

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-239 effective Mar. 23, 1976, see section 708 of Pub. L. 90-321, set out as an Effective Date note under section 1691 of this title.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

§ 1691c-1. Incentives for self-testing and self-correction

(a) Privileged information

(1) Conditions for privilege

A report or result of a self-test (as that term is defined by regulations of the Bureau) shall be considered to be privileged under paragraph (2) if a creditor—

(A) conducts, or authorizes an independent third party to conduct, a self-test of any aspect of a credit transaction by a creditor, in order to determine the level or effectiveness of compliance with this subchapter by the creditor; and

(B) has identified any possible violation of this subchapter by the creditor and has taken, or is taking, appropriate corrective action to address any such possible violation.

(2) Privileged self-test

If a creditor meets the conditions specified in subparagraphs (A) and (B) of paragraph (1) with respect to a self-test described in that paragraph, any report or results of that self-test—

(A) shall be privileged; and

(B) may not be obtained or used by any applicant, department, or agency in any—

(i) proceeding or civil action in which one or more violations of this subchapter are alleged; or

(ii) examination or investigation relating to compliance with this subchapter.

(b) Results of self-testing

(1) In general

No provision of this section may be construed to prevent an applicant, department, or agency from obtaining or using a report or results of any self-test in any proceeding or civil action in which a violation of this subchapter is alleged, or in any examination or investigation of compliance with this subchapter if—

(A) the creditor or any person with lawful access to the report or results—

(i) voluntarily releases or discloses all, or any part of, the report or results to the applicant, department, or agency, or to the general public; or

(ii) refers to or describes the report or results as a defense to charges of violations of this subchapter against the creditor to whom the self-test relates; or

(B) the report or results are sought in conjunction with an adjudication or admission of a violation of this subchapter for the sole purpose of determining an appropriate penalty or remedy.

(2) Disclosure for determination of penalty or remedy

Any report or results of a self-test that are disclosed for the purpose specified in paragraph (1)(B)—

(A) shall be used only for the particular proceeding in which the adjudication or admission referred to in paragraph (1)(B) is made; and

(B) may not be used in any other action or proceeding.

(c) Adjudication

An applicant, department, or agency that challenges a privilege asserted under this section may seek a determination of the existence and application of that privilege in—

(1) a court of competent jurisdiction; or

(2) an administrative law proceeding with appropriate jurisdiction.

(Pub. L. 90-321, title VII, § 704A, as added Pub. L. 104-208, div. A, title II, § 2302(a)(1), Sept. 30, 1996, 110 Stat. 3009-420; amended Pub. L. 111-203, title X, § 1085(1), July 21, 2010, 124 Stat. 2083.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-203 substituted “Bureau” for “Board” in introductory provisions.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 104-208, div. A, title II, § 2302(c), Sept. 30, 1996, 110 Stat. 3009-423, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the privilege provided for in section 704A of the Equal Credit Opportunity Act [15 U.S.C. 1691c-1] or section 814A of the Fair Housing Act [42 U.S.C. 3614-1] (as those sections are added by this section) shall apply to a self-test (as that term is defined pursuant to the regulations prescribed under subsection (a)(2) [set out below] or (b)(2) of this section [42 U.S.C. 3614-1 note], as appropriate) conducted before, on, or after the effective date of the regulations prescribed under subsection (a)(2) or (b)(2), as appropriate.

“(2) EXCEPTION.—The privilege referred to in paragraph (1) does not apply to such a self-test conducted before the effective date of the regulations prescribed under subsection (a) or (b), as appropriate, if—

“(A) before that effective date, a complaint against the creditor or person engaged in residential real estate related lending activities (as the case may be) was—

“(i) formally filed in any court of competent jurisdiction; or

“(ii) the subject of an ongoing administrative law proceeding;

“(B) in the case of section 704A of the Equal Credit Opportunity Act, the creditor has waived the privilege pursuant to subsection (b)(1)(A)(i) of that section; or

“(C) in the case of section 814A of the Fair Housing Act, the person engaged in residential real estate related lending activities has waived the privilege pursuant to subsection (b)(1)(A)(i) of that section.”

REGULATIONS

Pub. L. 104-208, div. A, title II, § 2302(a)(2), Sept. 30, 1996, 110 Stat. 3009-421, provided that:

“(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Sept. 30, 1996], in consultation with the Secretary of Housing and Urban Development and the agencies referred to in section 704 of the Equal Credit Opportunity Act [15 U.S.C. 1691c], and after providing notice and an opportunity for public comment, the Board shall prescribe final regulations to implement section 704A of the Equal Credit Opportunity Act [15 U.S.C. 1691c-1], as added by this section.

“(B) SELF-TEST.—

“(i) DEFINITION.—The regulations prescribed under subparagraph (A) shall include a definition of the term ‘self-test’ for purposes of section 704A of the Equal Credit Opportunity Act, as added by this section.

“(ii) REQUIREMENT FOR SELF-TEST.—The regulations prescribed under subparagraph (A) shall specify that a self-test shall be sufficiently extensive to constitute a determination of the level and effectiveness of compliance by a creditor with the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.].

“(iii) SUBSTANTIAL SIMILARITY TO CERTAIN FAIR HOUSING ACT REGULATIONS.—The regulations prescribed under subparagraph (A) shall be substantially similar to the regulations prescribed by the Secretary of Housing and Urban Development to carry out section 814A(d) of the Fair Housing Act [42 U.S.C. 3614-1(d)], as added by this section.”

§ 1691c-2. Small business loan data collection

(a) Purpose

The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

(b) Information gathering

Subject to the requirements of this section, in the case of any application to a financial institution for credit for women-owned, minority-owned, or small business, the financial institution shall—

(1) inquire whether the business is a women-owned, minority-owned, or small business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or other form of electronic transmission, or by any other means, and whether or not such application is in response to a solicitation by the financial institution; and

(2) maintain a record of the responses to such inquiry, separate from the application and accompanying information.

(c) Right to refuse

Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

(d) No access by underwriters

(1) Limitation

Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

(2) Limited access

If a financial institution determines that a loan underwriter or other officer or employee

of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit should have access to any information provided by the applicant pursuant to a request under subsection (b), the financial institution shall provide notice to the applicant of the access of the underwriter to such information, along with notice that the financial institution may not discriminate on the basis of such information.

(e) Form and manner of information

(1) In general

Each financial institution shall compile and maintain, in accordance with regulations of the Bureau, a record of the information provided by any loan applicant pursuant to a request under subsection (b).

(2) Itemization

Information compiled and maintained under paragraph (1) shall be itemized in order to clearly and conspicuously disclose—

(A) the number of the application and the date on which the application was received;

(B) the type and purpose of the loan or other credit being applied for;

(C) the amount of the credit or credit limit applied for, and the amount of the credit transaction or the credit limit approved for such applicant;

(D) the type of action taken with respect to such application, and the date of such action;

(E) the census tract in which is located the principal place of business of the women-owned, minority-owned, or small business loan applicant;

(F) the gross annual revenue of the business in the last fiscal year of the women-owned, minority-owned, or small business loan applicant preceding the date of the application;

(G) the race, sex, and ethnicity of the principal owners of the business; and

(H) any additional data that the Bureau determines would aid in fulfilling the purposes of this section.

(3) No personally identifiable information

In compiling and maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)),¹ telephone number, electronic mail address, or any other personally identifiable information concerning any individual who is, or is connected with, the women-owned, minority-owned, or small business loan applicant.

(4) Discretion to delete or modify publicly available data

The Bureau may, at its discretion, delete or modify data collected under this section which is or will be available to the public, if the Bureau determines that the deletion or modification of the data would advance a privacy interest.

¹ So in original. Probably should be “(2)(E)”,.