# TABLE OF CONTENTS

Legal Review ........................................... vii
Acknowledgments ...................................... vii

Section 1 – Truth In Lending Act and Regulation Z ............... 1-1
The Importance of Knowing Applicable Laws and Regulations .... 1-2
State Laws .................................................. 1-2
Truth In Lending Act and Regulation Z ............................. 1-3
   Purpose—full and fair disclosure of credit terms ............... 1-3
   Scope and exemptions .................................... 1-3
   Payday loans ........................................... 1-4
   Overdraft protection/bounce protection programs ............ 1-4
   Liability provisions ..................................... 1-4
   Limitation of actions .................................... 1-7
   Key definitions ......................................... 1-9
   Record retention ....................................... 1-18
Open-End Credit Operations and Procedures ..................... 1-19
   Properly determine Annual Percentage Rate (APR) .......... 1-19
   Comply with special rules for home equity plans .......... 1-20
   Comply with billing error resolution procedures ........... 1-21
   Credit payments on open-end accounts promptly .......... 1-24
   Open-end disclosures and notices ........................ 1-24
   Timing for electronic disclosures .......................... 1-25
   Compliance with the right of rescission rules—open-end loans ........................................................................ 1-29
   Periodic statements ...................................... 1-31
   Content of periodic statement .............................. 1-32
   Marketing and advertising rules for open-end credit ....... 1-36
Closed-End Credit Operations and Procedures .................... 1-39
Determine the Annual Percentage Rate (APR) ............ 1-39
Handle credit balances as required ....................... 1-41
Closed-end disclosures and notices ....................... 1-41
Disclosures for RESPA-Related Residential Mortgage Applications1 . 1-55
Loan Estimate .............................................. 1-55
Closing Disclosure .......................................... 1-57
High-Cost Mortgage Thresholds ............................ 1-71
Determination of APR and APOR ............................ 1-71
High-cost mortgage restrictions ............................. 1-72
Prepayment penalties ........................................ 1-73
Pre-loan counseling ......................................... 1-74
Open-end high cost repayment ability ........................ 1-75
Escrow for higher-priced mortgage appraisal requirements .. 1-76
Two appraisal requirements ................................. 1-77
Initial rate adjustment disclosure ............................ 1-78
Appraiser independence ..................................... 1-79
Restrictions on property valuations ......................... 1-80
Prohibition of conflicts of interest .......................... 1-81
Prohibited extensions of credit ............................. 1-82
Customary and reasonable compensation .................... 1-82
Mandatory reporting requirements .......................... 1-82
Marketing and advertising rules for closed-end credit .... 1-83
Tax implications ............................................. 1-86
The FTC “Mortgage Acts & Practices–Advertising Rules ... 1-88
Electronic Communication .................................... 1-89
Requirements ................................................ 1-89
Definition .................................................... 1-89
Relationship to ESIGN ........................................ 1-89
Clear and conspicuous standard ............................. 1-90
Timing and effective delivery online ......................... 1-90
Timing and delivery of periodic disclosures .................. 1-90
Retainability of disclosures .................................. 1-90
When consent is required ........................................ 1-90
Address or location to receive electronic communication . . 1-92
Electronic signatures ............................................. 1-92
Appendix 1-A — Sample Loan Estimate .......................... 1-93
Appendix 1-B — Sample Closing Disclosure ....................... 1-97
Appendix 1-C — Escrow Closing Disclosure ...................... 1-103
Appendix 1-D — Mortgage Disclosure Checklist ................. 1-105

Section 2 — Real Estate Settlement Procedures Act
and HUD's Regulation X ............................................. 2-1
Overview .......................................................... 2-2
Coverage ............................................................ 2-2
Exemptions ......................................................... 2-4
General Disclosure Requirements ................................. 2-6
  Prohibition against requiring the use of affiliates .............. 2-6
Transfer of Servicing Rights Disclosure Statements ............. 2-7
  Initial and annual escrow account statements .................. 2-9
Escrow account analysis ........................................... 2-10
Annual escrow account analysis ................................... 2-11
Escrow deficiencies .................................................. 2-12
Section 8: Anti-Kickback Rules .................................... 2-15
  Payments allowed under Section 8 .............................. 2-20
Affiliated business arrangements ................................... 2-20
Inadvertent error ..................................................... 2-23
Penalties for Violations of RESPA and Reg X .................... 2-24
  Recordkeeping requirements ..................................... 2-25
Relation to state laws ............................................... 2-25
Electronic Disclosures and the E-Sign Act ......................... 2-25
Frequently Asked Questions ........................................ 2-25
Appendix 2-A — Initial Escrow Account Disclosure Statement . 2-31
Appendix 2-B — Annual Escrow Account Disclosure Statement . 2-33
Section 3 – Home Mortgage Disclosure Act and Regulation C . . . 3-1

Overview ................................................. 3-2
Definitions .............................................. 3-2
Is Your Credit Union Exempt from HMDA Reporting? .......... 3-3
   Qualifying for exempt status ...................... 3-3
   Exemption based on state law .................... 3-4
Change in exempt status ................................ 3-4
   Effects of a merger. ................................. 3-4
   Bulk purchase of loans ............................ 3-5
Compiling Loan Data .................................... 3-5
   Exemptions from reporting ....................... 3-5
   Required data ...................................... 3-5
   Collecting data .................................... 3-7
Who Is Required to File a Report? ......................... 3-7
Completing the HMDA-LAR ............................ 3-7
   The HMDA-LAR form ............................. 3-7
   Required information ............................ 3-8
Submitting the HMDA Report .......................... 3-8
Public Disclosure of HMDA Information .................... 3-8
   The FFIEC disclosure statement ................. 3-8
   Modified HMDA-LAR ............................. 3-8
   Lobby notice ...................................... 3-8
Compliance .............................................. 3-9
Enforcement and Penalties for Noncompliance ............... 3-9
Record Retention Requirements .......................... 3-10
Appendix 3-A — Sample Data Collection Form ............... 3-11
Quiz/Study Guide ....................................... 3-12
Answer Key .............................................. 3-14
Section 4 – Fair Housing Act and NCUA Parts 701.31, 722, and 701.21

Overview ................................................................. 4-2

Scope of FHA ......................................................... 4-2

Responsibilities of the Department of Housing and Urban Development .............................................. 4-3

Effect of state law ..................................................... 4-3

Discrimination in Financing ...................................... 4-4

Section 804 — Discrimination in the Sale or Rental of Housing and Other Prohibited Practices .............. 4-4

Discrimination based on an applicant’s handicap .......... 4-5

Prohibited Activities .................................................. 4-5

Racial steering ......................................................... 4-6

Redlining ............................................................... 4-6

Excessively low appraisals ........................................ 4-6

Racially exclusive image .......................................... 4-6

Discouraging applications ........................................ 4-7

Excessively burdensome standards ......................... 4-7

More onerous terms or conditions ......................... 4-7

Practices that discriminate against women .............. 4-7

Enforcement and Penalties for Noncompliance .......... 4-8

Enforcement powers of the Secretary of HUD .......... 4-8

Enforcement by private persons ............................... 4-8

Enforcement by the United States Attorney General .... 4-9

Self-Testing for Compliance ...................................... 4-9

Results of the self-test ............................................ 4-9

NCUA Nondiscrimination Rules ................................. 4-10

Part 701.31 — Nondiscrimination requirements ........... 4-10

Part 722 Appraisals .................................................. 4-12

Section 701.21 — Loans and lines of credit to members .... 4-15

Appendix 4-A — Sample Equal Housing Logotype and Notice .................................................. 4-18

Quiz/Study Guide .................................................... 4-19

Answer Key ............................................................. 4-21
Section 5 – Flood Disaster Protection Act .......................... 5-1

Background ................................................................. 5-2
Glossary of Terms ......................................................... 5-3
National Flood Insurance Program ................................. 5-4
    What is the National Flood Insurance Program? ........... 5-4
    Coverage availability. ............................................ 5-4
    Emergency and regular programs ............................ 5-5
    Write Your Own (WYO) Program ............................... 5-5
    Flood insurance maps ............................................. 5-5

Requirement To Purchase Flood Insurance
Where Available ......................................................... 5-5
    Mandatory purchase requirement. ............................. 5-5
    30-day waiting period. ............................................ 5-6
    Required amount of insurance. ................................. 5-6
    The credit union’s responsibilities cease upon
    the sale of the loan. .............................................. 5-7
    Exemptions ........................................................... 5-7
    What about insuring land? ....................................... 5-7

Escrow Requirement ..................................................... 5-7

The Flood Determination Process ................................. 5-8
    Required use of the Standard Flood Hazard
    Determination Form (SFHDF) ................................. 5-8
    Use of a previous determination. .............................. 5-8
    What if the member disputes the credit union’s
    determination that flood insurance is required? ............ 5-9
    What if the member disputes the accuracy of the
    flood maps used to make the determination? ............... 5-9
    Forced placement of flood insurance ........................ 5-9
    Determination fees. ............................................... 5-10

Truth In Lending Act Implications ................................. 5-10

Notice Requirements .................................................. 5-11
    Notice of special flood hazards and availability of
    federal disaster relief assistance ............................. 5-11
    Record of receipt ................................................. 5-12
Alternate method of notice ........................................... 5-12
Use of prescribed form of notice .................................. 5-12
Notice of servicer’s identity ........................................... 5-12
Transfer of servicing rights .......................................... 5-12

Appendix 5-A — Sample Notice of Special Flood Hazards and
Availability of Federal Disaster Relief Assistance ....... 5-13
Appendix 5-B — Sample Notification of Change of Servicer .... 5-15
Appendix 5-C — National Flood Insurance Program
(NFIP) Policy Issuance 5-98 ......................................... 5-16
Appendix 5-D — Forthcoming Changes to Flood Insurance .... 5-20
Appendix 5-E — Mortgage Disclosure Checklist .................. 5-22
Quiz/Study Guide ...................................................... 5-24
Answer Key ............................................................... 5-26

Section 6 — Homeowner’s Protection Act of 1998 .......... 6-1
Background ................................................................ 6-3
Key Terms .................................................................. 6-2
Termination of PMI ...................................................... 6-4
  Member cancellation .................................................. 6-5
  Automatic termination .............................................. 6-5
  Final termination ..................................................... 6-5
  Loan modifications .................................................. 6-5
  Return of unearned premiums .................................. 6-5
High Risk Loan Exception of Cancellation
and Automatic Termination ......................................... 6-6
Disclosure Requirements ............................................. 6-6
  Initial disclosure for loans closed after July 29, 1999 .... 6-6
  Annual disclosure for loans closed after July 29, 1999 .... 6-7
  Annual disclosure for existing loans (closed prior to
  July 29, 1999) ......................................................... 6-7
  Notification upon cancellation or termination .............. 6-7
  Disclosure requirements for lender paid mortgage
  insurance ................................................................. 6-8
Fees for disclosures ............................ 6-8
Civil Liability .................................. 6-8
Effect on State Laws .......................... 6-8
Effect on Other Agreements .............. 6-9
Regulation Z (Truth In Lending) Implications 6-9
Enforcement .................................. 6-9
Quiz/Study Guide ............................ 6-10
Answer Key ................................. 6-11

Section 7 — Secondary Mortgage Markets ............ 7-1
General Overview ............................ 7-2
Government Agencies ....................... 7-2
Federal Housing Administration .......... 7-2
Department of Veterans Affairs .......... 7-2
Federal Home Loan Mortgage Corporation 7-2
Federal National Mortgage Association 7-3
Government National Mortgage Association 7-4
Types of Mortgage Loans ................. 7-5
Government loans .......................... 7-5
Conventional loans ......................... 7-5
Conforming loans .......................... 7-5
Nonconforming loans ....................... 7-5
Credit Union Procedures ................. 7-5
Quality control .............................. 7-6
Due-on-sale clause ......................... 7-7
Private mortgage insurance .............. 7-7
Mortgage pricing ............................ 7-7
Selling loans in the secondary market .... 7-7
Compliance Risk ......................... 7-7
NCUA Letter No. 124 ........................ 7-8
Quiz/Study Guide ............................ 7-10
Answer Key ................................. 7-12
Section 8 — The Equal Credit Opportunity Act and Regulation B

Purpose: The General Prohibition Against Discrimination. 8-2
Penalties for Violations 8-2
Regulation B Prohibits Unintentional As Well As Intentional Discrimination 8-2
The three “types” of lending discrimination 8-3
Protected “classes” 8-4
Discouraging applications 8-4
Charging different interest rates to borrowers 8-5
Prohibited Information 8-6
Signatures on Loan Applications 8-11
Restriction on Signature of Spouse or Others on Credit Instrument (12CFR 202.7(d)) 8-11
Requirement to Evidence “Joint Intent” 8-12
Adverse Action Notifications 8-13
Counteroffers 8-14
Approval 8-14
Incomplete Application 8-14
Withdrawal of Application 8-15
Requirements for Electronic Communication 8-15
Federal ESIGN statute and Regulation B 8-15
Definition of electronic communication 8-16
Provide a copy of the appraisal report (12CFR 202.5(a)) 8-16
Scope 8-16
Definitions 8-16
General appraisal requirements 8-17
Record Retention 8-19
Applications received 8-19
Action taken 8-19
Allegations of violations of ECOA or Regulation B 8-19
Existing credit accounts—adverse action 8-19
Record retention period 8-19
Policy and Procedures ............................................. 8-20
  Why your credit union should develop such policies and procedures ............................... 8-20
Self-Testing for Regulation B Compliance ......................................................... 8-20
  Definition .................................................................. 8-20
  Cautionary notes and exceptions ........................................................................ 8-21
  Collecting race, national origin, and gender data ...................................................... 8-21
  Why should your credit union engage in self-testing? .............................................. 8-22
Appendix 8-A — Sample Fair Lending Policy ............................................................. 8-23
Appendix 8-B — Mortgage Disclosure Checklist ....................................................... 8-27

Section 9 — SAFE Act – Mortgage Staff Registration ................................. 9-1
Secure and Fair Enforcement for Mortgage Licensing Act ................................. 9-2
  Compliance with SAFE Act requirements ................................................................ 9-2
  Registration of MLOs ......................................................................................... 9-3
  Credit union registration .................................................................................... 9-7
Policies and Procedures ......................................................................................... 9-9
Appendix A to Part 761 — Examples of Mortgage Loan Originator Activities .................... 9-9
SAFE Act Frequently Asked Questions ................................................................. 9-12
Legal Review

The RegTraC books are designed to provide general information regarding regulations affecting credit unions. They are not intended to substitute for legal advice based upon specific facts in any individual case, and credit unions with regulatory concerns are advised to consult with attorneys or specialists to obtain advice directed to their specific circumstances.

With respect to the content of the RegTraC books, neither Credit Union National Association (CUNA) nor its employees — nor any of its affiliates or their respective employees — make any express or implied warranty or assume any legal liability or responsibility for the accuracy, completeness, merchantability, fitness for a particular purpose or usefulness of any information. Neither do these books constitute an endorsement, recommendation or warranty of any product, service or provider mentioned herein. The views and opinions of the authors do not necessarily reflect those of CUNA. The books shall not be used for advertising or product endorsement purposes. To the maximum extent permitted by law, CUNA shall not be liable for any damages whatsoever arising out of the use, or inability to use, the books.

Material contained in the books is protected by copyright law. No part of any copyrighted materials may be reproduced or distributed without the prior written permission of the owner.

If you have further questions, please contact CUNA at 800-356-9655, ext. 4249, or e-mail RegTraC@cuna.com.

Acknowledgments

In developing this certification program, comments and ideas were solicited from an extensive number of experienced league and credit union people throughout the U.S. This network of credit union-oriented reviewers provided a wealth of information that produced this manual. True to credit union philosophy, the reviewers volunteered their efforts. Their work was time consuming and tremendously helpful. The authors and publisher of this book wish to acknowledge their contributions with great appreciation.

Contributors include:

• Andrea Stritzke, PolicyWorks
• Jeff Andersen, PolicyWorks
• Jennifer Anderson-Kapke, PolicyWorks
• Michael Christians, PolicyWorks
• Krystal Graziano, PolicyWorks
• Jeremy Smith, PolicyWorks
The Importance of Knowing Applicable Laws and Regulations

Prior to the 1960s there were few federal laws regulating the relationship between lenders and consumer borrowers. There were no requirements regarding the disclosure of loan terms, the taking of a security in a consumer’s property, or the reporting of credit information. Likewise, there were no requirements or limitations regarding related issues such as the prevention of discrimination in the regulated lending industry. Thus in 1968, Congress passed the Consumer Credit Protection Act (CPA). The CPA is a sweeping and extensive law governing virtually every aspect of the relationship between a consumer borrower and regulated lenders.

Various federal regulators have been given authority to interpret and enforce the CPA. In addition there are extensive regulations and official commentaries which provide further instruction that lenders must understand to insure they are “in compliance.”

The primary laws and regulations arising from the CPA are:

- The Fair Credit Reporting Act (15 USC §1681, et al.).

In addition, the following federal laws and regulations also govern the lending process:

- Important NCUA Regulations such as §§701.21, 701.31 and 723.
- The Soldiers’ and Sailors’ Civil Relief Act (50 USC §501, et al.).

State Laws

Generally, federal law preempts contrary state laws. This means the matters described in this book generally govern; and contrary state laws have no affect. However, many states have adopted various laws and/or regulations that place additional disclosure requirements or other burdens on a creditor. Due to the fact that there is no uniformity as to all such laws and regulations, they cannot be addressed in a general work such as this book.

As a general rule, the matters
discussed here will govern credit unions’ relationships with members. Nonetheless, every credit union should consult with local legal counsel in each state in which it does business to insure that it is aware of and complies with any additional “state” requirements.

This book provides a detailed analysis of the regulations addressed; discusses relevant cases; and provides tips to assist your credit union in maintaining compliance. Where appropriate, compliance checklists have been provided to assist you in the process of “self-assessment.”

Truth In Lending Act and Regulation Z

Purpose — full and fair disclosure of credit terms

The Truth In Lending Act (TILA) is the mother of all consumer protection laws. TILA and Regulation Z were adopted to “promote the informed use of consumer credit by requiring disclosures about its terms and cost” in clear and conspicuous disclosures. Unfortunately, this law has evolved into an extremely complex set of rules that are difficult to understand. Illustrating this is the fact that various regulatory agencies reported in 1994 that 50% of the institutions they examined had significantly violated Regulation Z. In 1974, Congress passed the Fair Credit Billing Act, which among other things, added to Regulation Z a set of error resolution rules that creditors must follow regarding claims of errors on credit card accounts.

Scope and exemptions

The Truth In Lending Act and Regulation Z apply to credit offered or extended to a consumer primarily for personal, family or household purposes. It also applies to all creditors who regularly (for example, more than 25 times per year, or more than five times for transactions involving a dwelling) extend credit that is either subject to a finance charge or is payable in more than four installments.

The following types of credit are exempt from Regulation Z:

- Nonconsumer credit (for example, credit extended to other than a natural person, or extended primarily for a business, commercial, or agricultural purpose).
- Credit where the amount financed is more than the threshold as determined by 1026.3(b) of the regulation, although credit secured by real property is subject to the regulation even if the loan is for more than the set threshold.
- Certain student loans that are made, insured, or guaranteed pursuant to a program authorized under the Higher Education Act of 1965.

If exempt, document the exemption well. Maddox v. St. Joe Papermakers Federal Credit Union, 572 So. 2d 961 (Fla. App. 1990). Maddox was a co-maker on a note with five others. When the principal defaulted, the credit union filed a complaint against all makers and co-makers. The credit union did not provide appropriate Truth In Lending disclosures (apparently due to the fact that
the loan was intended as a “business” loan, which is exempt from TILA and Regulation Z). This was not documented in the loan file presented by the credit union; and Maddox claimed the loan was for a consumer purpose. Therefore, the credit union’s failure to provide the disclosures or properly document the nature of the loan resulted in Maddox’s ability to assert a counterclaim against the credit union by way of offset against the amount of the loan.

**Payday loans**

In March 2000, the Regulation Z Commentary, Section 1026.2 at 2(a) (14), was revised to clarify that transactions commonly known as “payday loans” constitute credit and are covered under TILA. Typically in payday loans, a cash advance is made to a member in exchange for the member’s personal check, or the member’s authorization to debit his or her share account electronically. The member typically pays a fee in connection with the advance. Either the member’s check is not cashed or deposited for collection until a future date, or the share account is not debited until a designated future date. A fee charged in connection with a payday loan may be a finance charge for purposes of Section 1026.4, regardless of how the fee is defined under state law. Where the fee charged constitutes a finance charge under Section 1026.4, the credit union is required to provide Regulation Z disclosures.

**Overdraft protection /bounce protection programs**

The Interagency Guidance on Overdraft Protection Programs issued in February 2005 by the OCC, FRB, FDIC, and NCUA indicates that fees for paying overdraft items are not considered finance charges if the credit union has not agreed in writing to pay overdrafts. Even where the credit union agrees in writing to pay overdrafts as part of the membership account agreement, fees assessed against a checking account for overdraft protection are finance charges only to the extent the fees exceed the charges imposed for paying or returning overdrafts on a similar account that does not have overdraft or bounce protection.

Closed-end loans offered to members who are unable to repay their overdrafts and bring their accounts to a positive balance within a specified time, will require Regulation Z disclosures, if the loan is payable by written agreement in more than four installments. Regulation Z disclosures will also be required when such closed-end loans are subject to a finance charge.

**Liability provisions**

The Truth In Lending Act contains a criminal liability provision for willful violations of the Act and provisions that provide for civil liability and restitution.

**Criminal liability**

Under the Truth In Lending Act, any person who willfully and knowingly does one or more of the following could be fined up to $5,000, imprisoned for up to one year, or both:
- Gives false or inaccurate information, or fails to provide information required to be disclosed under the Act or Regulation Z
- Uses any chart or table in a manner that consistently understates the annual percentage rate (APR).
- Fails to comply with any of the requirements imposed under the Act.

Civil liability and restitution

Creditors that violate the Truth In Lending Act or Regulation Z are subject to penalties, monetary damages, and restitution which are more fully explained in this section.

Civil Liability — Generally. The Truth In Lending Act authorizes a member to commence legal action against your credit union for a failure to comply with the rules for:
- Providing disclosures in connection with a credit transaction.
- Following prescribed procedures when handling billing error claims.
- Establishing an interest rate cap on adjustable-rate mortgage loans.

In an individual action, noncompliance with any of the above will make your credit union liable for the sum of:
- The amount of actual damages sustained by that person as the result of the failure to comply.
- An additional amount equal to twice the amount of any finance charge, in an action involving an open-end consumer credit transaction (not secured by real property) with a $500 minimum and $5,000 maximum.
- If the matter goes to court, the costs of the action plus reasonable attorneys’ fees.

Minor technical violations of TILA are sufficient to allow a consumer to recover statutory damages. The terms “annual percentage rate” and “finance charge” appeared in the same type print and identical boxes as “amount financed” and “total of payments.” As a result the court awarded $1,000, plus attorneys’ fees to a debtor in a bankruptcy case. See, In re: Pittman, No 91-5-717-1-JS (Bkrtcy. MD. 3-17-94).

Supreme Court Rules On Truth In Lending Damage Issue (January 2005)

Much to lenders’ relief, the U.S. Supreme Court has ruled that the $1,000 cap on damages for violations of the Truth In Lending Act (TILA, 15 USC 1601) is still valid. The high court’s decision reversed an earlier ruling by the Fourth Circuit Court of Appeals, which had held that Congress in 1995 had limited the $1,000 cap to apply only in cases involving consumer leases.

The case before the court arose when a used car deal went wrong in a number of ways. The car buyer sued the dealer/lender for TILA violations and numerous other claims. The jury awarded $24,192.80 — double the finance charge — in TILA damages.

The jury verdict was entered despite TILA appearing to impose a cap of $1,000 on such damages. As first enacted, the law (15 USC 1640(a)(2)(A)) generally limited damages to “twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall
not be less than $100 nor greater than $1,000.”

Confusing Statute
The trouble is the paragraph in the law that includes the damage cap has been amended several times. These amendments set a $2,000 ceiling for damages in real estate loans, created separate rules for damages in class-action lawsuits, and extended TILA’s coverage to include consumer leases. With all due respect to Congress, these amendments were clumsily drafted.

By the time Congress was done, one reading the statute might conclude that the damage cap applied only to the clause dealing with leases. That would mean lenders violating TILA’s provisions could be assessed damages up to double the amount of the finance charge, with no limitation — even though comparable lease transactions would be subject to the $1,000 cap.

The Fourth Circuit Court of Appeals upheld the jury’s verdict. That appeals court simply read the statute, declared its meaning to be perfectly clear, and refused to inquire as to what Congress might have intended. The appeals court could find no ambiguity or confusion in what the law said so it could see no reason to look behind the words to find Congress’s true intent.

But the Supreme Court disagreed. In an opinion by Justice Ruth Bader Ginsburg, the court observed that any attempt by Congress to deliberately repeal the $1,000 cap would have been very controversial and would have led to extensive debate. The fact that Congress had not even discussed repealing the damages cap suggested that no such repeal had been intended.

Also, Ginsburg observed, it would be “passing strange” to read the statute as providing a relatively low cap on damages in cases involving mortgages and none at all for consumer loans — especially when Congress said it was raising the damage ceiling for violations involving mortgages to $2,000 to provide greater protection for mortgage borrowers.

The Supreme Court reversed the Fourth Circuit’s ruling, reducing the plaintiff’s TILA damage award to just $1,000. So lenders have successfully dodged a bullet. The TILA limits on damages remain unchanged. (Koons Buick Pontiac GMC v. Bradley Nigh, No. 03-377.)

In a successful action brought on behalf of a class (for example, a “class action” on behalf of all members), the claimants can recover:

- The amount of actual damages.
- An additional amount, with no statutory minimum, but with a maximum of $1,000,000 or an amount equal to 1% of your credit union’s net worth, whichever is less.

Two relatively minor violations = $500,000 + in damages. A court imposed the maximum class action damages for two minor violations of Regulation Z in Jones v. Goodyear Tire & Rubber Co., 442 F. Supp. 1157 (ED La. 1977). In this case, the plaintiff purchased a television set pursuant to a retail installment sales contract. The defendant failed to disclose the type of security interest it retained in the television; and it did not disclose the finance charge and APR more conspicuously than other terms.