

authority of any other agency designated in this section to make rules regarding its own procedures in enforcing compliance with requirements imposed under this chapter.

(Pub. L. 100-86, title VI, §610, Aug. 10, 1987, 101 Stat. 649; Pub. L. 101-73, title VII, §744(d), Aug. 9, 1989, 103 Stat. 438; Pub. L. 102-242, title II, §212(h), Dec. 19, 1991, 105 Stat. 2303.)

#### REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(3), 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

1991—Subsec. (a). Pub. L. 102-242, §212(h)(2), inserted at end “The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).”

Subsec. (a)(1). Pub. L. 102-242, §212(h)(1), added par. (1) and struck out former par. (1) which read as follows: “section 8 of the Federal Deposit Insurance Act in the case of—

“(A) national banks, by the Comptroller of the Currency;

“(B) member banks of the Federal Reserve System (other than national banks), by the Board of Governors of the Federal Reserve System; and

“(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;”.

1989—Subsec. (a)(2). Pub. L. 101-73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “section 5(d) of the Home Owners’ Loan Act of 1933, section 407 of the National Housing Act, and section 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and”.

#### EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100-86, set out as a note under section 4001 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4003 of this title.

### § 4010. 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 other than another depository institution 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 the foregoing liability, 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) Jurisdiction

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

#### (e) 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 rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

#### (f) Authority to establish rules regarding losses and liability among depository institutions

The Board is authorized to impose on or allocate among depository institutions the risks of

loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.

(Pub. L. 100-86, title VI, §611, Aug. 10, 1987, 101 Stat. 650.)

#### EFFECTIVE DATE

Section effective Sept. 1, 1988, see section 613(b) of Pub. L. 100-86, set out as a note under section 4001 of this title.

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