

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.

CHAPTER 42—LOW-INCOME HOUSING PRESERVATION AND RESIDENT HOMEOWNERSHIP

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CODIFICATION

Subtitles A and B of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. 100-242, title II, as revised generally by Pub. L. 101-625, title VI, §601(a), Nov. 28, 1990, 104 Stat. 4249, comprise subchapter I of this chapter. Prior to the general revision by Pub. L. 101-625 subtitles A and B (§§201-235) of the Emergency Low Income Housing Preservation Act of 1987, Pub. L. 100-242, title II, Feb. 5, 1988, 101 Stat. 1877, as amended by Pub. L. 100-628, title X, §§1021-1027, Nov. 7, 1988, 102 Stat. 3270, 3271; Pub. L. 101-235, title II, §§201, 202(a)-(c), 203(b), Dec. 15, 1989, 103 Stat. 2037, 2038; Pub. L. 101-402, §1, Oct. 1, 1990, 104 Stat. 866; Pub. L. 101-494, §§1(c), 2(a), Oct. 31, 1990, 104 Stat. 1185, were set out as a note under section 1715f of this title and amended section 1715z-6 of this title.

Subtitle C of the Low-Income Housing Preservation and Resident Homeownership Act of 1990, Pub. L. 100-242, title II, as added by Pub. L. 102-550, title III, §312, Oct. 28, 1992, 106 Stat. 3765, comprises subchapter II of this chapter. Another subtitle C of title II of Pub. L. 100-242 amended sections 1472, 1485, and 1487 of Title 42, The Public Health and Welfare.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1715z-1, 1715z-1b of this title; title 42 sections 1437n, 8107, 12742, 12877.

SUBCHAPTER I—PREPAYMENT OF MORTGAGES INSURED UNDER NATIONAL HOUSING ACT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4125, 4143, 4146 of this title.

§ 4101. General prepayment limitation

(a) Prepayment and termination

An owner of eligible low-income housing may prepay, and a mortgagee may accept prepayment of, a mortgage on such housing only in accordance with a plan of action approved by the Secretary under this subchapter or in accordance with section 4114 of this title. An insurance contract with respect to eligible low-income housing may be terminated pursuant to section 1715t of this title only in accordance with a plan of action approved by the Secretary under this subchapter or in accordance with section 4114 of this title.

(b) Foreclosure

A mortgagee may foreclose the mortgage on, or acquire by deed in lieu of foreclosure, any eligible low-income housing project only if the mortgagee also conveys title to the project to the Secretary in connection with a claim for insurance benefits.