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Consumer Protection in a Regulatory Environment

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Abstract

*The credit industry in the United States has been the focus of attention as creditors balance risks inherent in granting credit with those of consumer-borrowers who wish to procure goods and services through legitimate credit arrangements. Congress has intervened to regulate and police certain industries and institutions involved in providing Americans with necessary credit. This paper considers consumer protections from both an industry and consumer perspective by examining major statutes enacted by Congress and the regulations adopted by the Federal Trade Commission and the Consumer Financial Protection Board.**

Keywords: consumer protection, e-commerce, credit card fraud, “as is” sales, credit disputes

1. Introduction

There is no doubt that “credit is king” in the modern American economy. By 2023, Americans had amassed $1.127 trillion in unpaid credit card debt (Schulz, 2024). Fifty-six percent of all Americans

carried a credit card balance at some point in 2023. Petras (2024) noted that "Card balances increased by about $50 billion, or 4.6%, in the fourth quarter of 2023." In addition, "the percentage of card delinquencies 90 days or more rose to 6.4% from 4% in the fourth quarter of 2022" (Petras, 2024). The credit industry has been the focus of attention and close scrutiny as society balances risks inherent in credit transactions for creditors (Pathak, Rougeaux, and Singh, 2024) with those of borrowers who may only be able to procure goods and services through legitimate credit arrangements in many cases. In this context or rather, juxtaposition, Congress has stepped in to regulate and police industries and institutions involved in providing Americans with necessary credit. This paper considers consumer protections from both an industry (Part I) and consumer perspective (Part II) (see Kubasek et al., 2024).

Part I: Regulation of Specific Industries

2. Regulated Industries

Over the years, both the Congress and the Federal Trade Commission (FTC) have created a statutory and regulatory framework to deal with practices in certain industries that directly affect American consumers. The first of these is the used-car industry.

2.1. Used-Car Sales: Lemon Laws

Moore (2024) noted that many states have enacted a variety of state "lemon laws" that applied only in new car sales:

"Most state lemon laws specify that a manufacturer must provide a refund or replacement for a defective new vehicle when a substantial defect cannot be fixed in four attempts, a safety defect within two attempts or if the vehicle is out of service for 30 days within the first 12,000 to 18,000 miles or 12 to 24 months."

In the past, buyers of used vehicles were confronted by the fact that little information was available relating to whether the auto had been involved in an accident or whether there were serious issues that were not immediately visible to the buyer of a "used" vehicle (now regularly labeled as a "pre-owned" vehicle for marketing purposes) (see Olson, 2018). This situation was exacerbated by the legal rule that unless a warranty was offered by the seller of a used-car or fraud could be found (*Dennis v. Cash Your Car*, 2023) in the transaction, the sale was "as is" (Hunter, 2016; Hunter, Amoroso, & Shannon, 2019). What did that mean?

Robison (2023) writes:

"In an "as is" car sale, the buyer typically purchases a used vehicle in its current condition regardless of its known and unknown damages and defects. Often, when a buyer purchases a used vehicle in an "as is" car sale, the buyer may absolve the seller of any responsibility to repair or replace any damaged or defective parts. In other words, the buyer forfeits their right to complain if there are any issues with the vehicle unless the seller gives the buyer a warranty that covers the car."

"Vehicles sold "as is" are typically sold without any type of warranty. Because of this, many people use the term "as is" alongside the phrase "no warranty." If the buyer purchases the vehicle without any express or written warranty, the buyer may not have a legal recourse to receive compensation for repairing or replacing their vehicle."

In order to afford some protections to the used-car buyer, Congress enacted the *Truth in Mileage Act*, more widely known as the *Odometer Act of 1972,* which protects against odometer fraud in used-car sales. The Act prohibited tampering with a motor vehicle's odometer and provided safeguards to protect purchasers in the sale of motor vehicles with either altered or reset odometers.

In 1984, the FTC extended the Act's protections by enacting the *Used Car Registration Rule*(Federal Trade Commission, 1984). According to the Rule:

(a) It is a deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as *commerce* is defined in the Federal Trade Commission Act:
(1) To misrepresent the mechanical condition of a used vehicle;
(2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and
(3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.

Pursuant to the 1984 rule, a dealer must attach a *buyer's guide label* to any used-car offered for sale. The label must inform the buyer that the car is being sold "as is." The "as is" language is a warning to a purchaser that the seller is not guaranteeing anything about the vehicle. In addition, the label must include a "suggestion" that the buyer should obtain an independent inspection *before* any decision to purchase the used-car is made (Kubasek et al., 2024, p.621-622).

However, as Hunter (2016, pp. 59-60) wrote:

"The "as is" provision will not protect a dealer who has engaged in contract fraud. Used car dealers must comply with all duties and obligations relating to the formation of contracts. Illustrative of this concept is *Morris v. Mack's Used Cars* (1992) where a used car dealer was held liable for knowing concealment of the fact that a 1979 pickup truck it had sold had been reconstructed. The court rejected the defendant's contention that the truck had been sold "as is." In delivering its opinion, the court noted that the parties had a duty to execute the contract in good faith, and that this obligation could not be waived by a contractual disclaimer of an "as is" sale."

2.2. Real Estate Sales

Spurred on at least in part "as a consequence of the collapse of the residential condominium market in 2008-2009" (Brown & Nguyen, 2009), Congress enacted legislation to require certain disclosures relating to the sale of real property. The *Interstate Land Sales Full Disclosure Act,* passed in 1968, was designed to ensure that purchasers will be able to make "informed decisions" in real estate transactions (see *Cornell Ardmore, LP v. Isen,* 2021). The Act requires that "anyone who is planning to sell or lease 100 or more lots of unimproved land through a common promotional plan must file an initial statement of record with the Department of Housing and Urban Development's (HUD) Office of Interstate Land Sales Registration before the developer can offer land for sale" (Kubasek et. al, 2024, p. 622). The initial statement, or *Property Report*, is subject to HUD approval.

As Brown and Nguyen (2009) wrote:

"The Property Report is an extensive and detailed document that must include general information about the property, as well as other information such as risks associated with buying the land, title and land use matters, property financial and operating information, subdivision characteristics, general topography, statements of present condition, and any unusual conditions affecting the property."

A second statute, the *Real Estate Settlement Procedures Act of 1974* (and its 1976 amendments) requires the disclosure of information regarding mortgage loans to a buyer (see *Deutsch Bank Nat'l Trust Co. v. Price*, 2024). Chen (2024) writes:

- "The Real Estate Settlement Procedures Act (RESPA) applies to the majority of purchase loans, refinances, property improvement loans, and home equity lines of credit (HELOCs).
- RESPA requires lenders, mortgage brokers, or servicers of home loans to provide disclosures to borrowers concerning real estate transactions, settlement services, and consumer protection laws.
- RESPA prohibits loan servicers from demanding excessively large escrow accounts and restricts sellers from mandating title insurance companies.
- A plaintiff has up to one year to bring a lawsuit to enforce violations where kickbacks or other improper behavior occurred during the settlement process.
- A plaintiff has up to three years to bring a suit against their loan servicer."

An important element of the disclosures is the requirement that the buyer be given a "good faith estimate"

of the costs for finalizing the purchase of real estate. Typically, these costs are called "closing costs" and will include fees in connection with title searches; title examinations; provision of title certificates; title insurance; attorney services; preparation of key documents like property surveys, credit reports, inspections; and mortgage origination fees (DeMarco, 2022).

2.3. Funeral Home Sales

In normal consumer transactions, a consumer may be expected to "comparison shop" for goods and services. The funeral home industry may be an exception. Hermanson (2000) reported that "The death care industry is comprised of five segments: (1) funeral homes, funeral directors, and embalmers; (2) crematories and crematory operators; (3) cemeteries and cemetery operators; (4) sellers of pre-need funeral plans; and (5) third-party sellers of funeral goods."

Sheykin (2023) noted that "In 2021, the funeral home market reached a size of over $20 billion in the United States, with an expected compound growth rate of 4.5% for 2022 to 2027."

There are several factors that are unique to the funeral home industry. The Financial Model Template (blog) (2024) lists these factors that affect the profitability, and thus the practices, of a funeral home:

- **"Competition:** Funeral homes operate in a highly competitive market. The competition can significantly affect the profitability of the business. When there are many funeral homes in an area, it becomes more challenging to get enough business to remain profitable. One way to deal with competition is to identify what sets your funeral home apart and to use that as a selling point.
- **Staffing Costs:** Employee salaries, benefits, and training can be significant expenses for a funeral home. A funeral home might have high staffing costs if it has a large number of employees, or if the employees are highly skilled. To increase profitability, it is essential to manage staffing costs effectively. One way to do this is by cross-training employees, so they can fill multiple roles.
- **Location:** The location of a funeral home can have a significant impact on its profitability. A funeral home located in a rural area might have lower overheads but might struggle to attract enough customers. On the other hand, a funeral home located in a city might have more customers but might face higher overheads and competition. Funeral homeowners need to weigh the pros and cons of each location option carefully."

Mardsen-Ille (2023) added one other factor which has greatly affected the profitability of funeral homes:

"In 2022, 59.3% of Americans choose cremation, which is increasing exponentially in all states. It is anticipated that by 2040 over 80% of Americans will be cremated."

In addition to its unique business model, because of the psychological factors attenuating death (Beard & Burger, 2015), consumers may be especially vulnerable to pressure, undue influence, various forms of coercion, and outright "funeral scams" (Johnson, 2021). To prevent these especially vulnerable consumers from being taken advantage, the FTC enacted the *1984 Funeral Rule* (revised in 1994) (see *Hallman v. James H. Robinson Funeral Home,* 2023; *Norris Pulaski Funeral Servs., L.L.C. v. Stevens Funeral Home, Inc.*, 2024) . Fair (2022) stated: "As the FTC observed in enacting the Funeral Rule, 'A funeral is more than a social ritual: it is also an expensive consumer purchase. But unlike other major expenditures,… decisions must often be made while under the emotional strain of bereavement. In addition, consumers lack familiarity with the funeral transaction. Those considerations are still at the forefront of the protections the Funeral Rule extends to grieving families….'"

The Rule requires funeral home operators to provide customers with itemized price information relating to funeral goods and services. The Rule requires funeral home operators to itemize the following sixteen specified items of goods and services on the *General Price List* or GPL, together with the price for each item: 1. Forwarding of remains to another funeral home 2. Receiving remains from another funeral home 3. Direct cremation 4. Immediate burial 5. Basic services of funeral director and staff, and overhead 6. Transfer of remains to funeral home 7. Embalming 8. Other preparation of the body 9. Use of facilities

and staff for viewing 10. Use of facilities and staff for funeral ceremony 11. Use of facilities and staff for memorial service 12. Use of equipment and staff for graveside service 13. Hearse 14. Limousine 15. Either individual casket prices or the range of casket prices that appear on the Casket Price List 16. Either individual outer burial container prices or the range of outer burial container prices must appear on the Outer Burial Container Price List (FTC, 2015).

The Rule also makes it illegal for a funeral home operator to misstate or misrepresent legal or cemetery requirements for burial or to impose an illegal tie-in by requiring customers to purchase certain funeral goods and services as a condition for receiving other funeral goods and services (see *Greene County Memorial Park v. Behm Funeral Homes, Inc.*, 1992).

2.4. Online Sales: E-commerce

Most consumer protections were enacted in the pre-internet days and were designed to apply primarily in face-to-face transactions. The U.S. Census Bureau (2024) estimated that U.S. retail e-commerce sales for the fourth quarter of 2023 (adjusted for seasonal variation, but not for price changes), was $285.2 billion, an increase of 0.8 percent from the third quarter of 2023. Total retail sales for the fourth quarter of 2023 were estimated at $1,831.4 billion, an increase of 0.4 percent from the third quarter of 2023. The fourth quarter 2023 e-commerce estimate increased 7.5 percent from the fourth quarter of 2022 while total retail sales increased 2.8 percent in the same period. E-commerce sales in the fourth quarter of 2023 accounted for 15.6 percent of total sales. The fourth quarter 2023 e-commerce estimate increased 7.2 percent from the fourth quarter of 2022 while total retail sales increased 2.4 percent in the same period. E-commerce sales in the fourth quarter of 2023 accounted for 17.1 percent of total sales. Total e-commerce sales for 2023 were estimated at $1,118.7 billion, an increase of 7.6 percent from 2022. Total retail sales in 2023 increased 2.1 percent from 2022. E-commerce sales in 2023 accounted for 15.4 percent of total sales. E-commerce sales in 2022 accounted for 14.7 percent of total sales. Considering the volume of e-commerce sales, it is not unexpected that fraud might be present (see *In re Riskified Ltd. Sec. Litig.*, 2023; *Compass Mkt. v. Flywheel Digit.*, LLC, 2023).

Tatham (2017) reported that the most common types of e-commerce fraud involve a "fraudster purchasing high-end or other fencible goods like electronics, jewelry, or gift cards—but doing so in a way that raises less suspicion at the time of checkout." Such fraud involves what is known as "upfront staging," such as setting up an online customer profile for a period of time before attempting a fraudulent transaction. Another type of fraud occurs when a person committing fraud takes over a legitimate customer's profile or account, and then has the merchandise shipped to another address (see Varga, 2024; see also Schwartz, 2024).Tatham(2017) noted that "These profiles are typically secured by usernames and passwords that are often reused by consumers across online properties" – in other words, self-facilitated, in some cases.

Tatham (2017) further noted other common instances of ecommerce fraud which include:

- "Chargeback fraud, also referred to as *friendly-fraud*, occurs when a consumer purchases an item online with their own credit card but challenges the charges—telling their credit card provider they never received the items when they actually did receive the purchased items.
- Billing fraud occurs when the suspected victim's address is tied to the payment account used to purchase the stolen goods. Typically items are bought using the victim's billing address but then shipped to an address where the fraudster can pick up the items. Billing fraud is not location specific and can happen all across the country, whereas as shipping fraud tends to happen in certain areas near the coast or port cities.
- Shipping fraud occurs when the delivery address used for the purchased good is actually for the fraudsters. Sometimes a business address is used as the shipping address and the business may or may not know they are part of a fraud ring. Shipping fraud activity is concentrated in coastal states with major port cities and airports.
- Reshipping fraud is a relatively new scheme targeting businesses and credit card owners. The scam begins when criminals buy high-dollar merchandise—such as computers, cameras, and other

electronics—via the Internet using stolen credit cards. They then have the merchandise shipped to U.S.-based addresses of paid "re-shippers" (who may be unaware they are handling stolen goods). These re-shippers repackage the merchandise and mail it to locations internationally where the items can be sold."

Because of this shift in marketing and sales strategy from brick-and-mortar to the Internet, enforcement actions have often proceeded in a largely uncharted environment and involve the application of theories not specifically directed at the Internet. One such theory is the use of mail and wire fraud statutes (*Compass Mkt. v. Flywheel Digit., LLC,* 2023) in order to protect consumers from Internet fraud and misrepresentation or otherwise illegal practices (see Congressional Research Service, 2019; *Compass Mktg. v. Flywheel Digit, LLC*, 2023; *United States v. Quoc Ho*, 2023)); Decker, 2008; Trujillo, 2019).

Part II – Consumer Protections

3. Credit Protections

Americans increasingly use credit to purchase goods and services. Credit cards and debit cards tied to bank accounts or pre-approved lines of credit abound. Pokora (2024) reports that at "the end of 2023, the average credit card debt per borrower was $6,360, or about 10% higher than the year before—ushering in an all-time high. Collectively, this adds up to $50 billion in new debt in a single quarter and a total $1.13 trillion in U.S. credit card debt."

According to the Federal Reserve, 82% of U.S. adults had a credit card in 2022. Roughly 73% of Americans have a credit card by age 25. According to TransUnion, by mid-2023, credit card users reached a total of 167.2 million (reported in Pokora, 2024).

"Of the four main types of credit cards—Visa, MasterCard, American Express and Discover—Visa is by far the most common, making up 58.3% of cards in circulation. Chase has issued more cards than other institutions, with more than 149 million Chase credit cards in circulation. This is substantially higher the number of the next largest issuer, Capital One, with 106 million cards in circulation. The average credit card interest rate is 27.89%, according to Forbes Advisor's credit card rate report as of mid-March 2024. At the end of 2023, the average credit card debt per borrower was $6,360, or about 10% higher than the year before—ushering in an all-time high. This shift may be due to inflation or other financial stress and marks a move in the wrong direction. Collectively, this adds up to $50 billion in new debt in a single quarter and a total $1.13 trillion in U.S. credit card debt" (Pokora, 2024).

Three federal laws regulating the credit industry have been enacted to protect consumers: the *Truth in Lending Act*, the *Federal Credit Reporting Act*, and the *Fair Debt Collection Act*and merit special attention.

3.1. *Consumer Protection Act of 1968*

Perhaps the most important legislation in the area of consumer protection is Title I of the *Consumer Protection Act of 1968*, otherwise known as the *Truth in Lending Act,* which was designed to assist consumers in comparing credit lines and loans and to understand the various disclosures required under the Act. Cotter (2003) wrote: "The hope was that with uniformly disclosed prices, consumers would be able to shop for the best deal, thus better protecting themselves and forcing creditors to offer lower prices." Enforcement of a portion of the Act lies with the Federal Reserve Board through its Regulation Z powers (Griffith, 2000).

The Act applies under the following five circumstances:

- The Act applies only to consumer loans;
- The Act applies to lenders or those who arrange for credit in the "ordinary course" of business;
- The credit or loan must be in the amount of $25,000 or less, unless the credit or loan is secured by a mortgage on real estate;

- The credit or loan must be made to a "natural person," and not to a legal entity such as a partnership or corporation; and
- The credit extended or loan must be subject to a finance charge or must have repayments in more than four installment payments.

All creditors who fall within the ambit of the Act are required to disclose the finance charge and the annual percentage rate of the credit or loan so that it is "understandable to the ordinary consumer.' As a result, it would be improper to "bury" this information in other information that is unrelated to the credit terms or in a "mass of fine print trivia" (see, e.g., *Carlisle v. Whirlpool Financial National Bank*, 1999). This formulation is strikingly similar to the that made by the court in the seminal case of *Wille v. Southwestern Bell* (1976) in its iteration of factors leading to a possible finding of unconscionability.

Griffith (2000, p. 321) noted that:

"If a consumer is successful in enforcing liability against a creditor, he can recover the costs of his action and a reasonable attorney's fee. The allowance of such costs and legal fees acts as an incentive for consumers to seek redress even when there is no possibility of recovering actual damages. This statutory scheme is certainly consistent with the objective of having consumers act as private attorneys general to pursue their Truth in Lending remedies."

The Act applies to three categories of loans, with each category of loan having specific disclosure requirements:

- An open-ended credit line involves repeated transactions and assesses a finance charge on unpaid balances. Twin (2023) notes that: "Open-end credit is a type of loan that the borrower can draw money from repeatedly up to a certain pre-approved limit. Unlike closed-end credit, it has no fixed end date for repayment. When the borrower repays some of the money they have borrowed, it restores that portion of their pre-approved limit. Credit cards and lines of credit are examples of open-end credit and are also referred to as revolving credit." A creditor in an open-end credit line arrangement is required to disclose information on finance charges in periodic statements.
- A closed-end credit line is a loan given over a specific period of time. Daugherty (2022) writes: "A closed-end line of credit must be repaid at a predetermined point, while an open-end line of credit has no fixed end date. Closed-end lines of credit are often used in home building, after which the home's owner will refinance with a regular mortgage."A typical car lease is an example of a closed-end credit line arrangement. The creditor in a closed-end credit line arrangement is required to disclose the total amount financed, and the "number, amount, and due dates" of any payments.
- Credit card applications and solicitations must disclose the annual percentage rate or APR, any annual fees, and any "grace period" for submitting a late payment with or without the payment of a finance charge.

3.2. Provisions Related to Unauthorized Charges and Consumer Disputes

The Act provides for consumer protections regarding any *unauthorized charges* to credit cards (see Comptroller of the Currency, 2021; *State v. Berg*, 2024). If a credit card is stolen and an unauthorized charge is made to the account, a consumer's liability cannot exceed $50 per card if "prompt notification" of the theft is made to the credit card issuing company (see Irby, 2021). If a consumer notifies the credit card company *before* any unauthorized charge is made, the consumer is not liable for *any* of the unauthorized charges.

In addition, if a credit card company sends the consumer an *unsolicited card* in the mail and the card is stolen, the consumer cannot be held liable for any of the charges on the card (*Discover Bank v. Hicks,* 2007;*Duling v. Mid Am. Credit Union*, 2022; see also Loftsgordon, 2024)."An "unsolicited" credit card is a credit card opened in a consumer's name without that person's permission. Under Regulation Z, which implements the *Truth in Lending Act*, it's illegal for a credit card company, store, or other entity to send you a credit card you didn't request" (Loftsgordon, 2024).

3.3. Issues Relating to Damaged Goods

A consumer who "unknowingly" purchases damaged goods using a credit card for the purchaseis entitled to certain protections. If three requirements are met, a consumer will not be obligated to pay for the damaged goods. These conditions are: the consumer must purchase the item "near" his or home, meaning that the business offering the goods is located in the same state as the consumer's home or within 100 miles of the home; the item must cost more than $50; and the consumer must make a "good faith effort" to resolve the dispute, such as asking the retailer fora refund (Consumer Financial Protection Bureau (CFPB), 2022). If all these conditions are met, the credit card company cannot bill the consumer for the damaged item.

3.4. *The Equal Credit Opportunity Act* (ECOA)

In a response to allegations of discrimination against certain categories of consumers, Congress enacted the *Equal Credit Opportunity Act*(ECOA) as an amendment to the *Truth in Lending Actof 1968* (Taylor, 2018; *Chambers v. Mich. First Credit Union*, 2023). The ECOA makes it illegal for creditors to deny credit to applicants on the basis of race (Freeman, 2017), religion (*Hirschfeld v. Metlife Bank, N.A.*, 2012), national origin (*166630 Southfield Ltd. P'ship v. Flagstar Bank, F.S.B.*, 2013), color, sex, marital status (see St. Cyr, 2011; Joslin, 2019), or age (Eglit, 1986), "provided the applicant has the capacity to contract" (*Sixela Inv. Grp., LLC v. Hope Federal Credit Union*, 2023).Specifically, in order to reach one of the more pernicious forms of credit discrimination, the ECOA provides that a creditor cannot use information about the marital status of an applicant (*Castellanos-Hernandez v. Suburban Subaru, Inc.*, 2024), nor can a creditor require a spouse to co-sign a credit application as a condition of approval (see *CMF Virginia Land, L.P. v. Brinson*, 1992). The ECOA also prohibits a creditor from denying credit on the basis that the applicant is receiving public assistance benefits (Prestes, 2000; *Cosby v. Cma's Colonial Buick GMC*, 2023).

3.5. *The Consumer Leasing Act*

The *Consumer Leasing Act of 1977* amended the *Equal Credit Opportunity Act* to provide protection for individuals who lease automobiles and other goods. The Act is applicable to lessors who lease goods "as part of their regular business "purchased for "personal, family or household use." Professor Rohner (2003, Reporter for the Act, stated:

"The new Act borrows a number of baseline standards and protections from established consumer credit laws to address issues that are common to transactions in either credit sale or lease form. It also posits rules or frameworks for evaluating terms and practices that are unique to leases. This is supported by an enforcement structure that is rigorous but hopefully fair."

The *Consumer Leasing Act* applies under circumstances where a lease is executed for a minimum of four months and the underlying lease must not exceed $25,000. Under Regulation M, anyone who leases goods must disclose "up front" and in writing all material terms and conditions of the lease. The Consumer Financial Protection Board (CFPB, 2012) notes that "Today, a relatively small number of banks engage in consumer leasing. The trend seems to be for leasing to be carried out through specialized bank subsidiaries, vehicle finance companies, other finance companies, or directly by retailers." Statista (2022) reported that "The rental & leasing industry in the U.S. has seen particularly robust growth in the sectors of aircrafts, transportation, computers, and software. In 2022, the estimated revenue of the industry was US$166.8 billion"—although many of these transactions would be excluded from the Act's protection because of the dollar-value of the transaction or its commercial nature.

The Act also applies broadly to "rent-to own" (RTO)transactions (*Korrow v. Aaron's, Inc.*, 2011; *Talbert v. Affordable Rent-To-Own of Thibodaux, L.L.C.*, 2023), which refer to an agreement in which the buyer has the option to become the owner of the property after a fixed period of time and full payment. Daedal

Research (2022) reports that “Previously, rent-to-own agreements explicitly dealt in the purchasing of homes/property only, but nowadays rent-to-own industry comprises of dealers that rent furniture, appliances, home electronics, and jewelry as well to the consumers.”

The rent-to-own market in 2021 was valued at US$10.48 billion and is expected to reach US$15.53 billion by 2027, growing at a rate of 6.77% during the forecast period of 2022-2027.Daedal Research (2022) further notes that the “key players” of the US rent to own market are Rent-ACenter Inc., Goeasy Ltd., The Aaron's Company, Inc., Co-Ownership Organization, FlexShopper Inc., EZ Furniture Sales & Leasing, Buddy's Home Furnishings Company, Snap Finance Company, Home Partners of America Company (HPOA), Dream America Organization, Zerodown, Verbhouse, Action Rent to Own, and Divvy Homes.

4. The Fair Credit Reporting Act (FCRA)

In order to procure credit, a credit report will ordinarily be required. Typically, a credit report will contain information about a wide variety of financial transactions, including payments on credit accounts and any debt collection activities with which the applicant has been involved.

There are important requirements and limitations placed on a credit bureau under the Act (*Santos v. Healthcare Revenue Recovery Grp., LLC,* 2023; see also Kagan, 2024). A credit bureau cannot report “obsolete” information—generally, information after *seven years.* However, a bankruptcy is reportable for *ten years* (*Cavanaugh v. Equifax Info. Servs.*, 2018; see Landry, 2019; Hunter& Shannon, 2020). Should an applicant for credit be denied credit, the applicant has the right to the name and address of the credit bureau that reported on the applicant’s information. In addition, and perhaps more importantly, the FCRA imposes a duty on the credit reporting agency to assure that any information contained in the credit report is “as accurate as possible.” Should a consumer report an error in his or her credit report, the credit bureau is required to investigate the alleged error and to make any necessary corrections to the report in a timely manner if required to do so (see *Wynn v. UPS*, 2024).

In addition, the CFPB (2024) provides that access to an individual’s file is limited. A consumer reporting agency may provide information about an individual only to persons or entities who can demonstrate a “valid need” – usually to consider an application with a creditor, insurer, employer, landlord, or other business. A consumer reporting agency may not disseminate information about an applicant to an employer or to a potential employer without the applicant’s written consent given to the employer or a potential employee. Individuals may limit “prescreened” offers of credit and insurance based on information contained in a credit report. Any unsolicited “prescreened” offers of credit and insurance must include a toll-free phone number that an individual can call if the individual chooses to remove his or her name and address from the lists upon which these offers are based.An individual may “opt out” by calling the nationwide credit bureaus at ***1-888-5-OPTOUT (1-888-567-8688)***.

5. The Fair Debt Collection Practices Act (FDCPA)

Professor Elwin Griffin (2005, pp. 762-764) commented that:

“The congressional hearings preceding the enactment of the Fair Debt Collection Practices Act Practices Act ("FDCPA") exposed the tactics that debt collectors used to achieve their objective. It was not unusual for them to make telephone calls at all hours of the night, issue threats to the consumer, or divulge a consumer's confidential information to friends and neighbors, all in the quest to collect outstanding debts. It was clear that Congress had to do something about these disturbing practices. In response thereto, it enacted the FDCPA in 1977.”

In response to these and other questionable practices, Congress enacted the *Fair Debt Collection Practices Ac*t in 1977. The FDCPA prohibits certain practices relating to the collection of consumer debt (*Snyder v. Finley & Co., L.P.A.*, 2022; *Bouye v. Bruce*, 2023). The FDCPA applies to debt collectors

who *regularly* attempt to collect consumer debt on behalf of third parties. The following collection practices or behaviors are expressly prohibited by the FDCPA:

- Contacting a debtor at work if the debtor's employer raises an objection;
- Contacting a debtor who has give notice to the collection agency that they wish no contact with the debt collection agency;
- Contacting a debtor before 8 a.m. or after 9 p.m.;
- Contacting certain third parties;
- Using obscene or threatening language in communicating with the debtor; and
- Misrepresenting the collection agency as an attorney or a police officer.

The FDCPA has been the subject of much criticism as not protective enough of the rights of debtors (see Paladini, 2019). Professor Fox (2014, p. 75) noted the following:

"State policy makers need to be as aggressive in their efforts to protect consumers, and many already are. Some reforms are still necessary, however. The following would do much to improve the judicial collection of debt:
. Caseloads are too high across the country. As a result, judges do not have the time to do justice. We need to better fund and staff our judicial system.
. Judges need to be trained on the admissibility of business records, especially as the mode of collection and transmission of these records continues to change.
. Collectors should have the burden of proving that the statute of limitations has not run, as opposed to the consumer bearing the burden of proving that the statute of limitations has run.
. Debt Collectors, like other litigants, should be required to show their standing to sue with a complete chain of title of the particular account from the original creditor to the plaintiff named in the suit.
. Consumers need to be provided the legal assistance necessary to defend themselves in civil debt litigation."

6. The Credit Card Fraud Act

In 1984, Congress enacted the *Credit Card Fraud Act* (CCFA) in order to close certain "loopholes" that exposed both consumers and merchants to credit card fraud (*United States v. Alexander*, 2013). Bessette (2023) noted that:

"The Federal Trade Commission considers credit card fraud a form of identity theft. According to FTC data in early 2022, credit card fraud has consistently been the most commonly reported type of identity theft since 2017, save for a few months in 2020-21 during the COVID-19 pandemic, when there was a surge in fraudulent claims for unemployment benefits and other relief programs."

Caminer (1985) wrote "The 1984 Credit Card Fraud Act corrects most of these problems. The new statute punishes fraudulent use of an account number, eliminates the 'fraudulently obtained' loophole, punishes mere possession of illegal credit cards, clarifies the aggregation requirement, and punishes the counterfeiting of credit cards and possession of counterfeiting equipment."

The CCFA makes certain acts illegal such as to:

- possess an "unauthorized" credit card; or
- counterfeit or alter a credit card (see Caminer, 1985).

However, Bessette (2023) notes that problems with credit card fraud still abound. She writes:

"According to the most recent Survey of Consumer Payment Choice, conducted by the Federal Reserve Bank of Atlanta, 3.5% of credit card holders in 2020 said they had experienced an incident of loss, theft or fraud related to their credit card in the past 12 months. The percentage varies from year to year and has been as high as 5.7% since 2015. The annual average is about 4.7%."

The CCFA increased the penalties relating to the commission of credit card fraud (see WhitestoneYoung, 2021; Nathan, 2024; *Troy v. A.B.A.*, 2024).

7. Other Credit Protections

Two other federal statutes are relevant in protecting the rights of consumers. The *Fair Credit Billing Act of 1986*(FCBA) is enforced by the Federal Trade Commission. The Act creates procedures for consumers to follow in case of a complaint such as the failure of a credit card company to extend credit after having informed a consumer of the decision to do so; where a consumer has been charged for merchandise which the consumer did not purchase or receive; where the consumer is charged twice for one purchase; or where there has been a billing error.

The FCBA requires the creditor to explain to the consumer (and FTC) why the error occurred and to promptly correct any error. The credit card company has 90 days from the date it receives the complaint to act upon it, either by correcting the error or explaining to the consumer in writing why it believes the charge was not made in error. Once a complaint is filed with the FTC, the creditor may not attempt to collect a disputed debt or to take an action against the consumer until the complaint is resolved. The FCBA limits a consumer's liability for unauthorized use of his or her credit card to $50.

7.1. The *Fair and Accurate Credit Transactions Act of 2003 (FACT)*

Congress enacted FACT to respond to a flurry of *identity-theft* cases (*Sifuentes v. Truthfinder*, 2023). Congress had found that:

"(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.
(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.
(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.
(4) There is a need to ensure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy."

If an individual believes that he or she has been the victim of identity theft, they may contact the FTC and a "credit alert" will be placed in the individual's credit file. The FTC serves as a national credit fraud alter system or clearing house.

There are several other requirements under FACT designed to enhance consumer protection (*Sifuentes v. Twitter, Inc.*, 2023). These include:

- Major credit reporting agencies such as Experian, Equifax, and TransUnion are required to provide consumers with a free copy of their credit reports every twelve months;
- Receipts from credit card purchases are to list an abbreviated version the credit card number to protect consumers (often listing the card with only the last four numbers);
- Financial institutions are required to work with the FTC to "red-flag" any suspicious transactions that might indicate identity theft (Mariano, 2022);
- Assistance must be provided to victims of identity theft in order to assist them to rebuild their credit; and
- Victims of identity theft may also report fraud directly to creditors to protect their credit ratings.

8. The Credit Card Holders Bill of Rights Act of 2009(CARD Act)

Although much has been done to protect consumers from unscrupulous practices employed by merchants, third parties, and individuals involved in identity theft, much more needs to be done. Black (2023) noted that:

"The CARD Act of 2009 instituted limits on interest rate increases that credit card issuers can charge. Prior to the law going into effect, credit card companies could hike interest rates at will with no advanced

notification to borrowers. Worse yet, they could increase interest rates on both future purchases and existing balances as they wished."

"Since the CARD Act, a credit card issuer must generally wait until your account is at least 12 months old to raise your interest rate. And, if it wants to do so, it must notify you 45 days in advance of any interest rate hike."

The *Credit Card Holders Bill of Rights Act,* more widely known as the CARD Act, was enacted in 2009 as part of the package of consumer protections under President Barak Obama dealing with unfair or deceptive credit card practices (see Bar-Gill& Bubb, 2012; Kiernan & Comoreanu, 2023). There are four important provisions of the CARD Act which must be included in the contractual agreement between a credit card issuer and a client if any fees or interest are to be charged pursuant to that arrangement:

1. Creditors are required to notify consumers of any changes to fees and interest rates *before* any changes take place.
2. Notification and information requirements: Creditors must inform consumers about the timing of any payoff. All billing statements must conspicuously inform whether and under what circumstances the interest rate will increase. Creditors must inform consumers about the dates on which payments will be considered late and the interest rate associated with a late payment. Creditors must post all conditions associated with credit arrangements on the Internet, reflecting a modification of credit practices relating to deceptive advertising practices associated with "free" credit reports.
3. Credit card companies are prohibited from extending credit to anyone under the age of 21 (Nelson, 2011; Willis, 2015). Consumers who are under the age of twenty-one who desire to procure a credit card may acquire credit only with a co-signor and proof of sufficient income. There are also "special provisions" for college-age consumes who may be especially vulnerable to credit card related solicitations and advertising, which require disclosure of all agreements between creditors and institutions of higher learning; the total number of payments and amounts creditors make to these institutions; and the number of credit card accounts opened under an agreement between the credit card company and an institution of higher learning per year (see Johnson,2004/2005).
4. The CARD Act contains special provisions relating to gift cards (*Boundas v. Abercrombie & Fitch Stores, Inc.*, 2012). Consumers may be charged fees for dormant or inactive gift cards. Only one fee per month may be charged to a consumer with a gift card that is inactive for 12 months. Issuers of gift cards, prepaid cards, and gift certificates must inform consumers of these conditions *before* purchase: the existence of the "dormancy fee"; the amount of the dormancy fee; and the frequency of the dormancy charge (see *Mwantembe v. TD Bank, N.A.*, 2010).

Consumers should be aware of an important website, AnnualCreditReport.com, from which a visitor may receive one free credit report per year.
Black (2023) raises several issues relating to deficiencies in the CARD Act, including:

- **No maximum interest rate;**
- **Card issuers can still raise the interest rate; and**
- **No protection for small business credit cards, although interestingly, as Black (2023) noted,**

"If the credit practices were deemed unfair for consumers, then they should also be considered unfair for business owners, argued NSBA President Todd McCracken in his March 2009 testimony before the Financial Institutions and Consumer Credit subcommittee of the U.S. House of Representatives."

8.1. Young Credit Card Users

Willis (2015, p. 466) aims a pointed comment relating to credit card debt incurred by individuals under the age of 21:

"The CARD Act has provided consumers many valuable protections against abusive credit issuer practices, but it has not effectively addressed the needs and risks of young consumers. By ignoring the

realities of student credit use, legislators failed to enact young consumer provisions that adequately protect students. Rather than aim to reduce student access to credit across the board, the Act should be amended in ways that target excessive student credit card debt while maintaining liberal access to safe levels of credit. Amending the Act to include credit limit caps for students and eliminating the ability-to-pay requirement would accomplish these goals."

Landry (2019, p. 49) adds:

"The Card Act has provided consumers many valuable protections against abusive credit issuer practices, but it has not effectively addressed the needs and risks of young consumers. By ignoring the realities of student credit use, legislators failed to enact young consumer provisions that adequately protect students. Rather than aim to reduce student access to credit across the board, the Act should be amended in ways that target excessive student credit card debt while maintaining liberal access to safe levels of credit. Amending the Act to include credit limit caps for students and eliminating the ability-to-pay requirement would accomplish these goals."

9. A "Bright Spot" for Some Credit Card Users? Or is It?

Ironically, there is a potential "bright spot" for some low-to-moderate income credit card users. The Electronic Payments Coalition released a report examining how "American consumers, including lower-income consumers, utilize reward credit cards and how proposals restricting card issuers' ability to offer reward credit cards would adversely impact cardholders of all incomes" (Business Wire, 2024).

The main difference in "rewards usage" across all income groups was in how rewards are redeemed. Not completely unexpected, while all accountholders prefer "cashback" rewards, low- to moderate-income (LMI) accounts have a "stronger preference" for cash, with significant spikes in November and December for the Christmas shopping season, as well as during late summer during the "back-to-school" shopping season.

The key findings from the report include:

- **"Rewards are for everyone.** More than two-thirds of LMI cardholders own a rewards card, indicating that reward programs do not exclusively serve upper-income customers.
- **Rewards supplement consumer income.** Because all cardholders receive a boost to income from their rewards, many cardholders save up rewards to supplement holiday and back-to-school shopping. Total rewards savings in 2023 accounted for 23%-32% of planned holiday purchasing. Consumers may also use rewards to supplement everyday expenses in the face of rising inflation.
- **Rewards are especially important to lower-income consumers.** LMI accounts are most likely to redeem rewards for cash, indicating LMI card holders use rewards for everyday spending needs. Eliminating or reducing reward programs would negatively impact low-income households' finances more than any other income group."

In addition, reward cardholders often carry a balance of unredeemed rewards, representing an important safety net for these cardholders.

10. Concluding Comments

Despite what some may perceive as a benefit, the fact is that many Americans are literally "drowning in debt" and are frequent subjects of fraud, identity theft, and other untoward practices by creditors.

This paper has outlined the many ways the Congress, the FTC, and the CFPB have attempted to protect Americans from their own worst instincts and choices in racking up thousands of dollars in credit that they have little chance of paying.

Whatever protections can be afforded to American consumers from the worst practices of creditors, or the perceived benefits derived from the use of a credit card, it is still a matter of individual choice whether the

average person will continue to purchase goods and services beyond their capacity of repayment. The main issue then is affording them some protection.

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Used Motor Vehicle (Used Car) Registration Rule (1984). 16 C.F.R Sections 455.1-455.5.

* Note: On Thursday, May 16, 2024, the United Supreme Court rejected a challenge to the constitutionality of the structure used to fund the Consumer Financial Protection Bureau, the federal agency now tasked with enforcing many consumer finance laws. In a vote of 7-2, the Supreme Court reversed a decision by a Federal Appeals Court in Louisiana, which had previously ruled that the CFPB's funding violated the United States Constitution because the CFPB derives from the Federal Reserve rather than through the normal congressional appropriations process (Howe, 2024; *Consumer Financial Protection Bureau v. Community Financial Services Association of America*, 2024).