandum of Understanding (MOU) that, among other things, allowed the Bureau to refer servicing complaints to the Department of Education through a secure web portal. The Department of Education terminated that MOU effective October 1, 2017.

Since the termination of the MOU, the Bureau continues to pursue options that would allow the Bureau to share Confidential Supervisory Information with the Department of Education for permissible purposes under 12 CFR 1070.43. These efforts include providing relevant supervisory information where the Department of Education has active confidentiality assurances, and negotiating with the Department of Education for the Bureau to obtain information from student loan servicers necessary for supervisory examinations. The Department of Education continues to have access to the Bureau's public complaint database. Bureau staff also continues to analyze complaint data and provide that analysis as technical assistance when requested by the Department of Education.

With respect to your question about the Bureau's collaboration with federal and state agencies, the Bureau's former Private Education Loan Ombudsman had collaborated with state agencies to provide training or technical assistance to states seeking to improve student loan repayment through state-based consumer education or state oversight initiatives, including with the Illinois, Washington, Pennsylvania, California and Mississippi Attorneys General. The Private Education Loan Ombudsman also provided technical assistance and training for Banking Departments in California, Connecticut, and the District of Columbia related to new programs expanding oversight of student loan companies. Interagency coordination with state and federal regulators has been a priority for the Bureau since its inception, and the Bureau is continuing to build upon this cooperation under new leadership.

As for our supervisory activity, the Bureau supervises certain student loan servicers pursuant to a larger participant rule published in the Federal Register on December 6, 2013.[1] The Bureau has conducted exams of larger student loan participants in the past 10 months. As part of the prioritization process consistent with 12 U.S.C. § 5514(b)(2), the Bureau considered exams of student loan servicers subject to the Bureau's supervisory authority while developing its 2019 exam calendar. As the Bureau has stated previously, the Bureau will continue to monitor the student loan servicing market for trends and developments, as it does for all consumer financial markets within its jurisdiction.

Regarding your questions about the Bureau's ongoing investigations regarding student loan servicers, the Bureau does not comment on or confirm ongoing investigations to protect the integrity of the law enforcement process as well as the confidentiality and due process interests of entities under investigation.

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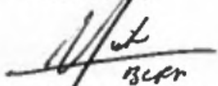
[1] Defining Larger Participants of the Student Loan Servicing Market, 78 Fed. Reg. 73,383 (Dec. 6, 2013).

Finally, you refer to a "staff report" regarding student bank account agreements that was allegedly "suppressed." In January 2018, the Bureau published its annual report pursuant to section 305(a) of the Credit Card Accountability, Responsibility, and Disclosure Act.[2] That statute requires the Bureau to submit to Congress, and make available to the public, an annual report that lists information submitted to the Bureau concerning college student credit card agreements between credit card issuers and institutions of higher education or certain organizations affiliated with such institutions.[3] The statute does not refer to debit card or bank account agreements, so the Bureau did not include such information in this year's final report. Please be assured that I will continue to fulfill the requirements of the law as written.

Should you have any further questions about this matter, please do not hesitate to contact me or have your staff contact Matthew Pippin in the Bureau's Office of Legislative Affairs. Mr. Pippin can be reached at (b)(6)

Sincerely,



Mick Mulvaney
Acting Director

cc: The Honorable Jack Reed, United States Senator
The Honorable Brian Schatz, United States Senator
The Honorable Catherine Cortez Masto, United States Senator
The Honorable Margaret Wood Hassan, United States Senator
The Honorable Robert Menendez, United States Senator
The Honorable Tina Smith, United States Senator
The Honorable Elizabeth Warren, United States Senator
The Honorable Brian Schatz, United States Senator
The Honorable Doug Jones, United States Senator
The Honorable Chris Van Hollen, United States Senator

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[2] Bureau of Consumer Fin. Prot., 2017 College credit card agreements (2018), https://www.consumerfinance.gov/documents/5948/cfpb_college-credit-card-agreements-report_2017.pdf.

[3] Pub. L. No. 111-24, § 305(a), 123 Stat. 1734, 1749 (codified at 15 U.S.C. § 1637(r)(3)).

The Honorable Tammy Baldwin, United States Senator
The Honorable Bernard Sanders, United States Senator
The Honorable Richard Blumenthal, United States Senator
The Honorable Richard J. Durbin, United States Senator