

**(4) Information requirements**

No collection of information or data acquisition activity undertaken by the Director 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 Director 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 Director 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 Director, 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 (c)(2), 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 Director’s possession, except that the same restrictions on disclosure that apply under paragraphs (1) and (6) shall apply to such individuals.

**(e) Investigation and prosecution of terrorism****(1) In general**

Notwithstanding subsections (a) and (b), the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring the Secretary to permit the Attorney General (or his designee) to—

(A) collect reports, records, and information (including individually identifiable information) in the possession of the Director that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18 or an act of domestic or international terrorism as defined in section 2331 of that title; and

(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such information, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

**(2) Application and approval**

(A) IN GENERAL.—An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the information sought is described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

**(3) Protection**

An officer or employee of the Department who, in good faith, produces information in accordance with an order issued under this subsection does not violate subsection (b)(2)<sup>1</sup> and shall not be liable to any person for that production.

(Pub. L. 107–279, title I, §183, title IV, §401(a)(6), Nov. 5, 2002, 116 Stat. 1972, 1983.)

**Editorial Notes****CODIFICATION**

Subsecs. (a) to (c) of section 9007 of this title, which were transferred to this section and redesignated subsecs. (c) to (e) by Pub. L. 107–279, §401(a)(6), were based on Pub. L. 103–382, title IV, §408(a) to (c), Oct. 20, 1994, 108 Stat. 4034; Pub. L. 107–56, title V, §508, Oct. 26, 2001, 115 Stat. 368; Pub. L. 107–279, title IV, §401(a)(1)–(5), Nov. 5, 2002, 116 Stat. 1983.

**AMENDMENTS**

2002—Subsecs. (c) to (e). Pub. L. 107–279, §401(a)(6), transferred subsecs. (a) to (c) of section 9007 of this title to this section and redesignated them as subsecs. (c) to (e), respectively. See Codification note above.

**§ 9574. Availability of data**

Subject to section 9573 of this title, data collected by the Institute, including any office, board, committee, or center of the Institute, in carrying out the priorities and mission of the Institute, shall be made available to the public, including through use of the Internet.

(Pub. L. 107–279, title I, §184, Nov. 5, 2002, 116 Stat. 1972.)

**§ 9575. Performance management**

The Director shall ensure that all activities conducted or supported by the Institute or a National Education Center make customer service a priority. The Director shall ensure a high level of customer satisfaction through the following methods:

(1) Establishing and improving feedback mechanisms in order to anticipate customer needs.

(2) Disseminating information in a timely fashion and in formats that are easily acces-

<sup>1</sup> So in original. Probably means subsection (d)(2).

sible and usable by researchers, practitioners, and the general public.

(3) Utilizing the most modern technology and other methods available, including arrangements to use data collected electronically by States and local educational agencies, to ensure the efficient collection and timely distribution of information, including data and reports.

(4) Establishing and measuring performance against a set of indicators for the quality of data collected, analyzed, and reported.

(5) Continuously improving management strategies and practices.

(6) Making information available to the public in an expeditious fashion.

(Pub. L. 107-279, title I, §185, Nov. 5, 2002, 116 Stat. 1972.)

### § 9576. Authority to publish

#### (a) Publication

The Director may prepare and publish (including through oral presentation) such research, statistics (consistent with part C), and evaluation information and reports from any office, board, committee, and center of the Institute, as needed to carry out the priorities and mission of the Institute without the approval of the Secretary or any other office of the Department.

#### (b) Advance copies

The Director shall provide the Secretary and other relevant offices with an advance copy of any information to be published under this section before publication.

#### (c) Peer review

All research, statistics, and evaluation reports conducted by, or supported through, the Institute shall be subjected to rigorous peer review before being published or otherwise made available to the public.

#### (d) Items not covered

Nothing in subsections<sup>1</sup> (a), (b), or (c) shall be construed to apply to—

(1) information on current or proposed budgets, appropriations, or legislation;

(2) information prohibited from disclosure by law or the Constitution, classified national security information, or information described in section 552(b) of title 5; and

(3) review by officers of the United States in order to prevent the unauthorized disclosure of information described in paragraph (1) or (2).

(Pub. L. 107-279, title I, §186, Nov. 5, 2002, 116 Stat. 1973.)

### § 9577. Vacancies

Any member appointed to fill a vacancy on the Board occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A vacancy in an office, board, committee, or center of the Institute shall be filled in the manner in which the original appointment was made. This section does

<sup>1</sup> So in original. Probably should be "subsection".

not apply to employees appointed under section 9578 of this title.

(Pub. L. 107-279, title I, §187, Nov. 5, 2002, 116 Stat. 1973.)

### § 9578. Scientific or technical employees

#### (a) In general

The Director may appoint, for terms not to exceed 6 years (without regard to the provisions of title 5 governing appointment in the competitive service) and may compensate (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) such scientific or technical employees to carry out the functions of the Institute or the office, board, committee, or center, respectively, if—

(1) at least 30 days prior to the appointment of any such employee, public notice is given of the availability of such position and an opportunity is provided for qualified individuals to apply and compete for such position;

(2) the rate of basic pay for such employees does not exceed the maximum rate of basic pay payable for positions at GS-15, as determined in accordance with section 5376 of title 5, except that not more than 7 individuals appointed under this section may be paid at a rate that does not exceed the rate of basic pay for level III of the Executive Schedule;

(3) the appointment of such employee is necessary (as determined by the Director on the basis of clear and convincing evidence) to provide the Institute or the office, board, committee, or center with scientific or technical expertise which could not otherwise be obtained by the Institute or the office, board, committee, or center through the competitive service; and

(4) the total number of such employees does not exceed 40 individuals or 1/5 of the number of full-time, regular scientific or professional employees of the Institute, whichever is greater.

#### (b) Duties of employees

All employees described in subsection (a) shall work on activities of the Institute or the office, board, committee, or center, and shall not be reassigned to other duties outside the Institute or the office, board, committee, or center during their term.

(Pub. L. 107-279, title I, §188, Nov. 5, 2002, 116 Stat. 1973.)

### Editorial Notes

#### REFERENCES IN TEXT

GS-15, referred to in subsec. (a)(2), is contained in the General Schedule, which is set out under section 5332 of Title 5, Government Organization and Employees.

Level III of the Executive Schedule, referred to in subsec. (a)(2), is set out in section 5314 of Title 5, Government Organization and Employees.

### Statutory Notes and Related Subsidiaries

#### REFERENCES TO MAXIMUM RATE UNDER 5 U.S.C. 5376

For reference to maximum rate under section 5376 of Title 5, Government Organization and Employees, see section 2(d)(3) of Pub. L. 110-372, set out as an Effective