The Word for the Day is 'Equitable Recoupment' Lenders should take note that they are not "out of the woods" when the statutory limitations period for bringing a lawsuit expires. In Troup v. Associates Home Equity Services, Inc. , the New Jersey Court of Appeals allowed a plaintiff to allege various defenses to stop a foreclosure action, including violations of ECOA and TILA, deceptive trade practices, and violations of the FTC holder in due course rule, even though the limitations period expired on all of these claims. The principle is called "equitable recoupment."

Equitable recoupment is statutory defense in TILA cases, as well as a judicially recognized ECOA defense in claims against borrowers and guarantors. The statute of limitations imposes a time limit on the borrower's right to bring an action for damages against a lender. Equitable recoupment, which has no limitations period, allows the borrower to setoff damages for a violation of the law in a lawsuit to recover the debt. For example, under TILA, a borrower can sue the lender within a year after the closing of a loan for failing to provide the correct disclosures. After the year passes, the borrower cannot sue the lender; HOWEVER, the borrower can raise the TILA claim against the lender or the assignee to stop a later foreclosure on the collateral for that loan or to defend a lawsuit to recover the debt. Equitable recoupment works much the same way. Borrowers and guarantors may raise ECOA claims against a collection action by alleging that the lender required the non-employed spouse of the borrower or guarantor to sign the note or guarantee illegally. Courts are split on (1) whether this defense may be raised in a foreclosure action, or only in a suit to collect the debt, (2) whether the note and/or security instrument are enforceable if the violation occurred, and (3) what is the proper amount to set off from the debt if a violation of the law is proved.