NYC Consumer and Worker Protection

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The Consumer Financial Protection Bureau
Via Electronic Submission

Docket No: CFPB–2023–OPE-0009: Request for Information Regarding Consumer Credit Card Market

April 19, 2023

Dear Director Rohit Chopra,

The City of New York appreciates the opportunity to respond to the Consumer Financial Protection Bureau's ("CFPB") request for information regarding the Consumer Credit Card Market (Docket No. CFPB–2023–0009).

The New York City Department of Consumer and Worker Protection's ("DCWP") mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. Through its community outreach, DCWP empowers New Yorkers by providing them with the tools and resources they need to be educated consumers and to achieve financial health. DCWP also conducts research and advocates for public policy that furthers its work to support New Yorkers.

DCWP's efforts around credit cards and personal finance include:

(a) Providing free one-on-one financial counseling to New York City residents through DCWP Financial Empowerment Centers, including counseling clients on credit card use;
(b) Managing the New York City Free Tax Prep program both for individual and self-employed filers;
(c) Producing research on student loans, including seven student loan-focused reports published since 2017;
(d) Producing a Neighborhood Financial Health Index that assesses key financial health indicators, such as access to financial services and quality jobs in New York City neighborhoods;
(e) Protecting consumers from predatory auto loans by implementing and enforcing new laws and rules to prevent deceptive financing practices by used car dealers; and

(f) Taking consumer protection-related legal action, including a $20 million settlement with Berkeley College.

DCWP has observed that the CARD Act has been transformational for credit card use. Credit card terms are now fairer, more transparent, and less likely to be predatory. As noted by the National Consumer Law Center ("NCLC") in previous comments regarding the CARD Act, the CARD Act reduced the total cost of credit by up to 190 basis points in the first six years of law being in place and reduced credit card debt held by Black Americans.[1]

DCWP commends the CFPB for its continued efforts to ensure that credit cards remain a safe and affordable tool for consumers. This includes recent efforts for increased transparency from credit card issuers and proposed rules that would cap late fees. DCWP encourages the CFPB to expand these efforts going forward amid the increased use of credit cards and similar financial tools, such as Buy Now, Pay Later ("BNPL"); higher inflation; growing interest rates; and other economic forces that will affect consumers in the coming months and years.

Overview of Observed Credit Card Trends

While conditions surrounding credit card use greatly improved following the CARD Act, there are indications that the credit card market is trending in a harmful direction. Following the CARD Act, credit card delinquency rates dropped, especially for younger borrowers. This included a decline in the share of credit card borrowers in their twenties transitioning to 90 days past due in their peak of ~4.5% in 2007 to ~2.5% in 2011, where it roughly remained until 2020.[2] A similar, though less dramatic, drop occurred for borrowers between the ages of 30-60.[3]

Credit card delinquency and potential misuse is now trending in the wrong direction, especially for borrowers between the ages of 20-40. Between December 2021 and December 2022, the Federal Reserve Bank of New York found that credit card balances went up by $130 billion, the largest annual growth in balances since the Federal Reserve Bank began collecting this data in 1999.[4] Furthermore, the share of credit card borrowers transitioning to 90 days past due fell for all age groups to about 1.5% in 2020, likely due to reduced spending and pandemic-era supports, such Economic Impact Payments.[5] But, by the end of 2022, those sliding into serious delinquency spiked beyond 2.5% for borrowers 20-40 years of age.[6] These rates are now the highest they have

[1] National Consumer Law Center, "Re:CARD Act Rules Review Pursuant to the Regulatory Flexibility Act; Request for Information Regarding Consumer Credit Card Market," accessed March 15, 2023 at https://www.nclc.org/wp-content/uploads/2022/08/Comments_CFPB_RFA_RFI_CARD_Act.pdf
[2] Andrew Haughwout, Donghoon Lee, Daniel Mangrum, Joelle Scally, and Wilbert van der Klaauw, "Younger Borrowers Are Struggling with Credit Card and Auto Loan Payments," Federal Reserve Bank of New York, accessed March 14, 2023 at https://libertystreeteconomics.newyorkfed.org/2023/02/younger-borrowers-are-struggling-with-credit-card-and-auto-loan-payments/
[3] Ibid.
[4] Ibid.
[5] Ibid.
[6] Ibid.

been since 2009 and are approaching pre-CARD Act delinquency rates.[7] In all, as of Q4 2022, there is about $1 trillion in credit card debt, a $130 billion year-over-year increase.[8]

There are multiple likely reasons for higher balances and delinquency rates. One reason is rising inflation and interest rates. DCWP financial counselors have reported, amid higher prices for everyday items, that more clients are using credit cards and maintaining balances on their cards. In response to rising inflation, interest rates have also risen. Between the passage of the CARD Act in 2009 and 2021, average credit card interest rates, although high in comparison to other forms of credit, remained relatively steady at between 12%-15%. Rates have since ballooned to 19% and are likely to trend upward.[9] Another possible reason for issues in the credit card market is the proliferation of credit card use across income and demographic groups and the decline in the use of cash. Since 2011, the share of payments made by credit cards has nearly doubled, from 15% of all purchases in 2011[10] to 28% of all purchases in 2021, the most recent year for which data is available.[11]

The rising rate of credit card use is concerning to DCWP. Credit cards are now the default way to make purchases for many, including individuals with low and moderate incomes, leading to easy access to credit and many using them for everyday purchases.[12] When borrowers find themselves forced to maintain balances, they now face higher interest rates. DCWP expects that as interest rates and prices remain high, credit card balances and delinquency will continue to go up. Higher rates of delinquency could have several lasting effects beyond debt; this includes affecting major life decisions, long-term credit, and negative physical and mental health. The CFPB should continue to research how it can influence lowering credit card balances and delinquency reduction, including more regulation on interest rates and credit limits and promoting financial education. Additional research could also focus on credit disparities among young borrowers, across racial and ethnic groups. CFPB actions should have an eye toward immediate action that can provide a short-term impact, given rapidly changing economic changes.

(Question 1e) What practices of credit card issuers may uniquely affect special populations (such as servicemembers and their dependents, low- and moderate-income consumers, older Americans, and students)? What are the effects of protections specific to special populations (for example, the

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[7] "2022: Q4 Quarterly Report on Household Debt and Credit," Federal Reserve Bank of New York. Accessed February 16, 2023 at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2022Q4

[8] "Total Household Debt Reaches $16.90 trillion in Q$ 2022; Mortgage and Auto Loan Growth Slows," Federal Reserve Bank of New York, accessed February 16, 2023 at https://www.newyorkfed.org/newsevents/news/research/2023/20230216

[9] Adam McCann, "Historical Credit Card Interest Rates," WalletHub, accessed February 16, 2023 at https://wallethub.com/edu/cc/historical-credit-card-interest-rates/25577

[10] Scott Schuh and Joanna Stavins, "The 2011 and 2012 Surveys of Consumer Payment Choice," Federal Reserve Bank of Boston, accessed February 15, 2023 at https://www.atlantafed.org/-/media/documents/banking/consumer-payments/research-data-reports/2014/the-2011-and-2012-surveys-of-consumer-payment-choice/rdr1401.pdf

[11] Emily Cubides and Shaun O'Brien, "2022 Findings from the Diary of Consumer Payment Choice," Federal Reserve, accessed March 15, 2023 at https://www.frbsf.org/wp-content/uploads/sites/7/2022-Findings-from-the-Diary-of-Consumer-Payment-Choice-FINAL.pdf

[12] Ibid.

Servicemembers Civil Relief Act or the Military Lending Act)? How are these changing and what, if any, trends are evolving?

As outlined in the *Overview of Observed Credit Card Trends* section, delinquency rates are trending upward for younger borrowers. This is particularly harmful for the borrowers who have yet to establish a credit history. There are several practices that likely contribute to this trend, including marketing cards to younger borrowers, promoting credit cards as a credit building tool, and offering attractive promotional and introductory offers to younger borrowers. While DCWP believes that credit card use can be an important tool for younger borrowers, it also believes that there should be more guardrails. The agency is a strong proponent of the CARD Act's ability-to-repay requirements which have prevented some of the most potentially harmful practices on younger borrowers. DCWP encourages CFPB to investigate ways to support younger borrowers' credit card use that include further regulating credit card use, such as strengthening ability-to-repay requirements; restricting young individuals to credit cards with more beneficial terms; and promoting secure credit cards as a credit building tool. DCWP would like to highlight to the CFPB that youth are a diverse demographic that includes a wide range of backgrounds, including those in the education system, in the workforce, unemployed, and more. Their needs are distinct and those considerations should drive how consumer protection and financial education materials are created and effectively distributed.

DCWP is highly concerned about the compounding effect that the resumption of payments on federal student loans will have on younger credit card borrowers. Prior to the moratorium, 1 in 6 New Yorkers had student loans.[13] Additionally, DCWP identified Black borrowers, people younger than 45, those experiencing material hardship, and more highly educated borrowers as disproportionately likely to have student loans.[14] As payments resume this summer, DCWP is concerned that a large number of these individuals will struggle to integrate student loan payments into their existing budgets and may turn to credit cards to reduce pressure on overextended budgets – only worsening the nationwide issue of growing credit card balances and delinquency rates. DCWP encourages the CFPB to research and closely monitor risk related to student loan repayments, with any eye toward populations identified above and those who carry credit card balances month to month. This could include heightened and/or targeted promotion of the Consumer Credit Counseling Service, which DCWP has identified as a useful tool to help borrowers manage their finances.

Lastly, DCWP remains concerned about populations that may lack access and/or the ability to use technology that is increasingly ubiquitous in the financial space, including credit card use. While the CFPB may be inclined to focus regulation on emerging technology, it should also focus on protecting vulnerable populations that rely on traditional customer service from credit card issuers, including in-person and phone services. DCWP strongly encourages that credit card issuers offer

[13] Weighed Down: New Yorkers Share How Student Loan Debt is Affecting Their Lives, accessed March 16, 2023 at https://www1.nyc.gov/assets/dca/downloads/pdf/partners/StudentLoanDebtSurvey-Report-2021.pdf.
[14] Ibid.

accessible customer service hours, such as opening phone services during weekday nights and weekends and encouraging credit card issuers to offer in-person services where feasible.

(Question 2a) How effective are current disclosures of rates, fees, and other cost terms of credit card accounts in conveying to consumers the costs of credit card plans?

While the CARD Act has been effective in improving disclosures around credit card rates and fees, more can be done to ensure that borrowers fully understand their credit card terms. DCWP has observed that there is often a lack of understanding around terminology used by credit cards and the implications of varying aspects of credit card use, such as interest rates and minimum payments. Additionally, DCWP counselors have reported that clients find it difficult to find their annual percentage rate (APR) and other relevant terms of their credit cards.

While credit card issuers are required to disclose terms of credit cards, these disclosures could be provided more frequently and in easily accessible ways. For instance, each paper and electronic statement could clearly lay out, in a readable and accessible manner, definitions of APRs, current APR terms, if interest has been applied to the borrowers' accounts in recent months, the minimum payment needed so interest is not applied, when future interest will be applied, and more. This would ensure that borrowers have access to all information needed to make informed financial decisions.

(Question 3a) What unfair, deceptive, or abusive acts and practices exist in the credit card market? How prevalent are these acts and practices and what effect do they have? With regard to any unfair, deceptive, or abusive acts and practices that exist in the credit card market, how might any such conduct be prevented and at what cost?

As previously stated, the CARD Act has proved to be effective at eliminating the worst practices from credit card issuers, yet deceptive and potentially predatory practices still exist. One such area is promotional APR periods. Many credit cards offer promotional periods where APR rates are kept low or even at zero percent. While not inherently negative, DCWP counselors have reported that there is not enough proactive communication with consumers about when these periods are ending, opening up the potential for consumers to be saddled with unexpected interest applied to their accounts. DCWP recommends that the CFPB investigate this practice with an eye toward how credit card issuers can better prepare consumers for the end of promotional periods.

Another issue with these promotional APR periods is deferred interest. A deferred interest plan includes no interest if the consumer pays off balances within a certain period, often 12 months. But after the promotional period, if a balance remains, card issuers will charge interest on some or all the promotional period. According to a Wallet Hub survey, 54% of people do not understand how deferred interest works, and 67% of people who understand how deferred interest works think it is unfair.[15] Given that the profitability of this practice relies on the many consumers who do not

[15] "Re:CARD Act Rules Review Pursuant to the Regulatory Flexibility Act; Request for Information Regarding Consumer Credit Card Market," National Consumer Law Center, accessed March 15, 2023 at https://www.nclc.org/wp-content/uploads/2022/08/Comments_CFPB_RFA_RFI_CARD_Act.pdf

understand the terms of these deferred interest plans and the practice provides little benefit to the consumer, DCWP encourages the CFPB to investigate ways to ban deferred interest payments.

DCWP would also like to see business cards afforded similar protections as those provided by the CARD Act for personal cards. These protections would support small business owners, who often are unable to secure bank loans. According to a Federal Reserve report, nearly 30% of financing for small businesses comes from credit cards.[16] DCWP serves small businesses and those who are self-employed through its self-employed tax preparation and financial counseling programs. While these consumers often have a business card, most do not have a sophisticated accounting and finance team and instead depend on their personal finance skills and credit lines to operate their businesses.[17] When these individuals or small business owners have business cards that do not have the extensive protections afforded under the CARD Act, it puts them at substantial risk. For this reason, DCWP believes it is imperative that CFPB address the lack of CARD Act protections for business cards.

(Question 4a) How, if at all, are the characteristics of consumers with lower credit scores changing? How are groups of consumers in different score tiers faring in the market? How do other factors relating to consumer demographics or financial lives affect consumers' ability to successfully obtain and use credit cards?

DCWP has a mission to support New Yorkers so they can build assets and make the most of their financial resources. For this reason, DCWP remains highly concerned about New Yorkers with low credit scores. DCWP counselors work extensively with those who have difficulty with credit scores and have observed the far-reaching effects of low credit scores, including difficulty taking out loans from reliable lenders, renting an affordable apartment, buying or leasing a car from a reputable auto-dealer, and delaying or preventing wealth building activities. Additionally, as one DCWP financial counselor reported, low credit scores are indicative of severe financial hardship, and these individuals are more likely to use credit cards as a lifeline, often only worsening credit scores.

DCWP encourages the CFPB to continue to monitor the effects of credit cards on credit scores and explore ways to ensure that credit card use does not result in low credit scores. This could be in the form of increased regulation on credit limits, ensuring that consumers are properly educated about interest rates and fully understand the terms of credit cards, and proactive financial education.

(Question 7e) How do innovations by firms offering other consumer financial products and services (such as buy-now-pay-later credit, mobile payments, or non-card point-of-sale loans) compete with credit cards, and to what extent do consumers view them as effective alternatives to or substitutes for credit cards?

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[16] "Small Business Credit Survey: 2022 Report on Employer Firms," Federal Reserve Bank, accessed March 16, 2023 at https://www.fedsmallbusiness.org/survey/2022/report-on-employer-firms
[17] "Report on Employer Firms: Small Business Credit Survey," Federal Reserve Bank, accessed March 16, 2023 at https://www.fedsmallbusiness.org/survey/2020/report-on-employer-firms

DCWP commends the CFPB for its recent research on BNPL and believes that it is increasingly becoming an alternative to credit cards. According to a BankRate survey, 38% of consumers who have used BNPL services say BNPL will eventually replace credit cards and 56% prefer BNPL services to credit cards.[18] DCWP has concerns regarding BNPL, many of which the CFPB has already recognized in its research. These concerns include marketing toward younger consumers; unreliable effects on credit scores, including the ability to hurt credit but not help improve scores; data use; overextension; varying terms and conditions including in respect to interest, returns, and payment schedules; and a general lack of regulation. DCWP encourages the CFPB to continue to research BNPL, monitor various BNPL companies and practices, and seek ways to make the industry safer for consumers including through potential regulations.

Respectfully Submitted,

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[18] Heidi Rivera and Hannah Smith, "Buy Now, Pay Later Statistics," Bankrate, accessed March 16, 2023 at https://www.bankrate.com/loans/personal-loans/buy-now-pay-later-statistics/