

~~would be permitted to rely on information provided by the consumer or information in a consumer's credit report.~~

Specific requirements for underage consumers. Consistent with the Credit Card Act, the proposed rule prohibits a creditor from issuing a credit card to a consumer who has not attained the age of 21 unless the consumer has submitted a written application that meets certain requirements. Specifically, the application must include either: (1) the signature of a cosigner who has attained the age of 21, who has the means to repay debts incurred by the underage consumer in connection with the account, and who assumes joint liability for such debts; or (2) information indicating that the underage consumer has the ability to make the required payments for the account.

C. Marketing to Students

Prohibited inducements. ~~The Credit Card Act limits a creditor's ability to offer a student at an institution of higher education any tangible item to induce the student to apply for or open an open-end consumer credit plan offered by the creditor. Specifically, the Credit Card Act prohibits such offers: (1) on the campus of an institution of higher education; (2) near the campus of an institution of higher education; or (3) at an event sponsored by or related to an institution of higher education.~~

~~The proposed commentary would provide guidance to assist creditors in complying with the rule. For example, the proposed commentary would clarify that "tangible item" means a physical item (such as a gift card, t-shirt, or magazine subscription) and does not include non-physical items (such as discounts, rewards points, or promotional credit terms). The proposed commentary would also clarify that a location that is within 1,000 feet of the border of the campus of an institution of higher~~

~~the Board believes a verification requirement before a credit card account is opened or credit line increased would not be necessary and could burden consumers. The Board, however, seeks comment on whether there is evidence that warrants a requirement to verify information before a credit card account is opened or a credit line is increased.~~

51(b) Rules Affecting Young Consumers

Currently, card issuers may grant credit to young consumers on the assumption that a parent or guardian of the consumer will pay the debt, even if the issuer does not obtain the express agreement of such parent or guardian to assume liability. Sections 301 and 303 of the Credit Card Act are meant to address this situation. Under new Section 127(c)(8)(A) of TILA, as adopted by Section 301 of the Credit Card Act, no credit card may be issued to, or open-end consumer credit plan established by, or on behalf of a consumer, who has not attained the age of 21 unless the consumer has submitted a written application to the card issuer that meets certain requirements. 15 U.S.C. 1637(c)(8)(A). New TILA Section 127(c)(8)(B) further provides that an application to open a credit card account by a consumer who has not attained the age of 21 as of the date of submission of the application shall require either: (1) the signature of a cosigner who has attained the age of 21 having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21; or (2) the submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account. 15 U.S.C. 1637(c)(8)(B).

Section 303 of the Credit Card Act adds new TILA Section 127(p). 15 U.S.C. 1637(p). TILA Section 127(p) states that no increase may be made in the amount of credit authorized to be extended under a credit card account for which an individual has assumed joint liability for debts incurred by the consumer in connection with the account before the consumer attains the age of 21, unless that individual approves in writing, and assumes joint liability for, such increase.

The Board proposes to implement these provisions in proposed § 226.51(b) and associated commentary. Proposed § 226.51(b)(1) would provide that a card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer submits a written application and provides either a signed agreement of a cosigner, guarantor, or joint applicant pursuant to § 226.51(b)(1)(i) or financial information consistent with § 226.51(b)(1)(ii), as further discussed below. The language in § 226.51(b)(1) has been modified from the statutory language in TILA Section 127(c)(8)(A) for consistency with § 226.51(a) and to clarify that the provision applies only to credit card accounts and only in connection with the opening of the account. Furthermore, the language has been modified to improve readability.

Although the text of TILA Section 127(c)(8)(A) references open-end consumer credit plans other than credit cards, the Board believes that the intent of the provision, read as a whole, is to apply only to credit card accounts. While the provision references other open-end consumer credit plans, the requirements under the provision apply only to “card issuers.” Based on the fact that the requirements of the provision are limited to card issuers as well as language in other related sections of the Credit Card Act and the

location of the provision in TILA, the Board believes that the restrictions in TILA Section 127(c)(8)(A) are meant to apply only to credit card accounts.

First, TILA Section 127(c)(8)(B), which discusses the requirements for an application submitted by a consumer who has not attained the age of 21, refers solely to an application to open a credit card account. Second, TILA Section 127(p), which restricts credit line increases for accounts in which an individual assumes joint liability for debts incurred by the consumer in connection with the account before the consumer attains the age of 21, refers only to a credit card account. Third, these provisions have been placed in TILA Section 127(c), a section that deals exclusively with credit card accounts. Therefore, the Board believes it is appropriate to apply proposed § 226.51(b)(1) only to credit card accounts.

Furthermore, proposed § 226.51(b)(1) refers to the opening of a credit card account, which differs from the statute's reference to the issuance of a credit card. The "issuance" of a credit card can refer to a card sent to the consumer as a replacement card or upon renewal of the card. See § 226.12(a). As a result, the Board believes that limiting the scope of § 226.51(b) to the opening of a credit card account is appropriate. Otherwise, the provision could be construed to require card issuers to evaluate a cardholder's ability or obtain the signature of a cosigner even when a card is being sent to an existing cardholder to replace an expired card. The Board notes that the renewal of an existing account or change in the terms of an existing account generally does not constitute the opening of an account for purposes of Regulation Z.

The Board proposes to implement the specific application requirements detailed in TILA Section 127(c)(8)(B) in § 226.51(b)(1)(i) and (ii). Proposed § 226.51(b)(1)(i)

and (ii) generally follow the language in TILA Section 127(c)(8)(B) with some changes. While most of these modifications are minor and are meant to improve the readability of the regulation without any substantive change in meaning, the Board also proposes to clarify the meaning of cosigner and joint liability.

The terms cosigner and joint liability can have several meanings. For example, a cosigner can refer to a guarantor who has no credit privileges on the account but is secondarily liable for a consumer's debt if the consumer defaults. A cosigner can also mean a joint accountholder who shares credit privileges with the consumer on the account and is jointly liable on the debt incurred by either the consumer or the joint accountholder. The Board believes it is appropriate to modify the language used in the regulation from the statutory language to make clear that all types of cosigners and joint liability arrangements would be included. Accordingly, proposed § 226.51(b)(1)(i) states that a consumer who is less than 21 years old can provide the signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old to be either secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 in the event the consumer defaults on the account or jointly liable with the consumer for any debt on the account incurred by either party.

Furthermore, to maintain consistency, the Board proposes to interpret the phrase "means to repay" or "means of repaying" as equivalent to evaluating a consumer's ability to make the required payments under TILA Section 150, which the Board proposes to implement in § 226.51(a), as discussed above. Therefore, § 226.51(b)(1)(i) and (ii) both reference § 226.51(a) in discussing the ability of a cosigner, guarantor, or joint applicant

to make the minimum payments on the consumer's debts and the consumer's independent ability to make the minimum payments on any obligations arising under the account.

Proposed § 226.51(b)(2) generally follows the language in TILA Section 127(p), though the Board has modified some of the wording used in the statute. These changes are meant to improve readability without any substantive change in meaning. For example, TILA Section 127(p) states that a parent, guardian, or spouse must approve the credit line increase in writing; however, the statute also concedes that an individual who is not a parent, guardian, or spouse may have assumed liability for debts incurred by the consumer. In those cases, that individual should be the one to approve the credit line increase, and assume liability for that increased amount. Therefore, proposed § 226.51(b)(2) eliminates the reference to parent, guardian, or spouse to apply the provision more generally to cosigners, guarantors, or joint accountholders.

The Board also proposes several comments to provide guidance to card issuers in complying with § 226.51(b). Proposed comment 51(b)-1 would clarify that § 226.51(b)(1) and (b)(2) apply only to a consumer who has not attained the age of 21 as of the date of submission of the application under § 226.51(b)(1) or the date the credit line increase is requested by the consumer under § 226.51(b)(2). If no request has been made (for example, for unilateral credit line increases by the card issuer), the provision would apply only to a consumer who has not attained the age of 21 as of the date the credit line increase is considered by the card issuer.

Proposed comment 51(b)-2 would address the ability of a card issuer to require a cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21. While § 226.51(b)(1)(i) and (b)(2) require, at a

minimum, that a cosigner, guarantor, or joint accountholder assume liability for any debt on the account incurred by the consumer before the consumer has attained the age of 21, proposed comment 51(b)-2 would clarify that § 226.51(b)(1)(i) and (b)(2) do not restrict a card issuer from extending this liability to debt incurred by the consumer after the consumer has attained the age of 21, at the card issuer's option, consistent with any agreement made between the parties.

The Board proposes comment 51(b)-3 to clarify that § 226.51(b)(1) and (b)(2) do not apply to a consumer under the age of 21 who is being added to another person's account as an authorized user and has no liability for debts incurred on the account. The Board believes that the protections under TILA Sections 127(c)(8) and 127(p) would not be necessary if the consumer under the age of 21 is not assuming any liability, and would therefore not be legally obligated to make any payments on the account.

Proposed comment 51(b)-4 would provide card issuers with guidance concerning electronic applications and explain how the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.) would govern the submission of such an application. TILA Section 127(c)(8) requires a consumer who has not attained the age of 21 to submit a written application. In addition, under TILA Section 127(p), a cosigner, guarantor, or joint accountholder must approve a credit line increase in writing. However, in accordance with the purposes of the E-Sign Act, contracts and other records cannot be denied legal effect, validity or enforceability solely because they are in electronic form. See 15 U.S.C. 7001(a). Therefore, the Board believes that, consistent with the purposes of the E-Sign Act, applications submitted under TILA Section 127(c)(8) and approvals under TILA Section 127(p), which must be provided in writing,

may also be submitted electronically. Moreover, the E-Sign Act requires that before any disclosure that is required to be in writing is provided to a consumer electronically, the consumer must affirmatively consent to the provision of the information electronically, among other things. Since the submission of an application or approval by a consumer, cosigner, guarantor, or joint accountholder is not a disclosure to a consumer, the consumer consent and other requirements necessary to provide consumer disclosures electronically pursuant to the E-Sign Act would not apply. Furthermore, § 226.5(a)(1)(iii), which was adopted in the January 2009 Regulation Z Rule, provides that an application may be provided to a consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in § 226.5a.

Proposed comment 51(b)(1)-1 explains that when evaluating an application to open a credit card account or credit line increase for a consumer under the age of 21, creditors must comply with applicable rules in Regulation B (12 CFR Part 202). Given that age is generally a prohibited basis for any creditor to take into account in any system evaluating the creditworthiness of applicants under Regulation B, the Board believes that Regulation B prohibits card issuers from refusing to consider the application of a consumer solely because the applicant has not attained the age of 21 (assuming the consumer has the legal ability to enter into a contract). Furthermore, because TILA Section 127(c)(8) permits card issuers to open a credit card account for a consumer who has not attained the age of 21 if either of the conditions under TILA Section 127(c)(8)(B) are met, the Board believes that a card issuer may choose to evaluate an application of a consumer who is less than 21 years old solely on the basis of the information provided

under § 226.51(b)(1)(ii). Therefore, the Board believes, a card issuer is not required to accept an application from a consumer less than 21 years old with the signature of a cosigner, guarantor, or joint applicant pursuant to § 226.51(b)(1)(i), unless refusing such applications would violate Regulation B. For example, if the card issuer permits other applicants of non-business credit card accounts who have attained the age of 21 to provide the signature of a cosigner, guarantor, or joint applicant, the card issuer must provide this option to applicants of non-business credit card accounts who have not attained the age of 21 (assuming the consumer has the legal ability to enter into a contract).

Proposed comment 51(b)(2)-1 would provide that the requirement under § 226.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to § 226.51(b)(1)(ii) must agree in writing to assume liability for a credit line increase does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old requests the increase. Because the party that must approve the increase is the one that is requesting the increase in this situation, the Board believes that § 226.51(b)(2) would be redundant.

~~Section 226.52 Limitations on Fees~~

~~52(a) Limitations During First Year After Account Opening~~

~~New TILA Section 127(n)(1) applies “[i]f the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over the limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the~~

(b) Rules affecting young consumers.

(1) Applications from young consumers. A card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer has submitted a written application and provided:

(i)(A) a signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old to be either secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 in the event the consumer defaults on the account or jointly liable with the consumer for any debt on the account incurred by either party, and

(B) financial information indicating such cosigner, guarantor, or joint applicant has the ability to make the minimum payments on such debts, consistent with paragraph (a) of this section; or

(ii) financial information indicating an independent ability to make the minimum payments on the proposed extension of credit in connection with the account, consistent with paragraph (a) of this section.

(2) Credit line increases for young consumers. If a credit card account has been opened pursuant to paragraph (b)(1)(i) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase.

~~2. Ability to pay as of application or consideration of increase. A card issuer complies with § 226.51(a) if it bases its determination regarding a consumer's ability to make the required minimum periodic payments on the facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account.~~

~~3. Credit line increase. When a card issuer considers increasing the credit line on an existing account, § 226.51(a) applies when the consideration is based upon a request of the consumer or is initiated by the card issuer.~~

~~4. Income, assets, and employment. Any current or reasonably expected assets or income may be considered by the card issuer. For example, a card issuer may use information about current or expected salary, wages, bonus pay, tips and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income could include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. A card issuer may also take into account assets such as savings accounts or investments that the consumer can or will be able to use.~~

~~5. Current obligations. A card issuer may consider the consumer's current obligations based on information provided by the consumer or in a consumer report.~~

51(b) Rules affecting young consumers.

1. Age as of date of application or consideration of credit line increase. Sections 226.51(b)(1) and (b)(2) apply only to a consumer who has not attained the age of 21 as of the date of submission of the application under § 226.51(b)(1) or the date the credit line

increase is requested by the consumer (or if no request has been made, the date the credit line increase is considered by the card issuer) under § 226.51(b)(2).

2. Liability of cosigner, guarantor, or joint accountholder. Sections 226.51(b)(1)(i) and (b)(2) require the signature or written consent of a cosigner, guarantor, or joint accountholder agreeing either to be secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 in the event the consumer defaults on the account or to be jointly liable with the consumer for any debt on the account incurred by either party. Sections 226.51(b)(1)(i) and (b)(2) do not prohibit a card issuer from also requiring the cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21, consistent with any agreement made between the parties.

3. Authorized users exempt. If a consumer who has not attained the age of 21 is being added to another person's account as an authorized user and has no liability for debts incurred on the account, § 226.51(b)(1) and (b)(2) do not apply.

4. Electronic application. Consistent with § 226.5(a)(1)(iii), an application may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.) in the circumstances set forth in § 226.5a. The electronic submission of an application from a consumer or a credit line increase approval from a consumer, cosigner, guarantor, or joint accountholder to a card issuer would constitute a written application or approval for purposes of § 226.51(b) and would not be considered a consumer disclosure for purposes of the E-Sign Act.

51(b)(1) Applications from young consumers.

1. Relation to Regulation B. In considering an application or credit line increase on the credit card account of a consumer who is less than 21 years old, creditors must comply with the applicable rules in Regulation B (12 CFR part 202).

51(b)(2) Credit line increases for young consumers.

1. Credit line request by joint accountholder aged 21 or older. The requirement under § 226.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to § 226.51(b)(1)(i) must agree in writing to assume liability for the increase before a credit line is increased, does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old requests the increase.

~~Section 226.52 Limitations on Fees~~

~~52(a) Limitations during first year after account opening.~~

~~52(a)(1)(i) 25 percent limit.~~

~~1. Example. Assume that, under the terms of a credit card account, a consumer is required to pay \$120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to five percent of the cash advance and a late payment fee of \$15 if the required minimum periodic payment is not received by the payment due date (which is the twenty fifth of the month). At account opening on January 1 of year one, the credit limit for the account is \$500. Section 226.52(a)(1)(i) permits the card issuer to charge to the account the \$120 in fees for the issuance or availability of credit at account opening. On February 1 of year one, the consumer uses the account for a \$100 cash advance. Section 226.52(a)(1)(i) permits the card issuer to charge a \$5 cash advance fee to the account. On March 26 of year one,~~