

(Pub. L. 102-242, title II, §270, Dec. 19, 1991, 105 Stat. 2339; Pub. L. 102-550, title XVI, §1604(e)(2)(I)–(K), (3), (4), Oct. 28, 1992, 106 Stat. 4084.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

AMENDMENTS

1992—Pub. L. 102-550 made technical amendment to references to “this chapter” wherever appearing to reflect correction of corresponding provision of original act.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4308, 4310 of this title.

§ 4310. Civil liability

(a) Civil liability

Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this chapter or any regulation prescribed under this chapter with respect to any person who is an account holder is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that—

(i) as to each member of the class, no minimum recovery shall be applicable; and

(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of \$500,000 or 1 percent of the net worth of the depository institution involved; and

(3) in the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with a reasonable attorney’s fee as determined by the court.

(b) Class action awards

In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional.

(c) Bona fide errors

(1) General rule

A depository institution may not be held liable in any action brought under this section for a violation of this chapter if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) Examples

Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution’s obligation under this chapter is not a bona fide error.

(d) No liability for overpayment

A depository institution may not be held liable in any action under this section for a violation of this chapter if the violation has resulted in—

(1) an interest payment to the account holder in an amount greater than the amount determined under any disclosed rate of interest applicable with respect to such payment; or

(2) a charge to the consumer in an amount less than the amount determined under the disclosed charge or fee schedule applicable with respect to such charge.

(e) Jurisdiction

Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within 1 year after the date of the occurrence of the violation involved.

(f) Reliance on Board rulings

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any regulation or order, or any interpretation of any regulation or order, of the Board, or in conformity with any interpretation or approval by an official or employee of the Board duly authorized by the Board to issue such interpretation or approval under procedures prescribed by the Board, notwithstanding, the fact that after such act or omission has occurred, such regulation, order, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Notification of and adjustment for errors

A depository institution shall not be liable under this section or section 4309 of this title for any failure to comply with any requirement imposed under this chapter with respect to any account if—

(1) before—

(A) the end of the 60-day period beginning on the date on which the depository institution discovered the failure to comply;

(B) any action is instituted against the depository institution by the account holder

under this section with respect to such failure to comply; and

(C) any written notice of such failure to comply is received by the depository institution from the account holder,

the depository institution notifies the account holder of the failure of such institution to comply with such requirement; and

(2) the depository institution makes such adjustments as may be necessary with respect to such account to ensure that—

(A) the account holder will not be liable for any amount in excess of the amount actually disclosed with respect to any fee or charge;

(B) the account holder will not be liable for any fee or charge imposed under any condition not actually disclosed; and

(C) interest on amounts in such account will accrue at the annual percentage yield, and under the conditions, actually disclosed (and credit will be provided for interest already accrued at a different annual percentage yield and under different conditions than the yield or conditions disclosed).

(h) Multiple interests in 1 account

If more than 1 person holds an interest in any account—

(1) the minimum and maximum amounts of liability under subsection (a)(2)(A) of this section for any failure to comply with the requirements of this chapter shall apply with respect to such account; and

(2) the court shall determine the manner in which the amount of any such liability with respect to such account shall be distributed among such persons.

(i) Continuing failure to disclose

(1) Certain continuing failures treated as 1 violation

Except as provided in paragraph (2), the continuing failure of any depository institution to disclose any particular term required to be disclosed under this chapter with respect to a particular account shall be treated as a single violation for purposes of determining the amount of any liability of such institution under subsection (a) of this section for such failure to disclose.

(2) Subsequent failure to disclose

The continuing failure of any depository institution to disclose any particular term required to be disclosed under this chapter with respect to a particular account after judgment has been rendered in favor of the account holder in connection with a prior failure to disclose such term with respect to such account shall be treated as a subsequent violation for purposes of determining liability under subsection (a) of this section.

(3) Coordination with section 4309 of this title

This subsection shall not limit or otherwise affect the enforcement power under section 4309 of this title of any agency referred to in subsection (a) of such section.

(Pub. L. 102-242, title II, §271, Dec. 19, 1991, 105 Stat. 2340; Pub. L. 102-550, title XVI, §1604(e)(2)(L)–(O), Oct. 28, 1992, 106 Stat. 4084.)

REPEAL OF SECTION

Pub. L. 104-208, div. A, title II, §2604(a), Sept. 30, 1996, 110 Stat. 3009-470, provided that, effective as of the end of the 5-year period beginning Sept. 30, 1996, this section is repealed.

AMENDMENTS

1992—Subsecs. (a), (c), (d), (g) to (i)(2). Pub. L. 102-550 made technical amendment to references to “this chapter” wherever appearing to reflect correction of corresponding provision of original act.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

§ 4311. Credit unions

(a) In general

No regulation prescribed by the Board under this chapter shall apply directly with respect to any depository institution described in clause (iv) of section 461(b)(1)(A) of this title.

(b) Regulations prescribed by NCUA

Within 90 days of the effective date of any regulation prescribed by the Board under this chapter, the National Credit Union Administration Board shall prescribe a regulation substantially similar to the regulation prescribed by the Board taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

(Pub. L. 102-242, title II, §272, Dec. 19, 1991, 105 Stat. 2342; Pub. L. 102-550, title XVI, §1604(e)(2)(P), (Q), Oct. 28, 1992, 106 Stat. 4084.)

AMENDMENTS

1992—Pub. L. 102-550 made technical amendment to references to “this chapter” wherever appearing to reflect correction of corresponding provision of original act.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4308 of this title.

§ 4312. Effect on State law

The provisions of this chapter do not supersede any provisions of the law of any State relating to the disclosure of yields payable or terms for accounts to the extent such State law requires the disclosure of such yields or terms for accounts, except to the extent that those laws are inconsistent with the provisions of this chapter, and then only to the extent of the inconsistency. The Board may determine whether such inconsistencies exist.

(Pub. L. 102-242, title II, §273, Dec. 19, 1991, 105 Stat. 2342; Pub. L. 102-550, title XVI, §1604(e)(2)(R), Oct. 28, 1992, 106 Stat. 4084.)

AMENDMENTS

1992—Pub. L. 102-550 made technical amendment to references to “this chapter” wherever appearing to re-