

PART 792—FEDERAL EMPLOYEES' HEALTH AND COUNSELING PROGRAMS

Subpart A—Regulatory Requirements for Alcoholism and Drug Abuse Programs and Services for Federal Civilian Employees

Sec.

- 792.101 Statutory requirements.
- 792.102 General.
- 792.103 Coverage.
- 792.104 Responsibilities of the Office of Personnel Management.
- 792.105 Agency responsibilities.

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What is the New Child Care Legislation and to Whom Does It Apply?

- 792.200 To whom do “we”, “you”, and their variants apply?
- 792.201 What does the new law permit?
- 792.202 What is the purpose of the new law?
- 792.203 Should we notify anyone of our intention to initiate a program and when can the obligation be made?
- 792.204 Are there sample memoranda and other documents available to assist us with this process?
- 792.205 Are there additional materials necessary for the implementation of this process and are there any special reporting and oversight requirements related to this law?
- 792.206 What are the benefits to an agency of providing such assistance to its lower income employees?
- 792.207 Which agency funds can be used for the purpose of this law?
- 792.208 Are agencies required to participate in this program?
- 792.209 How can agencies take advantage of this new law and when does this law become effective?
- 792.210 What is the definition of Executive agency?
- 792.211 What is the definition of tuition assistance program?
- 792.212 What is the definition of civilian employee?
- 792.213 What is the definition of a Federally sponsored child care center?
- 792.214 What is the definition of contractor?
- 792.215 What is the definition of a child?
- 792.216 What children are eligible for this subsidy?
- 792.217 What is a disabled child?
- 792.218 Are children enrolled in summer programs and part-time programs eligible?
- 792.219 Are part-time Federal employees eligible?

- 792.220 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?
- 792.221 What is the process for helping lower income employees with child care tuition?
- 792.222 Are agencies required to negotiate with their Federal labor organizations about the provisions of this law?
- 792.223 Are there any conditions which the child care provider must meet in order to participate in this program?
- 792.224 Is there a statutory cap on the amount or the percentage of child care tuition that will be subsidized? or to an organization that administers our program prior to the time the employee receiving tuition assistance has enrolled his or her child in the child care center or family child care home?
- 792.225 What is the definition of a lower income Federal employee and how is the amount of the tuition assistance subsidy determined?
- 792.226 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?
- 792.227 Are child care subsidies paid to the Federal employee using the child care?
- 792.228 May we disburse funds to a child care provider
- 792.229 How will the disbursement covered by §792.227 work where there is a Federally sponsored child care center in a multi-tenant building?
- 792.230 For how long will the tuition assistance be in effect for a Federal employee?
- 792.231 Can these funds be used for children of Federal employees who are already enrolled in child care?
- 792.232 Can we place special restrictions or requirements on the use of these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?
- 792.233 May we use the funds to improve the physical space of the family child care homes or child care centers?
- 792.234 For how long is the law effective?
- 792.235 Who will oversee the disbursement and use of these funds?

AUTHORITY: Sec. 201 of Pub. L. 91-616, 84 Stat. 1849, as amended and transferred to sec. 520 of the Public Health Services Act by sec. 2 (b)(13) of Pub. L. 98-24 (42 U.S.C. 290dd-1) and sec. 413 of Pub. L. 92-255, 86 Stat. 84, as amended and transferred to sec. 525 of the Public Health Service Act by sec. 2(b)(16)(A) of Pub. L. 98-24 (42 U.S. C. 290ee-1); Sec. 643, Pub. L. 106-58, 113 Stat. 477.

§ 792.101

5 CFR Ch. I (1-1-02 Edition)

Subpart A—Regulatory Requirements for Alcoholism and Drug Abuse Programs and Services for Federal Civilian Employees

§ 792.101 Statutory requirements.

Sections 290dd-1 and 290ee-1 of 42 United States Code, provide that the Office of Personnel Management shall be responsible for developing and maintaining, in cooperation with the Secretary of the Department of Health and Human Services, and with other Federal departments and agencies, appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and/or drug problems. To the extent feasible, agencies are encouraged to extend services to families of alcohol and/or drug abusing employees and to employees who have family members who have alcohol and/or drug problems. Such programs and services shall make optimal use of existing government facilities, services, and skills.

[50 FR 16692, Apr. 29, 1985]

§ 792.102 General.

It is the policy of the Federal Government to offer appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and/or drug problems. Short-term counseling and/or referral, or offers thereof, shall constitute the appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse, alcoholism, and/or drug abuse required under 42 U.S.C. 290dd-1(a) and 290ee-1(a). Federal departments and agencies must establish programs to assist employees with these problems in accordance with the legislation cited in § 792.101.

[50 FR 16692, Apr. 29, 1985]

§ 792.103 Coverage.

This part applies to all positions in Executive agencies as defined in section 105 of title 5 of the United States Code, and to those positions in the legislative and judicial branch of the Fed-

eral Government which are in the competitive service.

[49 FR 27921, July 9, 1984]

§ 792.104 Responsibilities of the Office of Personnel Management.

OPM shall provide overall leadership for the Government-wide alcoholism and drug abuse program in cooperation with the Secretary of Health and Human Services. To accomplish this, OPM shall develop and issue policy and program guidance, provide technical assistance to agencies, and determine the overall effectiveness of the Government-wide program, as well as those programs at individual agencies, based on program information required of agencies.

[49 FR 27921, July 9, 1984]

§ 792.105 Agency responsibilities.

(a) Agencies shall establish and administer programs through which practitioners who are knowledgeable in counseling and referral services can offer and provide employees who have alcohol and/or drug problems short-term counseling and/or referrals for long-term counseling or treatment.

(b) Agencies shall issue internal instructions implementing the requirements of 42 U.S.C. 290dd-1(a) and 290ee-1(a) and this regulation.

(c) Whenever a manager/supervisor becomes aware that a Federal employee's use of alcohol and/or drugs may be contributing to a performance or conduct deficiency, the manager/supervisor shall recommend counseling and refer the employee to the agency counseling program. If an employee fails to participate in any rehabilitative program or, having participated, the employee fails to bring conduct or performance up to satisfactory level, the agency shall evaluate the employee accordingly and initiate an appropriate performance-based or adverse action.

(d) As requested, agencies shall annually submit a report to OPM on their counseling activities for the past fiscal year at a time, and in a manner, set by OPM.

[49 FR 27921, July 9, 1984, as amended at 50 FR 16692, Apr. 29, 1985]

Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees—What Is the New Child Care Legislation and to Whom Does It Apply?

SOURCE: 65 FR 13660, Mar. 14, 2000, unless otherwise noted.

§ 792.200 To whom do “we”, “you”, and their variants apply?

Use of pronouns, “we,” “you,” and their variants throughout this part refers to the agency. OPM is always referred to as “OPM”.

§ 792.201 What does the new law permit?

Public Law 106–58 (113 Stat. 477) permits agencies to use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries, to improve the affordability of child care for lower income Federal employees. Employees can benefit from reduced tuition rates at Federal child care centers, non-Federal child care centers, and in family child care homes.

§ 792.202 What is the purpose of the new law?

The law is intended to make child care more affordable for lower income Federal employees through the use of agency appropriated funds.

§ 792.203 Should we notify anyone of our intention to initiate a program and when can the obligation be made?

Yes, you must provide notice to the House Subcommittee on Treasury, Postal Service and General Government and to the Senate Subcommittee on Treasury and General Government and to your appropriations subcommittees prior to the obligation of funds. This is a Congressional notification requirement. You must also notify OPM of your intention. Funds can be obligated immediately after notifications have occurred.

§ 792.204 Are there sample memoranda and other documents available to assist us with this process?

Yes, OPM will provide you with guidance that contains sample memoranda of understanding, sample marketing tools, sample tuition assistance applications, and models for determining tuition assistance eligibility. These materials can be found in “Guide for Implementing Child Care Legislation—Pub. L. 106–58, Sec. 643.” The Guide is available on OPM’s website, <http://www.opm.gov/wrkfam>. You may also obtain a copy by writing to OPM at: U.S. Office of Personnel Management, Family-Friendly Workplace Advocacy Office, 1900 E Street, NW., Room 7315, Washington, DC 20415.

§ 792.205 Are there additional materials necessary for the implementation of this process and are there any special reporting and oversight requirements related to this law?

Yes, you are responsible for tracking the utilization of your funds and reporting the results to OPM. OPM will provide you with a mandatory reporting form. OPM is required to provide a report to the appropriations committees no later than September 1, 2000. Therefore, you are required to report your results to OPM no later than August 1, 2000. OPM will provide you with guidance on this subpart.

§ 792.206 What are the benefits to an agency of providing such assistance to its lower income employees?

There are several benefits for the agencies beginning with improved recruitment and retention. Cost savings in recruitment and training can be significant. In addition, absenteeism rates related to child care problems can be reduced. Providing such subsidies can also increase morale, particularly among families who cannot afford the child care located at or near a child care center that is sponsored by their agency. The use of funds for lower income families who are enrolled or wish to enroll in Federal child care centers

§ 792.207

may help to increase the Federal participation rates where there is a regulatory requirement that at least 50 percent of the children enrolled have parents or guardians who are Federal employees.

§ 792.207 Which agency funds can be used for the purpose of this law?

You are permitted to use appropriated funds, including revolving funds, that are otherwise available to the agency for salaries and expenses.

[66 FR 705, Jan. 4, 2001]

§ 792.208 Are agencies required to participate in this program?

Agencies are not required to participate in this program. The decision to participate is left to the discretion of the agency. If an agency chooses to participate, it may not use funds other than those specified in § 792.207.

§ 792.209 How can agencies take advantage of this new law and when does this law become effective?

The law became effective as of September 29, 1999. Agencies are permitted to obligate funds beginning on March 14, 2000. Agencies can take advantage of this new law by notifying Congress and OPM of their intent.

§ 792.210 What is the definition of Executive agency?

The term *Executive agency* is defined by section 105 of title 5, United States Code, but does not include the General Accounting Office.

§ 792.211 What is the definition of tuition assistance program?

The term *tuition assistance program*, for the purposes of this subpart, means the program that results from the expenditure of agency funds to assist lower income Federal employees with child care costs, including, but not limited to, such activities as: determining which employees receive a subsidy, and the size of the subsidy each employee receives; distributing agency funds to participating providers; and tracking and reporting to OPM information such as total cost and employee utilization of the program.

5 CFR Ch. I (1–1–02 Edition)

§ 792.212 What is the definition of civilian employee?

The term *civilian employee*, for the purposes of this subpart, means all appointive positions in an Executive agency.

§ 792.213 What is the definition of a Federally sponsored child care center?

The term *Federally sponsored child care center*, for the purposes of this subpart, is a child care center that is located in a building or space that is owned or leased by the Federal government.

§ 792.214 What is the definition of contractor?

Sec. 643 of Public Law 106–58 says that child care services provided by contract are covered by this provision. The term *contractor* applies to an organization or individual who provides child care services for which Federal families are eligible. Child care *providers* that may provide services under contract include center-based child care and family child care homes. The term *provider* is typically used to denote contractor in the child care industry. For the purposes of this subpart, the term provider is used to denote both center-based child care and family child care homes.

§ 792.215 What is the definition of a child?

For the purposes of this subpart, a *child* is considered to be:

- (a) A biological child who lives with the Federal employee;
- (b) An adopted child;
- (c) A stepchild;
- (d) A foster child;
- (e) A child for whom a judicial determination of support has been obtained; or
- (f) A child to whose support the Federal employee who is a parent or legal guardian makes regular and substantial contributions.

§ 792.216 What children are eligible for this subsidy?

The law covers the children of Federal employees, excluding contract employees, from birth through age 13 and disabled children through age 18.

Office of Personnel Management

§ 792.225

§ 792.217 What is a disabled child?

For the purposes of this subpart a disabled child is defined as one who is unable to care for himself or herself based on a physical or mental incapacity as determined by a physician or licensed or certified psychologist.

§ 792.218 Are children enrolled in summer programs and part-time programs eligible?

Yes, Federal employees with children (birth through age 13 and disabled children through age 18) who are enrolled in summer care programs and part-time programs are eligible.

§ 792.219 Are part-time Federal employees eligible?

Yes, Federal employees who work part-time are eligible.

§ 792.220 Does the law apply only to on-site Federal child care centers that are utilized by Federal families?

No, the bill is broad in scope and includes non-Federal center-based child care as well as care in family child care homes, as long as they are licensed and/or regulated by the State and/or local regulating authorities.

§ 792.221 What is the process for helping lower income employees with child care tuition?

OPM guidance includes further explanation, but the process for the tuition assistance program can be summarized in 8 steps:

(a) After completing your collective bargaining obligations, where applicable, notify the Congressional committees (see § 792.203) and OPM of your decision to use a specific amount of appropriated funds for this purpose;

(b) Determine how you will structure the program and which tuition assistance model you will use;

(c) Determine how you will administer the program;

(d) Advertise the program;

(e) Conduct the application process;

(f) Make the tuition assistance determinations and notify the employees (parents are then charged a reduced tuition rate by the provider);

(g) Provide the funds to the provider or to an organization that will administer the program for you; and

(h) Report the results to OPM on the mandatory reporting form.

§ 792.222 Are agencies required to negotiate with their Federal labor organizations about the provisions of this law?

You are reminded of your obligation to negotiate or consult, as appropriate, with the exclusive representatives of your employees on the implementation of the regulations in this subpart under 5 U.S.C. 7117.

§ 792.223 Are there any conditions which the child care provider must meet in order to participate in this program?

Yes, the provider, whether center-based or family child care, must be licensed and/or regulated by the State and/or local authorities where the child care service is delivered.

§ 792.224 Is there a statutory cap on the amount or the percentage of child care tuition that will be subsidized?

No, the law does not specify a cap.

§ 792.225 What is the definition of a lower income Federal employee and how is the amount of tuition assistance subsidy determined?

Each agency makes the determination of the definition of *lower income* Federal employee. *Lower income* Federal employee can be defined by an agency in a number of ways. The process for determining both eligibility and the amount of tuition assistance subsidy for each family will usually involve consideration of total family income along with other factors such as total child care costs, depending on the tuition assistance model(s) you use. Agencies are not required to use one of the models that OPM suggests. If an agency uses a model OPM has suggested in its guidance, you may wish to change the threshold amounts, or percentages of total family income or other factors. In their guidance to this subpart, OPM will provide examples of models with detailed explanations. OPM's guidance on this subpart is a supplement to this subpart.

§ 792.226

(a) If the model or models you select includes a total family income threshold, you can use criteria such as those from:

(1) The Child Care Development Block Grant as defined (42 U.S.C. 9858);

(2) A formula based on a percentage of the State poverty level (as many States do for certain programs); or

(3) A set amount of total family income the agency chooses depending on the agency demographics and need to assist lower income Federal employees.

(b) Some models do not require a threshold amount, since eligibility is determined as a function of the relationship between total family income, actual child care tuition costs, and an amount or percentage the agency is willing to pay.

(c) In order to determine the amount of tuition assistance subsidy by which tuition will be reduced for a Federal employee, a number of approaches can be taken. The size of the subsidy is dependent on different income levels. It can be based on a tuition sliding scale such as that used in the military formula (10 U.S.C. 1791-1798); a formula based on a specific percentage of total family income the family is expected to pay with the agency paying the remaining amount; or a formula based on a specific percentage of child care tuition the family is expected to pay with the agency paying the remaining amount. Each of these approaches is based on different philosophical assumptions and it will be up to the agency to determine which model or models best fits its needs. The models are described in detail in OPM's guidance.

(d) Besides total family income, you may consider extraordinary financial situations to determine eligibility and the subsidy amount.

§ 792.226 Who determines if a Federal employee qualifies as a lower income employee and how is the program administered?

The agency or another appropriately identified organization determines eligibility using certain income and/or tuition criteria chosen by the agency. If the agency itself does not administer the program, it must select another organization to do so, using procedures

5 CFR Ch. I (1-1-02 Edition)

that are in accordance with the Federal Acquisition Regulations. Regardless of what organization administers the program, the model for determining both the tuition assistance eligibility and the amount of the subsidy is always determined by the Federal agency.

§ 792.227 Are child care subsidies paid to the Federal employee using the child care?

No, the child care subsidy is paid to the child care provider. If you choose to have an organization administer your program (see § 792.226), the subsidy is paid to the organization and they, in turn, pay the provider. In any case, the provider will invoice the organization that administers the program.

§ 792.228 May we disburse funds to a child care provider or to an organization that administers our program prior to the time the employee receiving tuition assistance has enrolled his or her child in the child care center or family child care home?

Yes, you may wish to disburse one lump sum to the organization administering the tuition assistance program and they will be responsible for tracking the utilization and providing you with regular reports. An agency contract should specify that any unexpended funds shall be returned to the agency after contract completion.

§ 792.229 How will the disbursement covered by § 792.227 work where there is a Federally sponsored child care center in a multi-tenant building?

In a multi-tenant building, funds from the agencies could be pooled together for the benefit of the employees qualified for tuition assistance.

§ 792.230 For how long will the tuition assistance be in effect for a Federal employee?

The tuition assistance, in the form of a reduced tuition rate, will be in effect from the time the decision for a particular Federal employee is made and the child is enrolled in the program, until the child is no longer enrolled, but not later than September 30, 2001. These funds are not available to pay

for services performed after September 30, 2001.

[66 FR 705, Jan. 4, 2001]

§ 792.231 Can these funds be used for children of Federal employees who are already enrolled in child care?

Yes, the funds can be used for children currently enrolled in child care as long as their families meet the tuition assistance eligibility requirements established by your agency.

§ 792.232 Can we place special restrictions or requirements on the use of these funds, and can we restrict the disbursement of such funds to only one type of child care or to one location?

(a) Yes, depending on your staffing needs and your employees' situations, including the local availability of child care, you may choose to place restrictions on the use of your funds in a number of ways including, but not limited to:

- (1) Fund Federal employees using family child care homes;
- (2) Fund Federal employees using your on-site child care center;
- (3) Fund Federal families using community, non-Federal child care centers; or
- (4) Restrict the use of such funds to one or more locations.

(b) It is up to you to determine whether there will be any restrictions on the use of your appropriated funds for child care tuition costs.

§ 792.233 May we use the funds to improve the physical space of the family child care homes or child care centers?

No, the legislation specifically addresses making the child care more affordable for lower income Federal employees.

§ 792.234 For how long is the law effective?

The law is effective for one year, ending September 30, 2001.

[66 FR 705, Jan. 4, 2001]

§ 792.235 Who will oversee the disbursement and use of these funds?

You will be responsible for tracking the utilization of these funds. OPM's

guidance which was issued on December 23, 1999, and which was reissued with updates on March 14, 2000, contains details about the oversight of this program and the mandatory reporting requirements. The guidance contains sample marketing materials, sample tuition assistance documents, the OPM reporting form, as well as suggestions for determining eligibility.

PART 831—RETIREMENT

Subpart A—Administration and General Provisions

- Sec.
- 831.101 Administration.
 - 831.102 Basic records.
 - 831.103 Evidence.
 - 831.104 Application.
 - 831.105 Computation of interest.
 - 831.106 Disclosure of information.
 - 831.107 Computation of time.
 - 831.109 Initial decision and reconsideration.
 - 831.110 Appeals.
 - 831.111 Employee deductions and agency contributions.
 - 831.112 Definitions of employee.
 - 831.113 Payments to children.
 - 831.114 Early retirement—major reorganization, major reduction in force, or major transfer of function.

Subpart B—Coverage

- 831.201 Exclusions from retirement coverage.
- 831.202 Continuation of coverage for food service employees of the House of Representatives.
- 831.203 Continuation of coverage for employees of the Metropolitan Washington Airports Authority.
- 831.204 Elections of retirement coverage under the District of Columbia Financial Responsibility and Management Assistance Act of 1995.
- 831.205 CSRS coverage determinations to be approved by OPM.

Subpart C—Credit for Service

- 831.301 Military service.
- 831.302 Unused sick leave.
- 831.303 Civilian service.
- 831.304 Service with the Cadet Nurse Corps during World War II.
- 831.305 Service with a nonappropriated fund instrumentality after June 18, 1952, but before January 1, 1966.
- 831.306 Service as a National Guard technician before January 1, 1969.
- 831.307 Contract service.