

section (a) [enacting this section] shall be effective upon enactment of this Act [Aug. 21, 1974].”

**§ 1232i. Limitations on withholding of Federal assistance**

**(a) Refusal to supply personal data on students or families**

Except as provided in section 1232g(b)(1)(D) of this title, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.

**(b) Noncompliance with nondiscrimination provisions of Federal law**

The extension of Federal financial assistance to a local educational agency may not be limited, deferred, or terminated by the Secretary on the ground of noncompliance with title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] or any other nondiscrimination provision of Federal law unless such agency is accorded the right of due process of law, which shall include—

(1) at least 30 days prior written notice of deferral to the agency, setting forth the particular program or programs which the Secretary finds to be operated in noncompliance with a specific provision of Federal law;

(2) the opportunity for a hearing on the record before a duly appointed administrative law judge within a 60-day period (unless such period is extended by mutual consent of the Secretary and such agency) from the commencement of any deferral;

(3) the conclusion of such hearing and the rendering of a decision on the merits by the administrative law judge within a period not to exceed 90 days from the commencement of such hearing, unless the judge finds by a decision that such hearing cannot be concluded or such decision cannot be rendered within such period, in which case such judge may extend such period for not to exceed 60 additional days;

(4) the limitation of any deferral of Federal financial assistance which may be imposed by the Secretary to a period not to exceed 15 days after the rendering of such decision unless there has been an express finding on such record that such agency has failed to comply with any such nondiscrimination provision of Federal law; and

(5) procedures, which shall be established by the Secretary, to ensure the availability of

sufficient funds, without regard to any fiscal year limitations, to comply with the decision of such judge.

**(c) Failure to comply with imposition of quotas**

It shall be unlawful for the Secretary to defer or limit any Federal financial assistance on the basis of any failure to comply with the imposition of quotas (or any other numerical requirements which have the effect of imposing quotas) on the student admission practices of an institution of higher education or community college receiving Federal financial assistance.

(Pub. L. 90-247, title IV, § 446, formerly § 440, as added Pub. L. 93-380, title V, § 515(a), Aug. 21, 1974, 88 Stat. 574; amended Pub. L. 94-482, title IV, §§ 407, 408, Oct. 12, 1976, 90 Stat. 2232, 2233; renumbered § 446 and amended Pub. L. 103-382, title II, § 212(b)(1), (3)(C), Oct. 20, 1994, 108 Stat. 3913.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (b), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 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 2000a of this title and Tables.

PRIOR PROVISIONS

A prior section 446 of Pub. L. 90-247 was classified to section 1233e of this title prior to repeal by Pub. L. 103-382.

AMENDMENTS

1994—Subsec. (a), Pub. L. 103-382, § 212(b)(3)(C), made technical amendment to reference to section 1232g(b)(1)(D) of this title to reflect renumbering of corresponding section of original act.

1976—Pub. L. 94-482 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-482 effective 30 days after Oct. 12, 1976, except either as specifically otherwise provided or, if not so specifically otherwise provided, effective July 1, 1976, for those amendments providing for authorization of appropriations, see section 532 of Pub. L. 94-482, set out as a note under section 1001 of this title.

EFFECTIVE DATE

Pub. L. 93-380, title V, § 515(b), Aug. 21, 1974, 88 Stat. 574, provided that: “The amendment made by subsection (a) [enacting this section] shall be effective upon enactment of this Act [Aug. 21, 1974].”

**§ 1232j. Prohibition on federally sponsored testing**

**(a) General prohibition**

Notwithstanding any other provision of Federal law and except as provided in subsection (b), no funds provided to the Department of Education or to an applicable program, may be used to pilot test, field test, implement, administer or distribute in any way any federally sponsored national test in reading, mathematics, or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law.

**(b) Exceptions**

Subsection (a) shall not apply to the Third International Mathematics and Science Study

or other international comparative assessments developed under the authority of section 9543(a)(6) of this title and administered to only a representative sample of pupils in the United States and in foreign nations.

(Pub. L. 90-247, title IV, § 447, as added Pub. L. 105-277, div. A, § 101(f) [title III, § 305(a)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-374; amended Pub. L. 107-110, title X, § 1062(4), Jan. 8, 2002, 115 Stat. 2088; Pub. L. 107-279, title IV, § 404(c), Nov. 5, 2002, 116 Stat. 1985.)

#### PRIOR PROVISIONS

A prior section 447 of Pub. L. 90-247 was classified to section 1233f of this title prior to repeal by Pub. L. 103-382.

Prior sections 1233 to 1233h comprising a former subchapter IV of this chapter were repealed by Pub. L. 103-382, title II, § 212(a)(2), Oct. 20, 1994, 108 Stat. 3913.

Section 1233, Pub. L. 90-247, title IV, § 441, formerly § 431, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 170; renumbered § 441, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, defined terms for purposes of former subchapter IV of this chapter.

Section 1233a, Pub. L. 90-247, title IV, § 442, formerly § 432, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered § 442, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 96-88, title III, § 301(a)(1), (b)(2), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 678, 692, authorized Secretary to establish necessary advisory councils.

Section 1233b, Pub. L. 90-247, title IV, § 443, formerly § 433, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered § 443, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 93-380, title V, § 516(a), Aug. 21, 1974, 88 Stat. 575; Pub. L. 94-482, title IV, § 411, title V, § 501(a)(10), Oct. 12, 1976, 90 Stat. 2234, 2235; Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, related to statutory advisory councils.

Section 1233c, Pub. L. 90-247, title IV, § 444, formerly § 434, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered § 444, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, related to compensation and travel expenses of members of advisory councils.

Section 1233d, Pub. L. 90-247, title IV, § 445, formerly § 435, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 171; renumbered § 445, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 93-380, title V, § 517(a), Aug. 21, 1974, 88 Stat. 575; Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, related to professional, technical, and clerical staff of advisory councils.

Section 1233e, Pub. L. 90-247, title IV, § 446, formerly § 436, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 172; renumbered § 446, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, related to advisory council meetings.

Section 1233f, Pub. L. 90-247, title IV, § 447, formerly § 437, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 172; renumbered § 447, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; amended Pub. L. 93-380, title V, § 517(b), Aug. 21, 1974, 88 Stat. 575; Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, related to auditing and review of advisory council activities.

Section 1233g, Pub. L. 90-247, title IV, § 448, formerly § 438, as added Pub. L. 91-230, title IV, § 401(a)(10), Apr. 13, 1970, 84 Stat. 172; renumbered § 448, Pub. L. 92-318, title III, § 301(a)(1), June 23, 1972, 86 Stat. 326; amended S. Res. 4, Feb. 4, 1977; Pub. L. 95-43, § 1(d), June 15, 1977, 91 Stat. 219; S. Res. 30, Mar. 7, 1979; Pub. L. 96-88, title

III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 103-437, § 7(a)(1), Nov. 2, 1994, 108 Stat. 4587, related to reports by Secretary.

Section 1233h, Pub. L. 90-247, title IV, § 449, as added Pub. L. 93-380, title V, § 518(a), Aug. 21, 1974, 88 Stat. 575, related to application of other laws to advisory councils under former subchapter IV of this chapter.

#### AMENDMENTS

2002—Subsec. (b). Pub. L. 107-279 substituted “section 9543(a)(6) of this title” for “section 9003(a)(6) of this title”.

Pub. L. 107-110 made technical amendment to reference in original act which appears in text as reference to section 9003(a)(6) of this title.

#### 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.

### SUBCHAPTER IV—ENFORCEMENT

#### CODIFICATION

Pub. L. 103-382, title II, § 212(b)(2), Oct. 20, 1994, 108 Stat. 3913, redesignated subchapter V of this chapter as this subchapter.

#### PRIOR PROVISIONS

A prior subchapter IV, consisting of sections 1233 to 1233h, was repealed by Pub. L. 103-382, title II, § 212(a)(2), Oct. 20, 1994, 108 Stat. 3913. See note set out under section 1232j of this title.

### § 1234. Office of Administrative Law Judges

#### (a) Establishment; duties

The Secretary shall establish in the Department of Education an Office of Administrative Law Judges (hereinafter in this subchapter referred to as the “Office”) which shall conduct—

- (1) recovery of funds hearings pursuant to section 1234a of this title,
- (2) withholding hearings pursuant to section 1234d of this title,
- (3) cease and desist hearings pursuant to section 1234e of this title, and
- (4) other proceedings designated by the Secretary.

#### (b) Appointment

The administrative law judges (hereinafter “judges”) of the Office shall be appointed by the Secretary in accordance with section 3105 of title 5.

#### (c) Employment requirements; chief judge

The judges shall be officers or employees of the Department. The judges shall meet the requirements imposed for administrative law judges pursuant to section 3105 of title 5. In choosing among equally qualified candidates for such positions the Secretary shall give favorable consideration to the candidates’ experience in State or local educational agencies and their knowledge of the workings of Federal education programs in such agencies. The Secretary shall designate one of the judges of the Office to be the chief judge.

#### (d) Assignment of judges

For the purposes of conducting hearings described in subsection (a), the chief judge shall