

Section 1010, Pub. L. 89-329, title I, §113, formerly §110, Nov. 8, 1965, 79 Stat. 1224, renumbered §111, Pub. L. 92-318, title I, §102(a)(1), June 23, 1972, 86 Stat. 236, renumbered §112, Pub. L. 93-29, title VIII, §803, May 3, 1973, 87 Stat. 59, renumbered §113 and amended Pub. L. 94-482, title I, §101(e), (f)(2), Oct. 12, 1976, 90 Stat. 2085, 2086, directed that nothing in the section be held to modify any authority under the Smith-Lever Act, section 341 et seq. of Title 7, Agriculture.

AMENDMENTS

2008—Pub. L. 110-315, §103(a)(2), reordered pars. in alphabetical order based on headings of pars. and renumbered pars. as so reordered, resulting in pars. (1) to (22) being redesignated as (2), (4), (6), (9) to (13), (15) to (20), (22), (21), (1), (3), (7), (5), (8), and (14), respectively.

Pars. (17) to (24). Pub. L. 110-315, §103(a)(1), added pars. (17) to (24).

2002—Pars. (4) to (6), (10), (14). Pub. L. 107-110 substituted “7801” for “8801”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

PART B—ADDITIONAL GENERAL PROVISIONS

§ 1011. Antidiscrimination

(a) In general

Institutions of higher education receiving Federal financial assistance may not use such financial assistance, directly or indirectly, to undertake any study or project or fulfill the terms of any contract containing an express or implied provision that any person or persons of a particular race, religion, sex, or national origin be barred from performing such study, project, or contract, except that nothing in this subsection shall be construed to prohibit an institution from conducting objective studies or projects concerning the nature, effects, or prevention of discrimination, or to have the institution's curriculum restricted on the subject of discrimination.

(b) Limitations on statutory construction

Nothing in this chapter shall be construed to limit the rights or responsibilities of any individual under the Americans With Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], or any other law.

(Pub. L. 89-329, title I, §111, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1590.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 89-329, as amended, known as the Higher Education Act of 1965. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (b), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as

amended, which is classified generally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1142 of this title prior to repeal by Pub. L. 105-244.

A prior section 1011, Pub. L. 89-329, title I, §121, as added Pub. L. 102-325, title I, §101, July 23, 1992, 106 Stat. 461, stated congressional findings and purposes of articulation agreements grant program, prior to the general amendment of this subchapter by Pub. L. 105-244.

Another prior section 1011, Pub. L. 89-329, title I, §111, as added Pub. L. 99-498, title I, §101, Oct. 17, 1986, 100 Stat. 1279, related to institutional development, prior to the general amendment of this subchapter by Pub. L. 102-325.

Another prior section 1011, Pub. L. 89-329, title I, §111, as added Pub. L. 96-374, title I, §101(a), Oct. 3, 1980, 94 Stat. 1377, stated Congressional findings with respect to education outreach programs, prior to the general amendment of this subchapter by Pub. L. 99-498.

Another prior section 1011, Pub. L. 89-329, title I, §114, formerly §111, Nov. 8, 1965, 79 Stat. 1224, renumbered §112 and amended Pub. L. 92-318, title I, §§102(a)(1), 131(d)(2)(A), June 23, 1972, 86 Stat. 236, 260, renumbered §113, Pub. L. 93-29, title VIII, §803, May 3, 1973, 87 Stat. 59, renumbered §114, Pub. L. 94-482, title I, §101(e), Oct. 12, 1976, 90 Stat. 2085, prohibited the giving of grants for programs relating to sectarian instruction or worship, prior to the general amendment of this subchapter by Pub. L. 96-374.

§ 1011a. Protection of student speech and association rights

(a) Protection of rights

(1) It is the sense of Congress that no student attending an institution of higher education on a full- or part-time basis should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or division of the institution directly or indirectly receiving financial assistance under this chapter, whether or not such program, activity, or division is sponsored or officially sanctioned by the institution.

(2) It is the sense of Congress that—

(A) the diversity of institutions and educational missions is one of the key strengths of American higher education;

(B) individual institutions of higher education have different missions and each institution should design its academic program in accordance with its educational goals;

(C) an institution of higher education should facilitate the free and open exchange of ideas;

(D) students should not be intimidated, harassed, discouraged from speaking out, or discriminated against;

(E) students should be treated equally and fairly; and

(F) nothing in this paragraph shall be construed to modify, change, or infringe upon any constitutionally protected religious liberty, freedom, expression, or association.

(b) Construction

Nothing in this section shall be construed—

(1) to discourage the imposition of an official sanction on a student that has willfully par-

participated in the disruption or attempted disruption of a lecture, class, speech, presentation, or performance made or scheduled to be made under the auspices of the institution of higher education, provided that the imposition of such sanction is done objectively and fairly; or

(2) to prevent an institution of higher education from taking appropriate and effective action to prevent violations of State liquor laws, to discourage binge drinking and other alcohol abuse, to protect students from sexual harassment including assault and date rape, to prevent hazing, or to regulate unsanitary or unsafe conditions in any student residence.

(c) Definitions

For the purposes of this section:

(1) Official sanction

The term “official sanction”—

(A) means expulsion, suspension, probation, censure, condemnation, reprimand, or any other disciplinary, coercive, or adverse action taken by an institution of higher education or administrative unit of the institution; and

(B) includes an oral or written warning made by an official of an institution of higher education acting in the official capacity of the official.

(2) Protected association

The term “protected association” means the joining, assembling, and residing with others that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments.

(3) Protected speech

The term “protected speech” means speech that is protected under the first and 14th amendments to the Constitution, or would be protected if the institution of higher education involved were subject to those amendments.

(Pub. L. 89-329, title I, §112, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1591; amended Pub. L. 110-315, title I, §104, Aug. 14, 2008, 122 Stat. 3090.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 89-329, as amended, known as the Higher Education Act of 1965. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

PRIOR PROVISIONS

A prior section 1011a, Pub. L. 89-329, title I, §122, as added Pub. L. 102-325, title I, §101, July 23, 1992, 106 Stat. 462, authorized grants to States, prior to the general amendment of this subchapter by Pub. L. 105-244.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-315, §104(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1). Pub. L. 110-315, §104(2), inserted “, provided that the imposition of such sanction is done objectively and fairly” after “higher education”.

§ 1011b. Territorial waiver authority

The Secretary is required to waive the eligibility criteria of any postsecondary education program administered by the Department where such criteria do not take into account the unique circumstances in Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States.

(Pub. L. 89-329, title I, §113, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1591; amended Pub. L. 110-315, title I, §105, Aug. 14, 2008, 122 Stat. 3090.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1144a of this title prior to repeal by Pub. L. 105-244.

A prior section 1011b, Pub. L. 89-329, title I, §123, as added Pub. L. 102-325, title I, §101, July 23, 1992, 106 Stat. 462, related to State applications for grants, prior to the general amendment of this subchapter by Pub. L. 105-244.

AMENDMENTS

2008—Pub. L. 110-315 substituted “Territorial waiver authority” for “Treatment of territories and territorial student assistance” in section catchline and struck out subsec. (a) designation and heading and subsec. (b). Text of former subsec. (b) read as follows: “Notwithstanding any other provision of law, an institution of higher education that is located in any of the Freely Associated States, rather than in another State, shall be eligible, if otherwise qualified, for assistance under division 1 of subpart 2 of part A of subchapter IV of this chapter. This subsection shall cease to be effective on September 30, 2004.”

§ 1011c. National Advisory Committee on Institutional Quality and Integrity

(a) Establishment

There is established in the Department a National Advisory Committee on Institutional Quality and Integrity (in this section referred to as the “Committee”) to assess the process of accreditation and the institutional eligibility and certification of institutions of higher education (as defined in section 1002 of this title) under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(b) Membership

(1) In general

The Committee shall have 18 members, of which—

(A) six members shall be appointed by the Secretary;

(B) six members shall be appointed by the Speaker of the House of Representatives, three of whom shall be appointed on the recommendation of the majority leader of the House of Representatives, and three of whom shall be appointed on the recommendation of the minority leader of the House of Representatives; and

(C) six members shall be appointed by the President pro tempore of the Senate, three of whom shall be appointed on the recommendation of the majority leader of the Senate, and three of whom shall be appointed on the recommendation of the minority leader of the Senate.

(2) Qualifications

Individuals shall be appointed as members of the Committee—

(A) on the basis of the individuals' experience, integrity, impartiality, and good judgment;

(B) from among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, representing all sectors and types of institutions of higher education (as defined in section 1002 of this title); and

(C) on the basis of the individuals' technical qualifications, professional standing, and demonstrated knowledge in the fields of accreditation and administration in higher education.

(3) Terms of members

Except as provided in paragraph (5), the term of office of each member of the Committee shall be for six years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(4) Vacancy

A vacancy on the Committee shall be filled in the same manner as the original appointment was made not later than 90 days after the vacancy occurs. If a vacancy occurs in a position to be filled by the Secretary, the Secretary shall publish a Federal Register notice soliciting nominations for the position not later than 30 days after being notified of the vacancy.

(5) Initial terms

The terms of office for the initial members of the Committee shall be—

(A) three years for members appointed under paragraph (1)(A);

(B) four years for members appointed under paragraph (1)(B); and

(C) six years for members appointed under paragraph (1)(C).

(6) Chairperson

The members of the Committee shall select a chairperson from among the members.

(c) Functions

The Committee shall—

(1) advise the Secretary with respect to establishment and enforcement of the standards of accrediting agencies or associations under subpart 2 of part G of subchapter IV of this chapter;

(2) advise the Secretary with respect to the recognition of a specific accrediting agency or association;

(3) advise the Secretary with respect to the preparation and publication of the list of nationally recognized accrediting agencies and associations;

(4) advise the Secretary with respect to the eligibility and certification process for institutions of higher education under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, together with recommendations for improvements in such process;

(5) advise the Secretary with respect to the relationship between—

(A) accreditation of institutions of higher education and the certification and eligibility of such institutions; and

(B) State licensing responsibilities with respect to such institutions; and

(6) carry out such other advisory functions relating to accreditation and institutional eligibility as the Secretary may prescribe by regulation.

(d) Meeting procedures**(1) Schedule****(A) Biannual meetings**

The Committee shall meet not less often than twice each year, at the call of the Chairperson.

(B) Publication of date

The Committee shall submit the date and location of each meeting in advance to the Secretary, and the Secretary shall publish such information in the Federal Register not later than 30 days before the meeting.

(2) Agenda**(A) Establishment**

The agenda for a meeting of the Committee shall be established by the Chairperson and shall be submitted to the members of the Committee upon notification of the meeting.

(B) Opportunity for public comment

The agenda shall include, at a minimum, opportunity for public comment during the Committee's deliberations.

(3) Secretary's designee

The Secretary shall designate an employee of the Department to serve as the Secretary's designee to the Committee, and the Chairperson shall invite the Secretary's designee to attend all meetings of the Committee.

(4) Federal Advisory Committee Act

The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Committee, except that section 14 of such Act shall not apply.

(e) Report and notice**(1) Notice**

The Secretary shall annually publish in the Federal Register—

(A) a list containing, for each member of the Committee—

(i) the member's name;

(ii) the date of the expiration of the member's term of office; and

(iii) the name of the individual described in subsection (b)(1) who appointed the member; and

(B) a solicitation of nominations for each expiring term of office on the Committee of a member appointed by the Secretary.

(2) Report

Not later than the last day of each fiscal year, the Committee shall make available an

annual report to the Secretary, the authorizing committees, and the public. The annual report shall contain—

(A) a detailed summary of the agenda and activities of, and the findings and recommendations made by, the Committee during the fiscal year preceding the fiscal year in which the report is made;

(B) a list of the date and location of each meeting during the fiscal year preceding the fiscal year in which the report is made;

(C) a list of the members of the Committee; and

(D) a list of the functions of the Committee, including any additional functions established by the Secretary through regulation.

(f) Termination

The Committee shall terminate on September 30, 2014.

(Pub. L. 89-329, title I, §114, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1592; amended Pub. L. 110-315, title I, §106(a), Aug. 14, 2008, 122 Stat. 3090.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1145 of this title prior to repeal by Pub. L. 105-244.

A prior section 1011c, Pub. L. 89-329, title I, §124, as added Pub. L. 102-325, title I, §101, July 23, 1992, 106 Stat. 463, related to local applications for grants, prior to the general amendment of this subchapter by Pub. L. 105-244.

AMENDMENTS

2008—Pub. L. 110-315 amended section generally, revising provisions relating to the National Advisory Committee on Institutional Quality and Integrity and extending its termination date from Sept. 30, 2004, to September 30, 2014.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-315, title I, §106(c), Aug. 14, 2008, 122 Stat. 3093, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2009.”

TRANSITION

Pub. L. 110-315, title I, §106(b), Aug. 14, 2008, 122 Stat. 3093, provided that: “Notwithstanding section 114 of the Higher Education Act of 1965 (20 U.S.C. 1011c) (as in effect before, during, and after the date of enactment of this Act [Aug. 14, 2008])—

“(1) the term of each member appointed to the National Advisory Committee on Institutional Quality and Integrity before the date of enactment of this Act shall expire on the date of enactment of this Act;

“(2) no new members shall be appointed to the National Advisory Committee on Institutional Quality and Integrity during the period beginning on the date of enactment of this Act and ending on January 31, 2009; and

“(3) no meeting of the National Advisory Committee on Institutional Quality and Integrity shall be convened during such period.”

§ 1011d. Student representation

The Secretary shall, in appointing individuals to any commission, committee, board, panel, or

other body in connection with the administration of this chapter, include individuals who are, at the time of appointment, attending an institution of higher education.

(Pub. L. 89-329, title I, §115, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1593.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 89-329, as amended, known as the Higher Education Act of 1965. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1145b of this title prior to repeal by Pub. L. 105-244.

A prior section 1011d, Pub. L. 89-329, title I, §125, as added Pub. L. 102-325, title I, §101, July 23, 1992, 106 Stat. 463, related to articulation agreements, prior to the general amendment of this subchapter by Pub. L. 105-244.

§ 1011e. Financial responsibility of foreign students

Nothing in this chapter or any other Federal law shall be construed to prohibit any institution of higher education from requiring a student who is a foreign national (and not admitted to permanent residence in the United States) to guarantee the future payment of tuition and fees to such institution by—

(1) making advance payment of such tuition and fees;

(2) making deposits in an escrow account administered by such institution for such payments; or

(3) obtaining a bond or other insurance that such payments will be made.

(Pub. L. 89-329, title I, §116, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1593.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 89-329, as amended, known as the Higher Education Act of 1965. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1145c of this title prior to repeal by Pub. L. 105-244.

A prior section 1011e, Pub. L. 89-329, title I, §126, as added Pub. L. 102-325, title I, §101, July 23, 1992, 106 Stat. 464, related to State administrative costs, prior to the general amendment of this subchapter by Pub. L. 105-244.

§ 1011f. Disclosures of foreign gifts

(a) Disclosure report

Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner.

(b) Contents of report

Each report to the Secretary required by this section shall contain the following:

(1) For gifts received from or contracts entered into with a foreign source other than a foreign government, the aggregate dollar amount of such gifts and contracts attributable to a particular country. The country to which a gift is attributable is the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity.

(2) For gifts received from or contracts entered into with a foreign government, the aggregate amount of such gifts and contracts received from each foreign government.

(3) In the case of an institution which is owned or controlled by a foreign source, the identity of the foreign source, the date on which the foreign source assumed ownership or control, and any changes in program or structure resulting from the change in ownership or control.

(c) Additional disclosures for restricted and conditional gifts

Notwithstanding the provisions of subsection (b) of this section, whenever any institution receives a restricted or conditional gift or contract from a foreign source, the institution shall disclose the following:

(1) For such gifts received from or contracts entered into with a foreign source other than a foreign government, the amount, the date, and a description of such conditions or restrictions. The report shall also disclose the country of citizenship, or if unknown, the principal residence for a foreign source which is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.

(2) For gifts received from or contracts entered into with a foreign government, the amount, the date, a description of such conditions or restrictions, and the name of the foreign government.

(d) Relation to other reporting requirements**(1) State requirements**

If an institution described under subsection (a) of this section is within a State which has enacted requirements for public disclosure of gifts from or contracts with a foreign source that are substantially similar to the requirements of this section, a copy of the disclosure report filed with the State may be filed with the Secretary in lieu of a report required under subsection (a) of this section. The State in which the institution is located shall provide to the Secretary such assurances as the Secretary may require to establish that the institution has met the requirements for public disclosure under State law if the State report is filed.

(2) Use of other Federal reports

If an institution receives a gift from, or enters into a contract with, a foreign source, where any other department, agency, or bu-

reau of the executive branch requires a report containing requirements substantially similar to those required under this section, a copy of the report may be filed with the Secretary in lieu of a report required under subsection (a) of this section.

(e) Public inspection

All disclosure reports required by this section shall be public records open to inspection and copying during business hours.

(f) Enforcement**(1) Court orders**

Whenever it appears that an institution has failed to comply with the requirements of this section, including any rule or regulation promulgated under this section, a civil action may be brought by the Attorney General, at the request of the Secretary, in an appropriate district court of the United States, or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, to request such court to compel compliance with the requirements of this section.

(2) Costs

For knowing or willful failure to comply with the requirements of this section, including any rule or regulation promulgated thereunder, an institution shall pay to the Treasury of the United States the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement.

(g) Regulations

The Secretary may promulgate regulations to carry out this section.

(h) Definitions

For the purpose of this section—

(1) the term “contract” means any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties;

(2) the term “foreign source” means—

(A) a foreign government, including an agency of a foreign government;

(B) a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states;

(C) an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and

(D) an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source;

(3) the term “gift” means any gift of money or property;

(4) the term “institution” means any institution, public or private, or, if a multicampus institution, any single campus of such institution, in any State, that—

(A) is legally authorized within such State to provide a program of education beyond secondary school;

(B) provides a program for which the institution awards a bachelor’s degree (or provides not less than a 2-year program which is

acceptable for full credit toward such a degree) or more advanced degrees; and

(C) is accredited by a nationally recognized accrediting agency or association and to which institution Federal financial assistance is extended (directly or indirectly through another entity or person), or which institution receives support from the extension of Federal financial assistance to any of the institution's subunits; and

(5) the term "restricted or conditional gift or contract" means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding—

(A) the employment, assignment, or termination of faculty;

(B) the establishment of departments, centers, research or lecture programs, or new faculty positions;

(C) the selection or admission of students; or

(D) the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

(Pub. L. 89-329, title I, §117, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1593.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1145d of this title prior to repeal by Pub. L. 105-244.

A prior section 1011f, Pub. L. 89-329, title I, §127, as added Pub. L. 102-325, title I, §101, July 23, 1992, 106 Stat. 464, related to priority grant applications, prior to the general amendment of this subchapter by Pub. L. 105-244.

§ 1011g. Application of peer review process

All applications submitted under the provisions of this chapter which require peer review shall be read by a panel of readers composed of individuals selected by the Secretary, which shall include outside readers who are not employees of the Federal Government. The Secretary shall ensure that no individual assigned under this section to review any application has any conflict of interest with regard to that application which might impair the impartiality with which that individual conducts the review under this section.

(Pub. L. 89-329, title I, §118, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1595.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 89-329, as amended, known as the Higher Education Act of 1965. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1145d-1 of this title prior to repeal by Pub. L. 105-244.

A prior section 1011g, Pub. L. 89-329, title I, §128, as added Pub. L. 102-325, title I, §101, July 23, 1992, 106

Stat. 464, related to reports and evaluation of programs, prior to the general amendment of this subchapter by Pub. L. 105-244.

§ 1011h. Binge drinking on college campuses

(a) Short title

This section may be cited as the "Collegiate Initiative To Reduce Binge Drinking and Illegal Alcohol Consumption".

(b) Sense of Congress

It is the sense of Congress that, in an effort to change the culture of alcohol consumption on college campuses, all institutions of higher education should carry out the following:

(1) The president of the institution should appoint a task force consisting of school administrators, faculty, students, Greek system representatives, and others to conduct a full examination of student and academic life at the institution. The task force should make recommendations for a broad range of policy and program changes that would serve to reduce alcohol and other drug-related problems. The institution should provide resources to assist the task force in promoting the campus policies and proposed environmental changes that have been identified.

(2) The institution should provide maximum opportunities for students to live in an alcohol-free environment and to engage in stimulating, alcohol-free recreational and leisure activities.

(3) The institution should enforce a "zero tolerance" policy on the illegal consumption of alcohol by students at the institution.

(4) The institution should vigorously enforce the institution's code of disciplinary sanctions for those who violate campus alcohol policies. Students with alcohol or other drug-related problems should be referred for assistance, including on-campus counseling programs if appropriate.

(5) The institution should adopt a policy to discourage alcoholic beverage-related sponsorship of on-campus activities. It should adopt policies limiting the advertisement and promotion of alcoholic beverages on campus.

(6) The institution should work with the local community, including local businesses, in a "Town/Gown" alliance to encourage responsible policies toward alcohol consumption and to address illegal alcohol use by students.

(Pub. L. 89-329, title I, §119, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1596.)

PRIOR PROVISIONS

A prior section 1011h, Pub. L. 89-329, title I, §129, as added Pub. L. 102-325, title I, §101, July 23, 1992, 106 Stat. 465, authorized appropriations to carry out the articulation agreements grant program, prior to the general amendment of this subchapter by Pub. L. 105-244.

§ 1011i. Drug and alcohol abuse prevention

(a) Restriction on eligibility

Notwithstanding any other provision of law, no institution of higher education shall be eligible to receive funds or any other form of financial assistance under any Federal program, in-

cluding participation in any federally funded or guaranteed student loan program, unless the institution certifies to the Secretary that the institution has adopted and has implemented a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees that, at a minimum, includes—

(1) the annual distribution to each student and employee of—

(A) standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on the institution's property or as part of any of the institution's activities;

(B) a description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;

(C) a description of the health-risks associated with the use of illicit drugs and the abuse of alcohol;

(D) a description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and

(E) a clear statement that the institution will impose sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by subparagraph (A); and

(2) a biennial review by the institution of the institution's program to—

(A) determine the program's effectiveness and implement changes to the program if the changes are needed;

(B) determine the number of drug and alcohol-related violations and fatalities that—

(i) occur on the institution's campus (as defined in section 1092(f)(6) of this title), or as part of any of the institution's activities; and

(ii) are reported to campus officials;

(C) determine the number and type of sanctions described in paragraph (1)(E) that are imposed by the institution as a result of drug and alcohol-related violations and fatalities on the institution's campus or as part of any of the institution's activities; and

(D) ensure that the sanctions required by paragraph (1)(E) are consistently enforced.

(b) Information availability

Each institution of higher education that provides the certification required by subsection (a) of this section shall, upon request, make available to the Secretary and to the public a copy of each item required by subsection (a)(1) of this section as well as the results of the biennial review required by subsection (a)(2) of this section.

(c) Regulations

(1) In general

The Secretary shall publish regulations to implement and enforce the provisions of this

section, including regulations that provide for—

(A) the periodic review of a representative sample of programs required by subsection (a) of this section; and

(B) a range of responses and sanctions for institutions of higher education that fail to implement their programs or to consistently enforce their sanctions, including information and technical assistance, the development of a compliance agreement, and the termination of any form of Federal financial assistance.

(2) Rehabilitation program

The sanctions required by subsection (a)(1)(E) of this section may include the completion of an appropriate rehabilitation program.

(d) Appeals

Upon determination by the Secretary to terminate financial assistance to any institution of higher education under this section, the institution may file an appeal with an administrative law judge before the expiration of the 30-day period beginning on the date such institution is notified of the decision to terminate financial assistance under this section. Such judge shall hold a hearing with respect to such termination of assistance before the expiration of the 45-day period beginning on the date that such appeal is filed. Such judge may extend such 45-day period upon a motion by the institution concerned. The decision of the judge with respect to such termination shall be considered to be a final agency action.

(e) Alcohol and drug abuse prevention grants

(1) Program authority

The Secretary may make grants to institutions of higher education or consortia of such institutions, and enter into contracts with such institutions, consortia, and other organizations, to develop, implement, operate, improve, and disseminate programs of prevention, and education (including treatment-referral) to reduce and eliminate the illegal use of drugs and alcohol and the violence associated with such use. Such grants or contracts may also be used for the support of a higher education center for alcohol and drug abuse prevention that will provide training, technical assistance, evaluation, dissemination, and associated services and assistance to the higher education community as determined by the Secretary and institutions of higher education.

(2) Awards

Grants and contracts shall be awarded under paragraph (1) on a competitive basis.

(3) Applications

An institution of higher education, a consortium of such institutions, or another organization that desires to receive a grant or contract under paragraph (1) shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require by regulation.

(4) Additional requirements**(A) Participation**

In awarding grants and contracts under this subsection the Secretary shall make every effort to ensure—

- (i) the equitable participation of private and public institutions of higher education (including community and junior colleges); and
- (ii) the equitable geographic participation of such institutions.

(B) Consideration

In awarding grants and contracts under this subsection the Secretary shall give appropriate consideration to institutions of higher education with limited enrollment.

(5) Authorization of appropriations

There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

(Pub. L. 89-329, title I, §120, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1596; amended Pub. L. 110-315, title I, §107, Aug. 14, 2008, 122 Stat. 3093.)

PRIOR PROVISIONS

Provisions similar to subsecs. (a) to (d) of this section were contained in section 1145g of this title prior to repeal by Pub. L. 105-244.

AMENDMENTS

2008—Subsec. (a)(2)(B) to (D), Pub. L. 110-315, §107(1), added subpars. (B) and (C) and redesignated former subpar. (B) as (D).

Subsec. (e)(5), Pub. L. 110-315, §107(2), substituted “such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years” for “\$5,000,000 for fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years”.

Subsec. (f), Pub. L. 110-315, §107(3), struck out subsec. (f) which related to National Recognition Awards for outstanding alcohol and drug abuse prevention programs.

§ 1011j. Prior rights and obligations**(a) Authorization of appropriations****(1) Pre-1987 parts C and D of subchapter VII**

There are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and for each succeeding fiscal year to pay obligations incurred prior to 1987 under parts C and D of subchapter VII of this chapter, as such parts were in effect before the effective date of the Higher Education Amendments of 1992.

(2) Post-1992 and pre-1998 part C of subchapter VII

There are authorized to be appropriated such sums as may be necessary for fiscal year 2009 and for each succeeding fiscal year to pay obligations incurred prior to October 7, 1998, under part C of subchapter VII of this chapter, as such part was in effect during the period—

- (A) after the effective date of the Higher Education Amendments of 1992; and
- (B) prior to October 7, 1998.

(b) Legal responsibilities**(1) Pre-1987 subchapter VII**

All entities with continuing obligations incurred under parts A, B, C, and D of sub-

chapter VII of this chapter, as such parts were in effect before the effective date of the Higher Education Amendments of 1992, shall be subject to the requirements of such part as in effect before the effective date of the Higher Education Amendments of 1992.

(2) Post-1992 and pre-1998 part C of subchapter VII

All entities with continuing obligations incurred under part C of subchapter VII of this chapter, as such part was in effect during the period—

- (A) after the effective date of the Higher Education Amendments of 1992; and
- (B) prior to October 7, 1998,

shall be subject to the requirements of such part as such part was in effect during such period.

(Pub. L. 89-329, title I, §121, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1601; amended Pub. L. 110-315, title I, §108, Aug. 14, 2008, 122 Stat. 3094.)

REFERENCES IN TEXT

Parts A, B, C, and D of subchapter VII of this chapter, as such parts were in effect before the effective date of the Higher Education Amendments of 1992, referred to in subsecs. (a)(1) and (b)(1), means parts A (§1132b et seq.), B (§1132c et seq.), C (§1132d et seq.), and D (§1132e et seq.) of subchapter VII of this chapter, as in effect before the effective date of Pub. L. 102-325. For effective date of Pub. L. 102-325, see section 2 of Pub. L. 102-325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title. Pub. L. 102-325, title VII, §§703-707(a), July 23, 1992, 106 Stat. 738-753, amended subchapter VII of this chapter effective Oct. 1, 1992, by amending parts A to C generally, repealing part D, and redesignating former part E as D.

Part C of subchapter VII of this chapter, as such part was in effect during the period after the effective date of the Higher Education Amendments of 1992 and prior to October 7, 1998, referred to in subsecs. (a)(2) and (b)(2), probably means part C (§1132d et seq.) of subchapter VII of this chapter, as in effect during the period after the effective date of Pub. L. 102-325 and before it was amended by Pub. L. 105-244. For effective date of Pub. L. 102-325, see section 2 of Pub. L. 102-325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title. Pub. L. 105-244, title VII, §701, Oct. 7, 1998, 112 Stat. 1786, amended subchapter VII of this chapter generally, effective Oct. 1, 1998, omitting part C which related to loans for construction, reconstruction, and renovation of academic housing, and other educational facilities and adding a new part C (§1139 et seq.) relating to urban community service.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1132a-1 of this title prior to the general amendment of subchapter VII of this chapter by Pub. L. 105-244.

A prior section 121 of Pub. L. 89-329, title I, as added Pub. L. 99-498, title I, §101, Oct. 17, 1986, 100 Stat. 1285, related to adult learning research and was classified to section 1016 of this title, prior to the general amendment of this subchapter by Pub. L. 102-325.

AMENDMENTS

2008—Subsec. (a), Pub. L. 110-315 substituted “2009 and for each succeeding fiscal year” for “1999 and for each of the 4 succeeding fiscal years” in pars. (1) and (2).

§ 1011k. Recovery of payments**(a) Public benefit**

Congress declares that, if a facility constructed with the aid of a grant under part A of subchapter VII of this chapter as such part A was in effect prior to October 7, 1998, or part B of such subchapter as part B was in effect prior to July 23, 1992, is used as an academic facility for 20 years following completion of such construction, the public benefit accruing to the United States will equal in value the amount of the grant. The period of 20 years after completion of such construction shall therefore be deemed to be the period of Federal interest in such facility for the purposes of such subchapter as so in effect.

(b) Recovery upon cessation of public benefit

If, within 20 years after completion of construction of an academic facility which has been constructed, in part with a grant under part A of subchapter VII of this chapter as such part A was in effect prior to October 7, 1998, or part B of subchapter VII of this chapter as such part B was in effect prior to July 23, 1992—

(1) the applicant under such parts as so in effect (or the applicant's successor in title or possession) ceases or fails to be a public or nonprofit institution; or

(2) the facility ceases to be used as an academic facility, or the facility is used as a facility excluded from the term "academic facility" (as such term was defined under subchapter VII of this chapter, as so in effect), unless the Secretary determines that there is good cause for releasing the institution from its obligation,

the United States shall be entitled to recover from such applicant (or successor) an amount which bears to the value of the facility at that time (or so much thereof as constituted an approved project or projects) the same ratio as the amount of Federal grant bore to the cost of the facility financed with the aid of such grant. The value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

(c) Prohibition on use for religion

Notwithstanding the provisions of subsections (a) and (b) of this section, no project assisted with funds under subchapter VII of this chapter (as in effect prior to October 7, 1998) shall ever be used for religious worship or a sectarian activity or for a school or department of divinity. (Pub. L. 89-329, title I, §122, as added Pub. L. 105-244, title I, §101(a), Oct. 7, 1998, 112 Stat. 1601.)

REFERENCES IN TEXT

Subchapter VII of this chapter, referred to in text, was amended, effective Oct. 1, 1992, by Pub. L. 102-325, title VII, §§703-707(a), July 23, 1992, 106 Stat. 738-753, by amending parts A to C generally, repealing part D, and redesignating former part E as D, and was further amended generally, effective Oct. 1, 1998, by Pub. L. 105-244, title VII, §701, Oct. 7, 1998, 112 Stat. 1786, by substituting provisions relating to graduate and postsecondary improvement programs for former provisions relating to construction, reconstruction, and renovation of academic facilities.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1132i of this title prior to the general amendment of subchapter VII of this chapter by Pub. L. 105-244.

A prior section 122 of Pub. L. 89-329, title I, as added Pub. L. 99-498, title I, §101, Oct. 17, 1986, 100 Stat. 1286, limited funds authorized to be appropriated and was classified to section 1016a of this title, prior to the general amendment of this subchapter by Pub. L. 102-325.

§ 1011l. Diploma mills**(a) Information to the public**

The Secretary shall maintain information and resources on the Department's website to assist students, families, and employers in understanding what a diploma mill is and how to identify and avoid diploma mills.

(b) Collaboration

The Secretary shall continue to collaborate with the United States Postal Service, the Federal Trade Commission, the Department of Justice (including the Federal Bureau of Investigation), the Internal Revenue Service, and the Office of Personnel Management to maximize Federal efforts to—

(1) prevent, identify, and prosecute diploma mills; and

(2) broadly disseminate to the public information about diploma mills, and resources to identify diploma mills.

(Pub. L. 89-329, title I, §123, as added Pub. L. 110-315, title I, §109, Aug. 14, 2008, 122 Stat. 3094.)

§ 1011m. Certification regarding the use of certain Federal funds**(a) Prohibition**

No Federal funds received under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) by an institution of higher education or other postsecondary educational institution may be used to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action described in subsection (b).

(b) Applicability

The prohibition in subsection (a) applies with respect to the following Federal actions:

(1) The awarding of any Federal contract.

(2) The making of any Federal grant.

(3) The making of any Federal loan.

(4) The entering into of any Federal cooperative agreement.

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(c) Lobbying and earmarks

No Federal student aid funding under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) may be used to hire a registered lobbyist or pay any person or entity for securing an earmark.

(d) Certification

Each institution of higher education or other postsecondary educational institution receiving

Federal funding under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), as a condition for receiving such funding, shall annually certify to the Secretary of Education that the requirements of subsections (a) through (c) have been met.

(e) Actions to implement and enforce

The Secretary of Education shall take such actions as are necessary to ensure that the provisions of this section are implemented and enforced.

(Pub. L. 110-315, title I, §119, Aug. 14, 2008, 122 Stat. 3117.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsections (a), (c), and (d), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

CODIFICATION

Section was enacted as part of the Higher Education Opportunity Act, and not as part of the Higher Education Act of 1965 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1012, Pub. L. 89-329, title I, §112, as added Pub. L. 99-498, title I, §101, Oct. 17, 1986, 100 Stat. 1282, related to establishment of off-campus program grants, prior to the general amendment of this subchapter by Pub. L. 102-325.

Another prior section 1012, Pub. L. 89-329, title I, §112, as added Pub. L. 96-374, title I, §101(a), Oct. 3, 1980, 94 Stat. 1377, provided for State allotments including percentage breakdown and cases of States not conducting comprehensive statewide planning, prior to the general amendment of this subchapter by Pub. L. 99-498.

A prior section 1013, Pub. L. 89-329, title I, §113, as added Pub. L. 99-498, title I, §101, Oct. 17, 1986, 100 Stat. 1284, related to adult and continuing education staff development, prior to the general amendment of this subchapter by Pub. L. 102-325.

Another prior section 1013, Pub. L. 89-329, title I, §113, as added Pub. L. 96-374, title I, §101(a), Oct. 3, 1980, 94 Stat. 1378; amended Pub. L. 97-300, title I, §183, Oct. 13, 1982, 96 Stat. 1357; Pub. L. 98-524, §4(c)(1), Oct. 19, 1984, 98 Stat. 2488, related to comprehensive statewide planning with respect to education outreach programs, prior to the general amendment of this subchapter by Pub. L. 99-498.

A prior section 1014, Pub. L. 89-329, title I, §114, as added Pub. L. 99-498, title I, §101, Oct. 17, 1986, 100 Stat. 1285, related to administration of programs by Secretary, prior to the general amendment of this subchapter by Pub. L. 102-325.

Another prior section 1014, Pub. L. 89-329, title I, §114, as added Pub. L. 96-374, title I, §101(a), Oct. 3, 1980, 94 Stat. 1379; amended Pub. L. 97-300, title I, §183, Oct. 13, 1982, 96 Stat. 1357; Pub. L. 98-524, §4(c)(2), Oct. 19, 1984, 98 Stat. 2488, related to information services, prior to the general amendment of this subchapter by Pub. L. 99-498.

PART C—COST OF HIGHER EDUCATION

§ 1015. Improvements in market information and public accountability in higher education

(a) Improved data collection

(1) Development of uniform methodology

The Secretary shall direct the Commissioner of Education Statistics to convene a series of forums to develop nationally consistent meth-

odologies for reporting costs incurred by postsecondary institutions in providing postsecondary education.

(2) Redesign of data systems

On the basis of the methodologies developed pursuant to paragraph (1), the Secretary shall redesign relevant parts of the postsecondary education data systems to improve the usefulness and timeliness of the data collected by such systems.

(3) Information to institutions

The Commissioner of Education Statistics shall—

(A) develop a standard definition for the following data elements:

(i) tuition and fees for a full-time undergraduate student;

(ii) cost of attendance for a full-time undergraduate student, consistent with the provisions of section 1087*ll* of this title;

(iii) average amount of financial assistance received by an undergraduate student who attends an institution of higher education, including—

(I) each type of assistance or benefit described in section 1078(a)(2)(C)(i)¹ of this title;

(II) fellowships; and

(III) institutional and other assistance; and

(iv) number of students receiving financial assistance described in each of subclauses (I), (II), and (III) of clause (iii);

(B) not later than 90 days after October 7, 1998, report the definitions to each institution of higher education and within a reasonable period of time thereafter inform the authorizing committees of those definitions; and

(C) collect information regarding the data elements described in subparagraph (A) with respect to at least all institutions of higher education participating in programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, beginning with the information from academic year 2000-2001 and annually thereafter.

(b) Data dissemination

The Secretary shall make available the data collected pursuant to subsection (a) of this section. Such data shall be available in a form that permits the review and comparison of the data submissions of individual institutions of higher education. Such data shall be presented in a form that is easily understandable and allows parents and students to make informed decisions based on the costs for typical full-time undergraduate students.

(c) Study

(1) In general

The Commissioner of Education Statistics shall conduct a national study of expenditures at institutions of higher education. Such study shall include information with respect to—

¹ See References in Text note below.