

and IX (§6001 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

The School-to-Work Opportunities Act of 1994, referred to in subsec. (b)(1)(B)(ii), (C)(ii), is Pub. L. 103-239, May 4, 1994, 108 Stat. 568, as amended, which is classified principally to chapter 69 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

#### CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1226c, 6434, 6435, 6621, 6622, 6701, 6847, 7131, 7237, 7263, 7548, 8002, 8036, 8332, 8676 of this title.

#### PART H—SENSE OF CONGRESS

### § 8961. Sense of Congress to increase total share of Federal spending on education

#### (a) Findings

The Congress finds that—

(1) in order to increase our Nation's standard of living and to increase the number of good jobs, the United States must increase its productivity and ability to compete in the international marketplace by improving the educational level of our workforce;

(2) although efforts are being made to establish higher educational standards and goals, there is a substantial shortage of resources to meet such standards and goals;

(3) States and local communities are finding it increasingly difficult to meet ever higher educational standards and goals, and States will not be able to fund needed changes without Federal help to reach such standards and goals;

(4) the Federal Government has established many educational programs but failed to provide adequate funding for such programs, for example one such program provides education to our Nation's disabled students and was established with a promise of 40 percent Federal funding but currently receives only eight percent Federal funding;

(5) the annual shortfall in Federal education programs is approximately half of the promised funding;

(6) many needed educational improvements will not need Federal funds, however, other suggested changes such as lengthened school years, better pay, after-school activities, mentoring for students at risk, programs for gifted students, and replacing substandard buildings, will require substantial Federal assistance; and

(7) the Federal contribution to education is less than two percent of the total Federal budget, and in order to make education a national priority, the total percentage of Federal educational funding should be increased by one percent each year over the next eight years to reach 10 percent of the total Federal budget.

#### (b) Sense of Congress

It is the sense of the Congress that the total share of the Federal spending on education should increase by at least one percent each year until such share reaches 10 percent of the total Federal budget.

(Pub. L. 89-10, title XIV, §14801, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3911.)

### § 8962. Sense of Congress; requirement regarding notice

#### (a) Purchase of American-made equipment and products

In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this chapter, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

#### (b) Notice to recipients of assistance

In providing financial assistance under this chapter, the head of each Federal agency shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) of this section by the Congress.

(Pub. L. 89-10, title XIV, §14802, as added Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3912.)

## CHAPTER 71—NATIONAL EDUCATION STATISTICS

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PRIOR PROVISIONS

Provisions similar to those in this chapter were contained in section 1221e-1 of this title prior to repeal by Pub. L. 103-382, §212(a)(1).

**§ 9001. Findings; purpose; definitions**

**(a) Findings**

The Congress finds that—

(1) a Department of Education was established in 1867 “for the purpose of collecting such statistics and facts as shall show the condition and progress of education in the several States and territories, and of diffusing such information respecting the organization and management of schools and school systems and methods of teaching as shall aid the people of the United States in the establishment and maintenance of efficient school systems, and otherwise promote the cause of education throughout the United States”;

(2) today, while the role of the current Department of Education is much broader, the National Center for Education Statistics within the Office of Educational Research and Improvement continues to perform those crucial original purposes; and

(3) looking to the 21st century, the National Center for Education Statistics must be able to design and undertake, effectively and efficiently, statistical activities that will aid in the reform of the Nation’s educational systems.

**(b) Purpose**

It is the purpose of this chapter to ensure the continuation of an effective mechanism for collecting and reporting statistics and information showing the condition and progress of education in the United States and other nations in order to promote and accelerate the improvement of American education.

**(c) Definitions**

For the purpose of this chapter and unless otherwise specified—

(1) the term “Assistant Secretary” means the Assistant Secretary for Educational Research and Improvement established under section 3412(b)(1)(E)<sup>1</sup> of this title;

(2) the term “Department” means the Department of Education;

(3) the term “institution of higher education” has the same meaning given such term in section 1141(a) of this title;

(4) the term “local educational agency” has the same meaning given such term in section 8801 of this title;

(5) the term “Secretary” means the Secretary of Education;

(6) the term “State educational agency” has the same meaning given such term in section 8801 of this title; and

(7) the terms “State” and “United States”—  
(A) other than for the purpose of section 9010 of this title, mean each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(B) for the purpose of section 9010 of this title, have the same meaning given such terms in subparagraph (A), except that such terms include Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau.

(Pub. L. 103-382, title IV, §402, Oct. 20, 1994, 108 Stat. 4029.)

REFERENCES IN TEXT

The reference to section 3412(b)(1)(E) of this title in subsec. (c)(1) probably should be a reference to section 3412(b)(3) of this title. Pub. L. 103-227, title IX, §913, Mar. 31, 1994, 108 Stat. 223, amended section 3412 by striking out subsec. (b)(1)(E) which related to an Assistant Secretary for Educational Research and Improvement, redesignating subsec. (b)(1)(F) as (b)(1)(E), and adding a subsec. (b)(3) which relates to an Assistant Secretary for Educational Research and Improvement.

SHORT TITLE

Section 401 of Pub. L. 103-382 provided that: “This title [enacting this chapter] may be cited as the ‘National Education Statistics Act of 1994.’”

**§ 9002. National Center for Education Statistics**

**(a) Establishment**

There is established, within the Office of Educational Research and Improvement established under section 3419 of this title, a National Center for Education Statistics (hereafter in this chapter referred to as the “Center”).

**(b) Commissioner and Associate Commissioners**

**(1) Commissioner**

The Center shall be headed by a Commissioner of Education Statistics (hereafter in this chapter referred to as the “Commissioner”) who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall—

(A) have substantial knowledge of programs assisted by the Center;

(B) be paid in accordance with section 5315 of title 5; and

(C) serve for a term of four years, with the terms to expire every fourth June 21, beginning in 1995.

**(2) Associate Commissioners**

The Commissioner may appoint such Associate Commissioners as the Commissioner determines are necessary and appropriate.

<sup>1</sup> See References in Text note below.

(Pub. L. 103-382, title IV, §403, Oct. 20, 1994, 108 Stat. 4030.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7267 of this title.

**§ 9003. Duties of Center**

**(a) Duties**

The duties of the Center are to collect, analyze, and disseminate statistics and other information related to education in the United States and in other nations, including—

(1) collecting, acquiring, compiling (where appropriate, on a State by State basis), and disseminating full and complete statistics on the condition and progress of education, at the preschool, elementary, secondary, and postsecondary levels in the United States, including data on—

(A) State and local education reform activities;

(B) student achievement at all levels of education;

(C) secondary school completions, drop-outs, and adult literacy;

(D) educational access to and opportunity for postsecondary education, including data on financial aid to postsecondary students;

(E) teaching, including data on course-taking, instruction, the conditions of the education workplace, and the supply of, and demand for, teachers, which may include data on the proportions of women and men, cross-tabulated by race or ethnicity, teaching in subjects in which such individuals have been historically underrepresented;

(F) the learning and teaching environment, including data on libraries;

(G) the incidence, frequency, seriousness, and nature of violence affecting students, school personnel, and other individuals participating in school activities, as well as other indices of school safety;

(H) the financing and management of education, including data on revenues and expenditures; and

(I) the social and economic status of children;

(2) conducting and publishing reports and analyses of the meaning and significance of such statistics;

(3) conducting longitudinal studies, as well as regular and special surveys and data collections, necessary to report on the condition and progress of education;

(4) collecting, analyzing, cross-tabulating, and reporting, to the extent feasible, so as to provide information by gender, race, socioeconomic status, limited-English proficiency, and other population characteristics when such disaggregated information would facilitate educational and policy decisionmaking;

(5) assisting public and private educational agencies, organizations, and institutions in improving and automating statistical and data collection activities; and

(6) acquiring and disseminating data on educational activities and student achievement in the United States compared with foreign nations.

**(b) Training program**

The Commissioner may establish a program to train employees of public and private educational agencies, organizations, and institutions in the use of the Center's standard statistical procedures and concepts and may establish a fellows program to appoint such employees as temporary fellows at the Center in order to assist the Center in carrying out its duties.

(Pub. L. 103-382, title IV, §404, Oct. 20, 1994, 108 Stat. 4031.)

NATIONAL SURVEY OF FACTORS ASSOCIATED WITH PARTICIPATION

Pub. L. 102-325, title XIV, §1406, July 22, 1992, 106 Stat. 818, provided that:

“(a) AUTHORITY OF THE SECRETARY OF EDUCATION.—In order to assure improved and accurate data on the participation of at-risk students in postsecondary education, the Secretary of Education, acting through the National Center for Educational Statistics, shall conduct a special purpose survey on a biennial basis of factors associated with participation of low-income, disadvantaged, non-English language background, disabled, and minority students, including (but not limited to) African American, Native Americans, Native Hawaiians, major Hispanic subgroups, and Asian students from disadvantaged backgrounds in various types of postsecondary education. The survey data shall permit comparisons with other groups that have characteristically participated at higher rates than at-risk students.

“(b) DEVELOPMENT OF THE SURVEY.—The Secretary of Education shall consult with the Congress and the elementary and secondary and higher education community in developing such an annual survey. The survey shall include, but not be limited to—

“(1) academic preparation of groups at key points in the elementary and secondary education process;

“(2) rates of academic progress and graduation from high school;

“(3) participation in postsecondary education by type and control of institution and by program of study;

“(4) persistence rates in postsecondary programs, or, in the case of short-term programs, completion rates; and

“(5) average student financial assistance awarded to groups, including Federal, State, and other assistance.

“(c) REPORT TO CONGRESS.—The Secretary of Education shall report relevant data and conclusions from the survey to Congress on an annual basis, including comparisons of important factors for at-risk and other relevant populations.

“(d) DEVELOPMENT OF PLAN.—In the event of significant findings related to underparticipation rates of at-risk and other students, the Secretary of Education shall submit a plan containing policies and program modifications for ensuring the participation of at-risk students. The plan shall indicate the modifications the Secretary will make to increase participation, including, but not limited to, increasing information and training, and recommending other relevant changes to the programs under this title [see Tables for classification].

“(e) PANEL SURVEY ON INCOME DYNAMICS.—

“(1) IN GENERAL.—The Secretary of Education, acting through the National Center for Education Statistics, shall make an interagency agreement with the National Science Foundation to provide for additional questions and an appropriate sample size as part of an existing panel study of income dynamics to provide information on the educational processes and other developmental behavior of Hispanic, black, and non-Hispanic white children and their short-term and long-term consequences.

“(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$900,000 for fiscal year 1993 and such sums for each of the 4 succeeding fiscal years to carry out this subsection.”

#### DATA STUDY REQUIRED

Pub. L. 99-498, title XIII, §1303, Oct. 17, 1986, 100 Stat. 1580, as amended by Pub. L. 100-50, §23(3), June 3, 1987, 101 Stat. 362, provided that:

“(a) CONDUCT OF STUDIES.—The Secretary, through the Office of Educational Research and Improvement, shall conduct the studies required by this section and submit reports thereon to the Congress not later than September 30, 1990. The reports shall contain such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

“(b) COST STUDY REQUIRED.—(1) The Secretary shall conduct a study on the escalating cost of higher education. The study required by this section shall—

“(A) identify the current cost of obtaining a higher education and determine how that cost has changed in recent years,

“(B) determine the specific causes of such changes in cost and the extent to which those causes have contributed to such changes,

“(C) forecast the future cost of obtaining a higher education with consideration given to prospective demographic changes in student enrollments,

“(D) evaluate the impact of such changes in cost on institutions of higher education, their students, and lower- and middle-income families,

“(E) make recommendations on how such changes in cost can be minimized in the future, and

“(F) outline State and Federal policy options which may help to minimize such changes in cost in the future.

“(2) In conducting such study, the Secretary shall give special consideration to the impact of escalating costs on lower- and middle-income students and families, the impact of escalating costs on female and minority students, the impact of escalating costs on the career choices made by students, and the relationship between escalating costs and the Federal student financial assistance programs.

“(3) During the conduct of such study, the Secretary shall consult frequently with the Chairman of the Senate Committee on Labor and Human Resources and the Chairman of the House Committee on Education and Labor.

“(c) STUDENT AID RECIPIENT SURVEY.—(1) The Secretary shall survey student aid recipients on a regular cycle, but not less than once every 3 years—

“(A) to identify the population of students receiving Federal student aid;

“(B) to determine the income distribution and other socioeconomic characteristics of federally aided students;

“(C) to describe the combinations of aid from State, Federal, and private sources received by students from all income groups;

“(D) to describe the debt burden of loan recipients and their capacity to repay their education debts; and

“(E) to disseminate such information in both published and machine readable form.

“(2) The survey shall be representative of full-time and part-time, undergraduate, graduate, and professional and current and former students in all types of institutions, and should be designed and administered in consultation with the Congress and the postsecondary education community.

“(d) TEACHER SUPPLY AND DEMAND.—(1) The Secretary shall utilize the legislative authority under section 406(b) of the General Education Provisions Act [former 20 U.S.C. 1221e-1(b)] to annually assess current and future supply and demand for teachers with particular attention to—

“(A) long-term and short-term shortages of personnel in various subject areas or teaching specialties;

“(B) shortages in particular States or regions;

“(C) the number of minorities entering teaching;

“(D) the number of women and minorities entering educational administration;

“(E) the effect of State curriculum and graduation requirements on the need for teachers in each State;

“(F) the extent to which demographic characteristics of persons currently employed as teachers and persons studying to be teachers match the characteristics of the students in each State (race, age, sex);

“(G) the academic qualifications of prospective teachers and the academic preparation of persons currently preparing to be teachers;

“(H) the effect of the introduction of State mandated teacher competency tests on the demographic and educational characteristics of teachers and the supply of teachers; and

“(I) an assessment of new and emerging specialties and the technologies, academic subjects, and occupational areas requiring vocational education, with emphasis on the unique needs for preparing an adequate supply of vocational teachers of handicapped students, with added emphasis on the preparation required to teach combined classrooms of handicapped, or other highly targeted groups of students and other students within a vocational education setting.

“(2) The analysis conducted under this subsection may include assessment of other educational needs identified by the Congress, including an assessment of the need for instructional equipment and materials in elementary and secondary schools and in institutions of higher education.

“(e) EQUITABLE STUDENT AID FOR FARM FAMILIES.—The Secretary shall conduct a study of financial aid formulas under title IV of the Act [20 U.S.C. 1070 et seq.; 42 U.S.C. 2751 et seq.] for students in postsecondary educational institutions with special attention to devising a more equitable formula for farm families.

“(f) There are authorized to be appropriated \$2,700,000 for the fiscal year 1987 and for each of the 2 succeeding fiscal years to carry out the provisions of this section.”

#### STUDY BY NATIONAL CENTER FOR EDUCATION STATISTICS RESPECTING CONDITION OF EDUCATION FOR HISPANIC AMERICANS

Pub. L. 98-211, §24(b), Dec. 8, 1983, 97 Stat. 1419, provided that: “The National Center for Education Statistics shall not terminate the study of the condition of education for Hispanic Americans unless specifically required or authorized to do so by law.”

### § 9004. Performance of duties

#### (a) Grants, contracts, and cooperative agreements

##### (1) In general

In carrying out the Commissioner's duties under this chapter, the Commissioner may award grants, and enter into contracts and cooperative agreements.

##### (2) Duration

Notwithstanding any other provision of law, the grants, contracts, and cooperative agreements under this section may be awarded, on a competitive basis, for a period of not more than five years, and may be renewed at the discretion of the Commissioner for an additional period of not more than five years.

#### (b) Gathering information

##### (1) Sampling

The Commissioner may use the statistical method known as sampling to carry out the purpose of this chapter.

##### (2) Source of information

The Commissioner may, as the Commissioner considers appropriate, use information collected—

(A) from States, local educational agencies, public and private schools, preschools, institutions of higher education, libraries, administrators, teachers, students, the general public, and such other individuals, organizations, agencies, and institutions as the Commissioner may consider appropriate; and

(B) by other offices within the Department and by other Federal departments, agencies, and instrumentalities.

**(3) Collection**

The Commissioner may—

(A) enter into interagency agreements for the collection of statistics;

(B) arrange with any agency, organization, or institution for the collection of statistics; and

(C) assign employees of the Center to any such agency, organization, or institution to assist in such collection.

**(4) Technical assistance and coordination**

In order to maximize the effectiveness of Federal efforts to serve the educational needs of children and youth, the Commissioner shall—

(A) provide technical assistance to Department offices that gather data for statistical purposes; and

(B) coordinate closely with other Department offices in the collection of data.

(Pub. L. 103-382, title IV, §405, Oct. 20, 1994, 108 Stat. 4032.)

**§ 9005. Reports**

**(a) Report on condition and progress of education**

The Commissioner shall, not later than June 1, 1995, and each succeeding June 1 thereafter, submit to the President and the Congress a statistical report on the condition and progress of education in the United States.

**(b) Statistical reports**

The Commissioner shall issue regular statistical reports to the President and Congress on such education topics as the Commissioner determines to be appropriate.

**(c) Special reports**

The Commissioner may, whenever the Commissioner considers it appropriate, issue special reports on particular education topics.

(Pub. L. 103-382, title IV, §406, Oct. 20, 1994, 108 Stat. 4033.)

**§ 9006. Advisory Council on Education Statistics**

**(a) Establishment**

There is established, within the Center, the Advisory Council on Education Statistics (hereafter in this chapter referred to as the "Council").

**(b) Membership**

**(1) Composition**

The Council shall be composed of—

(A) 18 voting members who are users of education data and who are appointed by the

Secretary on the basis of their experience and eminence within the field of education, of whom at least—

(i) three shall be practicing educators;

(ii) three shall be education policy-makers;

(iii) three shall be professional statisticians;

(iv) three shall be education researchers; and

(v) three shall be experts in educational measurement;

(B) three individuals representing the general public, appointed by the Secretary;

(C) the Director of the Census and the Commissioner of Labor Statistics, as voting, ex officio members; and

(D) the Assistant Secretary and the Commissioner, as nonvoting, ex officio members.

**(2) Presiding officer**

The Commissioner shall appoint the presiding officer of the Council from among the voting members of the Council.

**(3) Terms**

Members of the Council appointed under paragraph (1)(A) shall be appointed for three-year terms except that, in the case of initial appointments, the Secretary shall make appointments for shorter terms to the extent necessary to avoid the expiration of the terms of more than six members in the same calendar year.

**(4) Meetings**

(A) The Council shall meet in public session at the call of the presiding officer, except that the Council shall meet—

(i) at least two times during each calendar year; and

(ii) in addition, whenever ten voting members request in writing that the presiding officer call a meeting.

(B) Eleven voting members of the Council shall constitute a quorum.

**(5) Special rule**

The Council shall—

(A) review general policies for the operation of the Center and shall advise the Commissioner on standards to ensure that statistics and other information disseminated by the Center are of high quality and are not subject to partisan political influence; and

(B) advise the Commissioner and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Educational Progress.

**(6) Staff**

The Council shall appoint a staff of not more than six individuals with technical expertise to enable the Council to carry out its duties.

(Pub. L. 103-382, title IV, §407, Oct. 20, 1994, 108 Stat. 4033.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year

period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9010, 9011 of this title.

**§ 9007. Confidentiality**

**(a) Confidentiality standards**

**(1) In general**

(A) The Center shall develop and enforce standards designed to protect the confidentiality of persons in the collection, reporting, and publication of data under this chapter.

(B) This section shall not be construed to protect the confidentiality of information about institutions, organizations, and agencies that receive grants from, or have contracts or cooperative agreements with, the Federal Government.

**(2) Prohibition**

No person may—

(A) use any individually identifiable information furnished under this chapter for any purpose other than a statistical purpose;

(B) make any publication whereby the data furnished by any particular person under this chapter can be identified; or

(C) permit anyone other than the individuals authorized by the Commissioner to examine the individual reports.

**(b) Administration**

**(1) In general**

No department, bureau, agency, officer, or employee of the Federal Government, except the Commissioner in carrying out the purposes of this chapter, shall require, for any reason, copies of reports that have been filed under this chapter with the Center or retained by any individual respondent. Copies of such reports that have been so filed or retained with the Center or any of the Center's employees, contractors, or agents shall be immune from legal process, and shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding. This paragraph shall apply only to individually identifiable information (as defined in paragraph (5)(A)).

**(2) Employee or staff violations**

Whoever, being or having been an employee or staff member of the Department, having taken or subscribed the oath of office, or having sworn to observe the limitations imposed by subsection (a)(2) of this section, knowingly publishes or communicates any individually identifiable information (as defined in paragraph (5)(A)), the disclosure of which is prohibited by subsection (a)(2) of this section, and that comes into such employee or staff's pos-

session by reason of employment (or otherwise providing services) under this chapter, shall be found guilty of a class E felony and imprisoned for not more than five years, or fined as specified in section 3571 of title 18, or both.

**(3) Temporary staff**

The Commissioner may utilize temporary staff, including employees of Federal, State, or local agencies or instrumentalities (including local educational agencies), and employees of private organizations to assist the Center in performing the Center's responsibilities, but only if such temporary staff are sworn to observe the limitations imposed by this section.

**(4) Information requirements**

No collection of information or data acquisition activity undertaken by the Center shall be subject to any review, coordination, or approval procedure except as required by the Director of the Office of Management and Budget under the rules and regulations established pursuant to chapter 35 of title 44, except such collection of information or data acquisition activity may be subject to review or coordination if the Commissioner determines that such review or coordination is beneficial.

**(5) Definitions**

For the purposes of this section—

(A) the term "individually identifiable information" means any record, response form, completed survey, or aggregation thereof from which information about particular individuals may be revealed; and

(B) the term "report" means a response provided by or about an individual to an inquiry from the Center and does not include a statistical aggregation from which individually identifiable information cannot be revealed.

**(6) Violations**

Any person who uses any data provided by the Center, in conjunction with any other information or technique, to identify any individual student, teacher, administrator, or other individual and who knowingly discloses, publishes, or uses such data for a purpose other than a statistical purpose, or who otherwise violates subparagraph (A) or (B) of subsection (a)(2) of this section, shall be found guilty of a class E felony and imprisoned for not more than five years, or fined as specified in section 3571 of title 18, or both.

**(7) Access to reports or records**

Nothing in this section shall restrict the right of the Secretary, the Comptroller General of the United States, the Director of the Congressional Budget Office, and the Librarian of Congress, to gain access to any reports or other records, including information identifying individuals, in the Center's possession, except that the same restrictions on disclosure that apply under paragraphs (1) and (6) shall apply to such individuals.

(Pub. L. 103-382, title IV, §408, Oct. 20, 1994, 108 Stat. 4034.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9008 of this title.

**§ 9008. Dissemination****(a) General requests****(1) In general**

The Center may furnish transcripts or copies of tables and other statistical records and make special statistical compilations and surveys for State and local officials, public and private organizations, and individuals.

**(2) Compilations**

The Center shall provide State and local educational agencies opportunities to suggest the development of particular compilations of statistics, surveys, and analyses that would assist those educational agencies.

**(b) Congressional requests**

The Center shall furnish such special statistical compilations and surveys as the Congress may request.

**(c) Joint statistical projects**

The Secretary may engage in joint statistical projects related to the purposes of this chapter, or other statistical purposes authorized by law, with nonprofit organizations or agencies, and the cost of such projects shall be shared equitably as determined by the Secretary.

**(d) Fees****(1) In general**

Statistical compilations and surveys under this section, other than those carried out pursuant to subsections (b) and (c) of this section, may be made subject to the payment of the actual or estimated cost of such work.

**(2) Funds received**

All funds received in payment for work or services described in this subsection may be used to pay directly the costs of such work or services, to repay appropriations that initially bore all or part of such costs, or to refund excess sums when necessary.

**(e) Access****(1) Other agencies**

The Center shall, consistent with section 9007 of this title, cooperate with other Federal agencies having a need for educational data in providing access to educational data received by the Center.

**(2) Interested parties**

The Center shall, in accordance with such terms and conditions as the Secretary may prescribe, provide all interested parties, including public and private agencies and individuals, direct access to data collected by the Center for the purposes of research and acquiring statistical information.

(Pub. L. 103-382, title IV, § 409, Oct. 20, 1994, 108 Stat. 4035.)

**§ 9009. Cooperative education statistics systems****(a) In general**

The Commissioner may establish one or more national cooperative education statistics systems for the purpose of producing and maintaining, with the cooperation of the States, com-

parable and uniform information and data on elementary and secondary education, post-secondary education, and libraries, that are useful for policymaking at the Federal, State, and local levels. In carrying out this section, the Commissioner may provide technical assistance, and make grants and enter into contracts and cooperative agreements.

**(b) Model data system**

The Commissioner, working through the cooperative education statistics system, shall study, design, and pilot a model data system that will yield information about spending for administration at the school and local education agency levels.

(Pub. L. 103-382, title IV, § 410, Oct. 20, 1994, 108 Stat. 4036.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8824 of this title.

**§ 9010. National Assessment of Educational Progress****(a) Establishment**

The Commissioner shall, with the advice of the National Assessment Governing Board established under section 9011 of this title, and with the technical assistance of the Advisory Council established under section 9006 of this title, carry out, through grants, contracts, or cooperative agreements with one or more qualified organizations, or consortia thereof, a National Assessment of Educational Progress (hereafter in this chapter referred to as the "National Assessment").

**(b) Purpose; State assessments****(1) Purpose**

The purpose of the National Assessment is to provide a fair and accurate presentation of educational achievement in reading, writing, and the other subjects included in the third National Education Goal, regarding student achievement and citizenship. The Commissioner, in carrying out the National Assessment, shall use sampling techniques that produce data that are representative on a national and regional basis, and on a State basis pursuant to paragraph (2). In addition, the Commissioner shall—

(A) collect and report data on a periodic basis, but at least once every two years, on students at ages 9, 13, and 17 and in grades 4, 8, and 12 in public and private schools;

(B) report achievement data on a basis that ensures valid and reliable trend reporting;

(C) include information on special groups, including, whenever feasible, information collected, cross-tabulated, analyzed, and reported by sex, race or ethnicity and socioeconomic status; and

(D) ensure that achievement data are made available on a timely basis following official reporting, in a manner that facilitates further analysis.

**(2) State assessments**

(A)(i) The Commissioner, in carrying out the National Assessment, may conduct State as-

assessments of student achievement in grades 4, 8, and 12.

(ii) Each such State assessment, in each subject area and at each grade level, shall be conducted on a developmental basis until the Commissioner determines, as the result of an evaluation required by subsection (f) of this section, that such assessment produces high quality data that are valid and reliable.

(B)(i) States wishing to participate in State assessments shall enter into an agreement with the Secretary pursuant to subsection (d)(2) of this section.

(ii) Such agreement shall contain information sufficient to give States full information about the process for consensus decision-making on objectives to be tested, and the standards for sampling, test administration, test security, data collection, validation, and reporting.

(C) A participating State shall review and give permission for the release of results from any test of its students administered as a part of a State assessment prior to the release of such data. Refusal by a State to release its data shall not restrict the release of data from other States that have approved the release of such data.

**(3) Prohibited data**

In carrying out the National Assessment, the Commissioner shall not collect any data that are not directly related to the appraisal of educational performance, achievement, and traditional demographic reporting variables, or to the fair and accurate presentation of such information.

**(4) Technical assistance**

In carrying out the National Assessment, the Commissioner may provide technical assistance to States, localities, and other parties.

**(c) Access**

**(1) Public access**

Except as provided in paragraph (2), the public shall have access to all data, questions, and test instruments of the National Assessment.

**(2) Personally identifiable information**

(A) The Commissioner shall ensure that all personally identifiable information about students, their educational performance, and their families, and that information with respect to individual schools, remains confidential, in accordance with section 552a of title 5.

(B) Notwithstanding any other provision of law, the Commissioner may decline to make available to the public for a period, not to exceed ten years after initial use, cognitive questions that the Commissioner intends to reuse in the future.

**(d) Participation**

**(1) National and regional**

Participation in the national and regional assessments by State and local educational agencies shall be voluntary.

**(2) State**

Participation in assessments made on a State basis shall be voluntary. The Commis-

sioner shall enter into an agreement with any State that desires to carry out an assessment for the State under this subsection. Each such agreement shall contain provisions designed to ensure that the State will—

(A) participate in the assessment; and

(B) pay from non-Federal sources the non-Federal share of such participation.

**(3) Non-Federal share**

(A) For each fiscal year, the non-Federal share for the purpose of paragraph (2)(B) shall be—

(i) the cost of conducting the assessment at the school level for all public schools in the State sample;

(ii) the cost of coordination within the State; and

(iii) other reasonable costs specified by the Secretary in the agreement described in paragraph (2), such as the cost of analyzing and reporting the data.

(B) The non-Federal share of payments under this paragraph may be in cash or in kind, fairly valued.

(C) The agreement described in paragraph (2) shall describe the manner in which the costs of administering the assessment to private nonprofit schools included in the State sample will be met.

**(e) Student performance levels**

**(1) Performance levels**

The National Assessment Governing Board, established under section 9011 of this title, shall develop appropriate student performance levels for each age and grade in each subject area to be tested under the National Assessment.

**(2) Development of levels**

(A) Such levels shall be—

(i) devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the general public;

(ii) used on a developmental basis until the Commissioner determines, as the result of an evaluation under subsection (f) of this section, that such levels are reasonable, valid, and informative to the public; and

(iii) updated as appropriate.

(B) In using such levels on a developmental basis, the Commissioner and the Board shall ensure that reports that use such levels do so in a manner that makes clear the developmental status of such levels.

**(3) Reporting**

After determining that such levels are reasonable, valid, and informative to the public, as the result of an evaluation under subsection (f) of this section, the Commissioner shall use such levels or other methods or indicators for reporting results of the National Assessment and State assessments.

**(f) Review of National and State assessments**

**(1) In general**

(A) The Secretary shall provide for continuing review of the National Assessment, State

assessments, and student performance levels, by one or more nationally recognized evaluation organizations, such as the National Academy of Education and the National Academy of Sciences.

(B) Such continuing review shall address—

(i) whether each developmental State assessment is properly administered, produces high quality data that are valid and reliable, and produces data on student achievement that are not otherwise available to the State (other than data comparing participating States to each other and the Nation); and

(ii) whether developmental student performance levels are reasonable, valid, and informative to the public.

**(2) Report**

The Secretary shall report to the Congress, the President, and the Nation on the findings and recommendations of such reviews.

**(3) Use of findings and recommendations**

The Commissioner shall consider the findings and recommendations of such reviews in designing the competition to select the organization, or organizations, through which the Commissioner carries out the National Assessment.

**(g) Coverage agreements**

**(1) Department of Defense schools**

The Secretary and the Secretary of Defense may enter into an agreement, including such terms as are mutually satisfactory, to include in the National Assessment elementary and secondary schools operated by the Department of Defense.

**(2) Bureau of Indian Affairs schools**

The Secretary and the Secretary of the Interior may enter into an agreement, including such terms as are mutually satisfactory, to include in the National Assessment schools for Indian children operated or supported by the Bureau of Indian Affairs.

(Pub. L. 103-382, title IV, §411, Oct. 20, 1994, 108 Stat. 4036.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9001, 9011, 9012 of this title.

**§ 9011. National Assessment Governing Board**

**(a) Establishment**

There is established the National Assessment Governing Board (hereafter in this chapter referred to as the “Board”), which shall formulate policy guidelines for the National Assessment.

**(b) Membership**

**(1) Appointment and composition**

The Board shall be appointed by the Secretary and be composed of—

(A) two Governors, or former Governors, who shall not be members of the same political party;

(B) two State legislators, who shall not be members of the same political party;

(C) two chief State school officers;

(D) one superintendent of a local educational agency;

(E) one member of a State board of education;

(F) one member of a local board of education;

(G) three classroom teachers representing the grade levels at which the National Assessment is conducted;

(H) one representative of business or industry;

(I) two curriculum specialists;

(J) three testing and measurement experts, who shall have training and experience in the field of testing and measurement;

(K) one nonpublic school administrator or policymaker;

(L) two school principals, of whom one shall be an elementary school principal and one shall be a secondary school principal; and

(M) four additional members who are representatives of the general public, including parents.

**(2) Assistant Secretary for Educational Research**

The Assistant Secretary for Educational Research and Improvement shall serve as an ex officio, nonvoting member of the Board.

**(3) Special rule**

The Secretary and the Board shall ensure at all times that the membership of the Board reflects regional, racial, gender, and cultural balance and diversity and that the Board exercises its independent judgment, free from inappropriate influences and special interests.

**(c) Terms**

**(1) In general**

Terms of service of members of the Board shall be staggered and may not exceed a period of 3 years, as determined by the Secretary.

**(2) Service limitation**

Members of the Board may serve not more than two terms.

**(3) Change of status**

A member of the Board who changes status under subsection (b) of this section during the term of the appointment of the member may continue to serve as a member until the expiration of such term.

**(d) Vacancies**

**(1) In general**

(A) The Secretary shall appoint new members to fill vacancies on the Board from among individuals who are nominated by organizations representing the type of individuals described in subsection (b)(1) of this section with respect to which the vacancy exists.

(B) Each organization submitting nominations to the Secretary with respect to a particular vacancy shall nominate for such vacancy six individuals who are qualified by experience or training to fill the particular Board vacancy.

(C) The Secretary’s appointments shall maintain the composition, diversity, and balance of the Board required under subsection (b) of this section.

**(2) Additional nominations**

The Secretary may request that each organization described in paragraph (1)(A) submit additional nominations if the Secretary determines that none of the individuals nominated by such organization have appropriate knowledge or expertise.

**(e) Duties****(1) In general**

In carrying out its functions under this section the Board shall—

(A) select subject areas to be assessed (consistent with section 9010(b)(1) of this title);

(B) develop appropriate student performance levels as provided in section 9010(e) of this title;

(C) develop assessment objectives and test specifications through a national consensus approach which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public;

(D) design the methodology of the assessment, in consultation with appropriate technical experts, including the Advisory Council established under section 9006 of this title;

(E) develop guidelines for reporting and disseminating results;

(F) develop standards and procedures for interstate, regional, and national comparisons; and

(G) take appropriate actions needed to improve the form and use of the National Assessment.

**(2) Delegation**

The Board may delegate any of the Board's procedural and administrative functions to its staff.

**(3) Cognitive items**

The Board shall have final authority on the appropriateness of cognitive items.

**(4) Prohibition against bias**

The Board shall take steps to ensure that all items selected for use in the National Assessment are free from racial, cultural, gender, or regional bias.

**(5) Technical**

In carrying out the duties required by paragraph (1), the Board may seek technical advice, as appropriate, from the Commissioner and the Advisory Council on Education Statistics and other experts.

**(6) Report**

Not later than 90 days after an evaluation of the student performance levels under section 9010(e) of this title, the Board shall make a report to the Secretary, the Committee on Education and Labor of the House of Representatives, and the Committee on Labor and Human Resources of the Senate describing the steps the Board is taking to respond to each of the recommendations contained in such evaluation.

**(f) Personnel****(1) In general**

In the exercise of its responsibilities, the Board shall be independent of the Secretary and the other offices and officers of the Department.

**(2) Staff**

(A) The Secretary may appoint, at the request of the Board, such staff as will enable the Board to carry out its responsibilities.

(B) Such appointments may include, for terms not to exceed three years and without regard to the provisions of title 5 governing appointments in the competitive service, not more than six technical employees who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

**(g) Coordination**

The Commissioner and the Board shall meet periodically—

(1) to ensure coordination of their duties and activities relating to the National Assessment; and

(2) for the Commissioner to report to the Board on the Department's actions to implement the decisions of the Board.

**(h) Administration**

Only sections 10, 11, and 12 of the Federal Advisory Committee Act shall apply with respect to the Board.

(Pub. L. 103-382, title IV, §412, Oct. 20, 1994, 108 Stat. 4039.)

## REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (f)(2)(B), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

Sections 10, 11, and 12 of the Federal Advisory Committee Act, referred to in subsec. (h), are sections 10, 11, and 12 of Pub. L. 92-463, as amended, which are set out in the Appendix to Title 5.

## CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9010, 9012 of this title.

**§ 9012. Authorization of appropriations****(a) In general**

There are authorized to be appropriated \$65,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years to carry out this chapter (other than sections 9010 and 9011 of this title).

**(b) National Assessment**

There are authorized to be appropriated \$35,000,000 for fiscal year 1995 and such sums as may be necessary for each of the fiscal years 1996 and 1997 to carry out section 9010 of this title.

**(c) Governing Board**

There are authorized to be appropriated \$3,000,000 for fiscal year 1995 and such sums as may be necessary for each of the fiscal years

1996 and 1997 to carry out section 9011 of this title.

(Pub. L. 103-382, title IV, §413, Oct. 20, 1994, 108 Stat. 4041.)