

(3) gives priority to applications that meet the voluntary standards and guidelines described in section 9543(a)(5) of this title.

**(d) Supplement not supplant**

Funds made available under this section shall be used to supplement, and not supplant, other State or local funds used for developing State data systems.

**(e) Report**

Not later than 1 year after November 5, 2002, and again 3 years after such date, the Secretary, in consultation with the National Academies Committee on National Statistics, shall make publicly available a report on the implementation and effectiveness of Federal, State, and local efforts related to the goals of this section, including—

(1) identifying and analyzing State practices regarding the development and use of statewide, longitudinal data systems;

(2) evaluating the ability of such systems to manage individual student data consistent with the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), promote linkages across States, and protect student privacy consistent with section 9573 of this title; and

(3) identifying best practices and areas for improvement.

(Pub. L. 107-279, title II, §208, Nov. 5, 2002, 116 Stat. 1981.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (a), (c)(2)(A), and (e)(2), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§6301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

**§ 9608. Authorization of appropriations**

There are authorized to be appropriated to carry out this subchapter \$80,000,000 for fiscal year 2003 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(Pub. L. 107-279, title II, §209, Nov. 5, 2002, 116 Stat. 1982.)

SUBCHAPTER III—NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

**§ 9621. National Assessment Governing Board**

**(a) Establishment**

There is established the National Assessment Governing Board (hereafter in this subchapter referred to as the “Assessment Board”), which shall formulate policy guidelines for the National Assessment (carried out under section 9622 of this title).

**(b) Membership**

**(1) Appointment and composition**

The Assessment Board shall be appointed by the Secretary and be composed as follows:

(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.

(M) Two parents who are not employed by a local, State or Federal educational agency.

(N) Two additional members who are representatives of the general public, and who may be parents, but who are not employed by a local, State, or Federal educational agency.

**(2) Director of the Institute of Education Sciences**

The Director of the Institute of Education Sciences shall serve as an ex officio, nonvoting member of the Assessment Board.

**(3) Balance and diversity**

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

**(c) Terms**

**(1) In general**

Terms of service of members of the Assessment Board shall be staggered and may not exceed a period of 4 years, as determined by the Secretary.

**(2) Service limitation**

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

**(3) Change of status**

A member of the Assessment 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.

**(4) Conforming provision**

Members of the Assessment Board previously granted 3 year terms, whose terms are in effect on December 21, 2000, shall have their terms extended by 1 year.

**(d) Vacancies**

**(1) In general**

**(A) Organizations**

The Secretary shall appoint new members to fill vacancies on the Assessment 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) Nominations**

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 Assessment Board vacancy.

**(C) Maintenance of Assessment Board**

The Secretary's appointments shall maintain the composition, diversity, and balance of the Assessment 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 Assessment Board shall—

(A) select the subject areas to be assessed (consistent with section 9622(b) of this title);

(B) develop appropriate student achievement levels as provided in section 9622(e) of this title;

(C) develop assessment objectives consistent with the requirements of this section and test specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards;

(D) develop a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public;

(E) design the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys;

(F) consistent with section 9622 of this title, measure student academic achievement in grades 4, 8, and 12 in the authorized academic subjects;

(G) develop guidelines for reporting and disseminating results;

(H) develop standards and procedures for regional and national comparisons;

(I) take appropriate actions needed to improve the form, content, use, and reporting of results of any assessment authorized by section 9622 of this title consistent with the provisions of this section and section 9622 of this title; and

(J) plan and execute the initial public release of National Assessment of Educational Progress reports.

The National Assessment of Educational Progress data shall not be released prior to the release of the reports described in subparagraph (J).

**(2) Delegation**

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

**(3) All cognitive and noncognitive assessment items**

The Assessment Board shall have final authority on the appropriateness of all assessment items.

**(4) Prohibition against bias**

The Assessment 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 and are secular, neutral, and non-ideological.

**(5) Technical**

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

**(6) Report**

Not later than 90 days after an evaluation of the student achievement levels under section 9622(e) of this title, the Assessment Board shall make a report to the Secretary, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate describing the steps the Assessment 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 Assessment Board shall be independent of the Secretary and the other offices and officers of the Department.

**(2) Staff**

**(A) In general**

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

**(B) Technical employees**

Such appointments may include, for terms not to exceed 3 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 for Education Statistics and the Assessment Board shall meet periodically—

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

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

#### (h) Administration

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Assessment Board, other than sections 10, 11, and 12 of such Act.

(Pub. L. 107-279, title III, §302, formerly Pub. L. 103-382, title IV, §412, Oct. 20, 1994, 108 Stat. 4039; Pub. L. 106-554, §1(a)(1) [title III, §307], Dec. 21, 2000, 114 Stat. 2763, 2763A-44; Pub. L. 107-110, title VI, §602(b), Jan. 8, 2002, 115 Stat. 1904; renumbered Pub. L. 107-279, title III, §302, and amended Pub. L. 107-279, title IV, §401(c), Nov. 5, 2002, 116 Stat. 1983.)

#### REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h), 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.

#### CODIFICATION

Section was formerly classified to section 9011 of this title prior to renumbering by Pub. L. 107-279.

#### PRIOR PROVISIONS

A prior section 302 of Pub. L. 107-279 was renumbered section 304 and is classified to section 9623 of this title.

#### AMENDMENTS

2002—Pub. L. 107-110 amended section generally, restating and expanding provisions and inserting headings.

Subsec. (a). Pub. L. 107-279, §401(c)(1), substituted “referred to as the ‘Assessment Board’” for “referred to as the ‘Board’” and inserted “(carried out under section 9622 of this title)” after “for the National Assessment”.

Subsec. (b)(1). Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board” in introductory provisions.

Subsec. (b)(2). Pub. L. 107-279, §401(c)(4), substituted “Director of the Institute of Education Sciences” for “Assistant Secretary for Educational Research” in heading and “Assistant Secretary for Educational Research and Improvement” in text.

Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board”.

Subsecs. (b)(3) to (d)(1). Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board” wherever appearing.

Subsec. (e)(1). Pub. L. 107-279, §401(c)(2), (5)(A)(vii), substituted “Assessment Board” for “Board” in introductory provisions and inserted concluding provisions.

Subsec. (e)(1)(A). Pub. L. 107-279, §401(c)(5)(A)(i), substituted “section 9622(b)” for “section 9010(b)”.

Subsec. (e)(1)(B). Pub. L. 107-279, §401(c)(5)(A)(ii), substituted “section 9622(e)” for “section 9010(e)”.

Subsec. (e)(1)(E). Pub. L. 107-279, §401(c)(5)(A)(iii), struck out “, including the Advisory Council established under section 9006 of this title” before semicolon at end.

Subsec. (e)(1)(F), (I). Pub. L. 107-279, §401(c)(5)(A)(iv), substituted “section 9622” for “section 9010” wherever appearing.

Subsec. (e)(1)(J). Pub. L. 107-279, §401(c)(5)(A)(v)-(vii), added subpar. (J).

Subsec. (e)(2) to (4). Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board”.

Subsec. (e)(5). Pub. L. 107-279, §401(c)(5)(B), struck out “and the Advisory Council on Education Statistics” before “and other experts.”

Pub. L. 107-279, §401(c)(3), substituted “Commissioner for Education Statistics” for “Commissioner”.

Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board”.

Subsec. (e)(6). Pub. L. 107-279, §401(c)(5)(C), substituted “section 9622(e)” for “section 9010(e)”.

Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board” in two places.

Subsec. (f). Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board” wherever appearing.

Subsec. (g). Pub. L. 107-279, §401(c)(3), substituted “Commissioner for Education Statistics” for “Commissioner” in two places.

Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board” wherever appearing.

Subsec. (h). Pub. L. 107-279, §401(c)(2), substituted “Assessment Board” for “Board”.

2000—Subsec. (c)(1). Pub. L. 106-554, §1(a)(1) [title III, §307(1)], substituted “4 years” for “3 years”.

Subsec. (c)(4). Pub. L. 106-554, §1(a)(1) [title III, §307(2)], added par. (4).

#### 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.

#### SHORT TITLE

This subchapter known as the “National Assessment of Educational Progress Authorization Act”, see Short Title note set out under section 9501 of this title.

### §9622. National Assessment of Educational Progress

#### (a) Establishment

The Commissioner for Education Statistics shall, with the advice of the Assessment Board established under section 9621 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, which collectively refers to a national assessment, State assessments, and a long-term trend assessment in reading and mathematics.

#### (b) Purpose; State assessments

##### (1) Purpose

The purpose of this section is to provide, in a timely manner, a fair and accurate measurement of student academic achievement and reporting of trends in such achievement in reading, mathematics, and other subject matter as specified in this section.

##### (2) Measurement and reporting

The Commissioner for Education Statistics, in carrying out the measurement and reporting described in paragraph (1), shall—

(A) use a random sampling process which is consistent with relevant, widely accepted professional assessment standards and that produces data that are representative on a national and regional basis;

(B) conduct a national assessment and collect and report assessment data, including achievement data trends, in a valid and reliable manner on student academic achievement in public and private elementary schools and secondary schools at least once every 2 years, in grades 4 and 8 in reading and mathematics;