~~As discussed in the supplementary information to §§ 226.7(b)(14) and 226.16(h), the Board proposed to adopt model language for the disclosures required to be given in connection with deferred interest or similar programs in Samples G-18(H) and G-24. Proposed Sample G-24 contained two model clauses, one for use in connection with credit card accounts under an open-end (not home-secured) consumer credit plan, and one for use in connection with other open-end (not home-secured) consumer credit plans.. The model clause for credit card issuers reflects the fact that, under those rules, an issuer may only revoke a deferred or waived interest program if the consumer's payment is more than 60 days late. The Board also proposed to add a new comment App. G-12 to clarify which creditors should use each of the model clauses in proposed Sample G-24.~~

~~As discussed in the section-by-section analysis to § 226.7(b)(14), the Board is adopting Sample G-18(H) as proposed. Furthermore, the Board did not receive comment on the model language in Sample G-24. Therefore, comment App. G-12 and Sample G-24 are also adopted as proposed.~~

Section 226.51 Ability to Pay

51(a) General Ability to Pay

In the October 2009 Regulation Z Proposal the Board proposed to implement new TILA Section 150, as added by Section 109 of the Credit Card Act, prohibiting a card issuer from opening a credit card account for a consumer, or increasing the credit limit applicable to a credit card account, unless the card issuer considers the consumer's ability to make the required payments under the terms of such account, in new § 226.51(a). 15 U.S.C. 1665e. Proposed § 226.51(a)(1) contained the substance of the rule in TILA Section 150. Proposed § 226.51(a)(2) required card issuers to use a reasonable method for estimating the required payments under § 226.51(a)(1) and provided a safe harbor for such estimation.

51(a)(1) Consideration of Ability to Pay

Proposed § 226.51(a)(1) generally followed the language provided in TILA Section 150 with two clarifying modifications. As detailed in the October 2009 Regulation Z Proposal, the Board proposed to interpret the term "required payments" to mean the required minimum periodic payment since the minimum periodic payment is the amount that a consumer is required to pay each billing cycle under the terms of the contract with the card issuer. In addition, proposed § 226.51(a)(1) provided that the card issuer's consideration of the ability of the consumer to make the required minimum periodic payments must be based on the consumer's income or assets and the consumer's current obligations. Proposed § 226.51(a)(1) also required card issuers to have reasonable policies and procedures in place to consider this information.

While consumer group commenters and some industry commenters agreed that a consideration of ability to pay should include a review of a consumer's income or assets and current obligations, many industry commenters asserted that the Credit Card Act did not compel this interpretation. These commenters stated that there are other factors that they believe are more predictive of a consumer's ability to pay than information on a consumer's income or assets, such as payment history and credit scores. The Board believes that there indeed may be other factors that are useful for card issuers in evaluating a consumer's ability to pay, and for this reason, the Board had proposed comment 51(a)-1 to clarify that card issuers may also consider other factors that are consistent with the Board's Regulation B (12 CFR Part 202). However, the Board still believes a proper evaluation of a consumer's ability to pay must include a review of a consumer's income or assets and obligations in order to give card issuers a more complete picture of a consumer's current financial state. As a result, the Board is adopting § 226.51(a)(1) as § 226.51(a)(1)(i), largely as proposed..

Industry group commenters also detailed challenges with respect to collecting income or asset information directly from consumers in certain contexts. Several commenters expressed concern regarding the lack of privacy for consumers in supplying income or asset information if a consumer applies for a credit card at point-of-sale. These commenters also suggested that requesting consumers to update income or asset information when increasing credit lines also presented several issues, especially at point-of-sale. Unlike a new account opening, there is generally no formal application for a credit line increase. Therefore, card issuers and retailers may need to develop new procedures to obtain this information. For point-of-sale credit line increases, card issuers and retailers believe this will negatively impact the consumer's experience because a consumer may need to take extra steps to complete a sale, which may lead consumers to abandon the purchase. Other commenters noted that requesting consumers to update income or asset information for credit line increases may foster an environment that encourages phishing scams as consumers may be required to distinguish between legitimate requests for updated information from fraudulent requests. Some industry commenters also suggested that the Board provide a de minimis exception for which a card issuer need not consider income or asset information.

Given these concerns, the Board is clarifying in comment 51(a)-4, which the Board is renumbering as comment 51(a)(1)-4 for organizational purposes, that card issuers may obtain income or asset information from several sources, similar to comment 51(a)-5 (renumbered as 51(a)(1)-5) regarding obligations. In addition to collecting this information from the consumer directly, in connection with either this credit card account or any other financial relationship the card issuer or its affiliates has with the consumer, card issuers may also rely on information from third parties, subject to any applicable restrictions on information sharing. Furthermore, the Board is aware of various models developed to estimate income or assets. The Board believes that empirically derived, demonstrably and statistically sound models that reasonably estimate a consumer's income or assets may provide information as valid as a consumer's statement of income or assets. Therefore, comment 51(a)(1)-4 states that card issuers may use empirically derived, demonstrably and statistically sound models that reasonably estimate a consumer's income or assets.

Moreover, the Board is not providing a de minimis exception for considering a consumer's income or assets. The Board is concerned that any de minimis amount chosen could still have a significant impact on a particular consumer, depending on the consumer's financial state. For example, subprime credit card accounts with relatively "small" credit lines may still be difficult for certain consumers to afford. Suggesting that these card issuers may simply avoid consideration of a consumer's income or assets may be especially harmful for consumers in this market segment.

Consumer group commenters suggested that the Board include more guidance on how card issuers must evaluate a consumer's income or assets and obligations. While consumer group commenters did not recommend a specific debt-to-income ratio or any other particular quantitative measures, they suggested that card issuers be required to consider a debt-to-income ratio and a consumer's disposable income. The Board's proposal required card issuers to have reasonable policies and procedures in place to consider this information. To provide further guidance for card issuers, the Board is adopting a new § 226.51(a)(1)(ii) to state that reasonable policies and procedures to consider a consumer's ability to make the required payments would include a consideration of at least one of the following: the ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. Furthermore, § 226.51(a)(1)(ii) provides that it would be unreasonable for a card issuer to not review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets.

Consumer group commenters further suggested that the language be modified to require that card issuers "have and <u>follow</u> reasonable <u>written</u> policies and procedures" to consider a consumer's ability to pay. The Board is moving the requirement that card issuers establish and maintain reasonable policies and procedures to new § 226.51(a)(1)(ii) and amending the provision to require that the reasonable policies and procedures be written. The Board believes that the suggested change to add the word "follow," however, is unnecessary. There are references throughout Regulation Z and the Board's other regulations that require reasonable policies and procedures without an explicit instruction that they be followed. In each of these instances, the Board has expected and continues to expect that these policies and procedures will be followed. Similarly, the Board has the same expectation with § 226.51(a)(1)(ii).

As noted above, proposed comment 51(a)-1 clarified that card issuers may consider credit reports, credit scores, and any other factor consistent with Regulation B (12 CFR Part 202) in considering a consumer's ability to pay. One industry commenter suggested that the Board amend the comment to include a reference to consumer reports, which include credit reports. The Board is adopting proposed comment 51(a)-1 as comment 51(a)(1)-1 with this suggested change.

Proposed comment 51(a)-2 clarified that in considering a consumer's ability to pay, a card issuer must base the consideration on 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. This guidance is similar to comment 34(a)(4)-5 addressing a creditor's requirement to consider a consumer's repayment ability for certain closed-end mortgage loans based on facts and circumstances known to the creditor at loan consummation. Several industry commenters asked whether this comment required card issuers to update any income or asset information the card issuer may have on a consumer prior to a credit line increase on an existing account. The Board believes that card issuers should be required to update a consumer's income or asset information, similar to how card issuers generally update information on a consumer's obligations, prior to considering whether to increase a consumer's credit line. This will prevent the card issuer from making an evaluation of a consumer's ability to make the required payments based on stale information. Consistent with the Board's changes to comment 51(a)-4 (adopted as 51(a)(1)-4), as discussed below, card issuers have several options to obtain updated income or asset information. Proposed comment 51(a)-2 is adopted as comment 51(a)(1)-2.

Furthermore, since credit line increases can occur at the request of a consumer or through a unilateral decision by the card issuer, proposed comment 51(a)-3 clarified that § 226.51(a) applies in both situations. Consumer group commenters suggested that credit line increases should only be granted upon the request of a consumer. The Board believes that if a card issuer conducts the proper evaluation prior to a credit line increase, such increases should not be prohibited simply because the consumer did not request the increase. The consumer is still in control as to how much of the credit line to ultimately use. Proposed comment 51(a)-3 is adopted as comment 51(a)(1)-3, with a minor non-substantive wording change.

Proposed comment 51(a)-4 provided examples of assets and income the card issuer may consider in evaluating a consumer's ability to pay. As discussed above, in response to comments on issues related to collecting income or asset information directly from consumers, the Board is amending comment 51(a)-4 (renumbered as 51(a)(1)-4) to provide a parallel comment to comment 51(a)-5 (renumbered as 51(a)(1)-5) regarding obligations. Specifically, the Board is clarifying that card issuers are not obligated to obtain income or asset information directly from a consumer. Card issuers may also obtain this information through third parties as well as empirically derived, demonstrably and statistically sound models that reasonably estimates a consumer's income or assets. The Board believes that, to the extent that card issuers are able to obtain information on a consumer's income or assets through means other than directly from the consumer, card issuers should be provided with flexibility.

The Board also proposed comment 51(a)-5 to clarify that in considering a consumer's current obligations, a card issuer may rely on information provided by the consumer or in a consumer's credit report. Commenters were supportive of this comment, and the comment is adopted as proposed, with one addition. Industry commenters requested that the Board clarify that in evaluating a consumer's current open-end obligations, card issuers should not be required to assume such obligations are fully utilized. The Board agrees. In contrast to the Board's safe harbor in estimating the minimum payments for the credit account for which the consumer is applying, the card issuer will have information on the consumer's historic utilization rates for other obligations. With respect to the credit account for which the consumer is applying, the card issuer has no information as to how the consumer plans to use the account, and assumption of full utilization is thus appropriate in that context. Moreover, while credit limit information is widely reported in consumer reports, there are still instances where such information is not reported. Furthermore, the Board is concerned that assuming full utilization of all open-end credit lines could result in an anticompetitive environment wherein card issuers raise credit limits on existing accounts in order to prevent a consumer from obtaining any new credit cards. For these reasons, proposed comment 51(a)-5 is amended to provide that in evaluating a consumer's current obligations to determine the consumer's ability to make the required payments, the card issuer need not assume that any credit line is fully utilized. In addition, the comment has been renumbered as comment 51(a)(1)-5.

Several industry commenters requested that the Board clarify that for joint accounts, a card issuer may consider the ability of both applicants or accountholders to make the required payments, instead of considering the ability of each consumer individually. In response, the Board is adopting new comment 51(a)(1)-6 to permit card issuers to consider joint applicants or joint accountholders collectively.

Moreover, as discussed in the October 2009 Regulation Z Proposal, the Board did not propose to require card issuers to verify information before an account is opened or credit line is increased for several reasons. The Board noted that TILA Section 150 does not require verification of a consumer's ability to make required payments and that verification can be burdensome for both consumers and card issuers, especially when accounts are opened at point of sale or by telephone. Furthermore, as discussed in the October 2009 Regulation Z Proposal, the Board stated its belief that because credit card accounts are generally unsecured, card issuers will be motivated to verify information when either the information supplied by the applicant is inconsistent with the data the card issuers already have or obtain on the consumer or when the risk in the amount of the credit line warrants such verification.

Many industry commenters expressed support for the Board's approach to provide card issuers with flexibility to determine instances when verification might be necessary and to refrain from strictly requiring verification or documentation in all instances. In contrast, consumer group commenters opposed this approach, stating that while there is no widespread evidence of income inflation in the credit card market, such problems do occur. One federal financial regulator commenter suggested that verification could be required in certain instances, such as when a consumer does not have a large credit file or when the credit line is large. The Board believes that given the inconvenience to consumers detailed in the October 2009 Regulation Z Proposal in providing documentation and the lack of evidence currently that consumers' incomes have been inflated in the credit card market on a widespread basis, a strict verification should not be required at this time.

51(a)(2) Minimum Periodic Payments

Under proposed § 226.51(a)(2)(i), card issuers would be required to use a reasonable method for estimating the required minimum periodic payments. Proposed § 226.51(a)(2)(ii) provided a safe harbor that card issuers could use to comply with this requirement. Specifically, the proposed safe harbor required the card issuer to assume utilization of the full credit line that the issuer is considering offering to the consumer from the first day of the billing cycle. The proposed safe harbor also required the issuer to use a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account. If the applicable minimum payment formula includes interest charges, the proposed safe harbor required the card issuer to estimate those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases. Finally, if the applicable minimum payment formula included fees, the proposed safe harbor permitted the card issuer to assume that no fees have been charged to the account.

Consumer group commenters and many industry commenters generally agreed with the Board's approach and proposed safe harbor. A federal financial regulator and an industry commenter stated that the Board's emphasis on the minimum periodic payments was misplaced. The federal financial regulator commenter suggested that instead of considering a consumer's ability to make the minimum periodic payments based on full utilization of the credit line, the commenter recommended that card issuers be required to consider a consumer's ability to pay the entire credit line over a reasonable period of time, such as a year. The Credit Card Act requires evaluation of a consumer's ability to make the "required payments." Unless the terms of the contract provide otherwise, repayment of the balance on a credit card account over one year is not required. As discussed in the October 2009 Regulation Z Proposal, the minimum periodic payment is generally the amount that a consumer is required to pay each billing cycle under the terms of the contract. As a result, the Board believes that requiring card issuers to consider the consumer's ability to make the minimum periodic payment is the most appropriate interpretation of the requirements of the Credit Card Act.

With respect to the Board's proposed safe harbor approach, some industry commenters suggested that the Board permit card issuers to estimate minimum periodic payments based on an average utilization rate for the product offered to the consumer. In the October 2009 Regulation Z Proposal, the Board acknowledged that requiring card issuers to estimate minimum periodic payments based on full utilization of the credit line could have the effect of overstating the consumer's likely required payments. The Board believes, however, that since card issuers may not know how a particular consumer may use the account, and the issuer is qualifying the consumer for a certain credit line, of which the consumer will have full use, an assumption that the entire credit line will be used is a proper way to estimate the consumer's payments under the safe harbor. Furthermore, the Board notes that the regulation requires that a card issuer use a reasonable method to estimate payments, and that § 226.51(a)(2)(ii) merely provides a safe harbor for card issuers to comply with this standard, but that it may not be the only permissible way to comply with § 226.51(a)(2)(i). Section 226.51(a)(2)(ii) is therefore adopted as proposed with one minor clarifying change.

As noted above, the proposed safe harbor under § 226.51(a)(2)(ii) required an issuer to use a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account. The Board is adding new comment 51(a)(2)-1 to clarify that if an account has or may have a promotional program, such as a deferred payment or similar program, where there is no applicable minimum payment formula during the promotional period, the issuer must estimate the required minimum periodic payment based on the minimum payment formula that will apply when the promotion ends.

Proposed § 226.51(a)(2)(ii) also provided that if the applicable minimum payment formula includes interest charges, the proposed safe harbor required the card issuer to estimate those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases. The Board is adopting a new comment to clarify this provision. New comment 51(a)(2)-2 provides that if the interest rate for purchases is or may be a promotional rate, the safe harbor requires the issuer to use the post-promotional rate to estimate interest charges.

As discussed in the October 2009 Regulation Z Proposal, the Board's proposed safe harbor further provided that if the minimum payment formula includes fees, the card issuer could assume that no fees have been charged because the Board believed that estimating the amount of fees that a typical consumer might incur could be speculative.

Consumer group commenters suggested that the Board amend the safe harbor to require the addition of mandatory fees as such fees are not speculative. The Board agrees. As a result, § 226.51(a)(2)(ii) requires that if a minimum payment formula includes the addition of any mandatory fees, the safe harbor requires the card issuer to assume that such fees are charged. In addition, the Board is adopting a new comment 51(a)(2)-3 to provide guidance as to what types of fees are considered mandatory fees. Specifically, the comment provides that mandatory fees for which a card issuer is required to assume are charged include those fees that a consumer will be required to pay if the account is opened, such as an annual fee.

51(b) Rules Affecting Young Consumers

The Board proposed in the October 2009 Regulation Z Proposal to implement new TILA Sections 127(c)(8) and 127(p), as added by Sections 301 and 303 of the Credit Card Act, respectively, in § 226.51(b). Specifically, proposed § 226.51(b)(1) provided 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). The Board proposed § 226.51(b)(2) to state 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 pursuant to proposed § 226.51(b)(1)(i) 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.

As discussed in the October 2009 Regulation Z Proposal, proposed § 226.51(b) generally followed the statutory language with modifications to resolve ambiguities in the statute and to improve readability and consistency with § 226.51(a). While many of these proposed changes did not generate much comment, certain of the Board's proposed modifications did prompt suggestions from commenters. First, consumer group commenters maintained that the Board's proposed language to limit the scope of § 226.51(b)(1) to credit card accounts only was not consistent with the language in TILA Section 127(c)(8)(A). For all the reasons set forth in the October 2009 Regulation Z Proposal, however, the Board believes that the intent of TILA Section 127(c)(8), read as a whole, was to apply these requirements only to credit card accounts. Furthermore, as discussed in the October 2009 Regulation Z Proposal, limiting the scope of § 226.51(b)(1) to credit card accounts only is consistent with the treatment of the related provision in TILA Section 127(p) regarding credit line increases, which applies solely to credit card accounts. Therefore, § 226.51(b)(1) will apply only to credit card accounts as proposed.

The Board also received comment regarding its proposal to make § 226.51(b) consistent with § 226.51(a) by requiring card issuers to determine whether a consumer under the age of 21, or any cosigner, guarantor, or joint applicant of a consumer under the age of 21, has the means to repay debts incurred by the consumer by evaluating a consumer's ability to make the required payments under § 226.51(a). Therefore, proposed § 226.51(b)(1)(i) and (ii) both referenced § 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.

Industry commenters were supportive of the Board's approach. Consumer group commenters, however, recommended that the Board require a more stringent evaluation of a consumer's ability to make the required payments for consumers under the age of 21 than the one required in § 226.51(a). In particular, consumer group commenters suggested, for example, that card issuers be required to only consider income earned from wages or require a higher residual income or lower debt-to-income ratio for consumers less than 21 years old. A state regulatory agency commenter suggested that the Board require card issuers to verify income or asset information stated on an application submitted by a consumer under the age of 21. The Board declines to make the suggested changes. The Board believes that the heightened procedures already set forth in TILA Sections 127(c)(8) and 127(p), as adopted by the Board in § 226.51(b), will provide sufficient protection for consumers less than 21 years old without unnecessarily impinging on their ability to obtain credit and build a credit history. Furthermore, the Board is concerned that the suggested changes could be inconsistent with the Board's Regulation B (12 CFR Part 202). For example, excluding certain income from consideration, such as alimony or child support, could conflict with 12 CFR § 202.6(b)(5).

The Board, however, is amending § 226.51(b)(1) to clarify that, consistent with comments 51(a)(1)-4 and 51(a)(1)-5, card issuers need not obtain financial information directly from the consumer to evaluate the ability of the consumer, cosigner, guarantor, or joint applicant to make the required payments. The Board is also making organizational and other non-substantive changes to § 226.51(b)(1) to improve readability and consistency. Section 226.51(b)(2) is adopted as proposed. The Board notes that for any credit line increase on an account of a consumer under the age of 21, the requirements of § 226.51(b)(2) are in addition to those in § 226.51(a).

In the October 2009 Regulation Z Proposal, the Board also proposed several comments to provide guidance to card issuers in complying with § 226.51(b). Proposed comment 51(b)-1 clarified 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. Some industry commenters suggested that the Board's final rule provide that the age of the consumer be determined at account opening as opposed to the consumer's age as of the date of submission of the application. The Board notes that TILA Section 127(c)(8)(B) applies to consumers who are under the age of 21 as of the date of submission of the application. Therefore, in compliance with the statutory provision, the Board is adopting comment 51(b)-1 as proposed.

Proposed comment 51(b)-2 addressed 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. Consumer group commenters recommended that the Board require that card issuers obtain separate consent of a cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21. The Board believes that requiring separate consent is unnecessary and duplicative as card issuers requiring cosigners, guarantors, or joint accountholders to assume such liability will likely obtain a single consent at the time the account is opened for the cosigner, guarantor, or joint accountholder to assume liability on debt that is incurred before and after the consumer has turned 21. Proposed comment 51(b)-2 is adopted in final.

The Board proposed 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 did not receive any comment on this provision, and the comment is adopted as proposed.

Proposed comment 51(b)-4 explained 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 electronic applications. TILA Section 127(c)(8) requires a consumer who has not attained the age of 21 to submit a written application, and TILA Section 127(p) requires a cosigner, guarantor, or joint accountholder to consent to a credit line increase in writing. As noted in the October 2009 Regulation Z Proposal, the Board believes that, consistent with the purposes of the E-Sign Act, applications submitted under TILA Section 127(c)(8) and consents under TILA Section 127(p), which must be provided in writing, may also be submitted electronically. See 15 U.S.C. 7001(a). Furthermore, since the submission of an application by a consumer or consent to a credit line increase by a cosigner, guarantor, or joint accountholder is not a disclosure to a consumer, the Board believes the consumer consent and other requirements necessary to provide consumer disclosures electronically pursuant to the E-Sign Act would not apply. The Board notes, however, that under the E-Sign Act, an electronic record of a contract or other record required to be in writing may be denied legal effect, validity or enforceability if such record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record. 15 U.S.C. 7001(e). Consumer group commenters recommended that the Board include this reference in the comment. The Board believes this is unnecessary, and comment 51(b)-4 is adopted as proposed with minor wording changes.

Under proposed comment 51(b)(1)-1, creditors must comply with applicable rules in Regulation B (12 CFR Part 202) in evaluating an application to open a credit card account or credit line increase for a consumer under the age of 21. In the October 2009 Regulation Z Proposal, the Board noted that because 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).

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. Therefore, 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)(i). Consequently, 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)(ii), 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).

Several industry commenters requested the Board further clarify the interaction between Regulation B and § 226.51(b). Some commenters suggested the Board state that certain provisions of § 226.51(b) override provisions of Regulation B. The Board notes that issuers would not violate Regulation B by virtue of complying with § 226.51(b). Therefore, the Board does not believe it is necessary to state that § 226.51(b) overrides provisions of Regulation B.

Furthermore, many industry commenters asked the Board to permit card issuers, in determining whether consumers under the age of 21 have the "independent" means to repay debts incurred, to consider a consumer's spouse's income. The Board believes that neither Regulation B nor § 226.51(b) compels this interpretation. Pursuant to TILA Section 127(c)(8)(B), card issuers evaluating a consumer under the age of 21 under § 226.51(b)(1)(ii), who is applying as an individual, must consider the consumer's independent ability. The Board notes, however, that in evaluating joint accounts, the card issuer may consider the collective ability of the joint applicants or joint accountholders to make the required payments under new comment 51(a)(1)-6, as discussed above. Comment 51(b)(1)-1 is adopted as proposed.

Proposed comment 51(b)(2)-1 provided 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 believed that § 226.51(b)(2) would be redundant. An industry commenter requested the Board clarify situations in which this applies. For example, the commenter requested whether comment 51(b)(2)-1 would apply if a consumer under the age of 21 requests the credit line increase over the telephone, but subsequently passes the telephone to the cosigner, guarantor, or joint accountholder who is at least 21 years old to make the request after being told that they are not sufficiently old enough to do so. The Board believes this approach will be tantamount to an oral approval and would circumvent the protections of § 226.51(b)(2). Consequently, the Board is modifying the proposed comment to clarify that it must be the cosigner, guarantor, or joint accountholder who is at least 21 years old who initiates the request to increase the credit line.

~~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~~