

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 45 - FAIR HOUSING
SUBCHAPTER I - GENERALLY

§ 3614–1. 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 regulation of the Secretary) shall be considered to be privileged under paragraph (2) if any person—

(A) conducts, or authorizes an independent third party to conduct, a self-test of any aspect of a residential real estate related lending transaction of that person, or any part of that transaction, in order to determine the level or effectiveness of compliance with this subchapter by that person; and

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

(2) Privileged self-test

If a person 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 aggrieved person, complainant, 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 person to whom the self-test relates or any person with lawful access to the report or the results—

(i) voluntarily releases or discloses all, or any part of, the report or results to the aggrieved person, complainant, 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 person 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 aggrieved person, complainant, 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. 90–284, title VIII, § 814A, as added Pub. L. 104–208, div. A, title II, § 2302(b)(1), Sept. 30, 1996, 110 Stat. 3009–421.)

Effective Date

Privilege provided for in this section applicable to self-test conducted before, on, or after effective date of regulations prescribed under section 2302(b)(2) of Pub. L. 104–208, set out below, with certain exception, see section 2302(c) of Pub. L. 104–208, set out as a note under section 1691c–1 of Title 15, Commerce and Trade.

Regulations

Section 2302(b)(2) of div. A of Pub. L. 104–208 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 Board and after providing notice and an opportunity for public comment, the Secretary of Housing and Urban Development shall prescribe final regulations to implement section 814A of the Fair Housing Act [42 U.S.C. 3614–1], as added by this section.

“(B) Self-test.—

“(i) Definition.—The regulations prescribed by the Secretary under subparagraph (A) shall include a definition of the term “self-test” for purposes of section 814A of the Fair Housing Act, as added by this section.

“(ii) Requirement for self-test.—The regulations prescribed by the Secretary under subparagraph (A) shall specify that a self-test shall be sufficiently extensive to constitute a determination of the level and effectiveness of the compliance by a person engaged in residential real estate related lending activities with the Fair Housing Act [42 U.S.C. 3601 et seq.].

“(iii) Substantial similarity to certain equal credit opportunity act regulations.—The regulations prescribed under subparagraph (A) shall be substantially similar to the regulations prescribed by the Board to carry out section 704A of the Equal Credit Opportunity Act [15 U.S.C. 1691c–1], as added by this section.”