

## § 792.103

### § 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 Federal 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 must issue internal instructions implementing the requirements of 5 U.S.C. 7361-7363 and this subpart.

(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

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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; 77 FR 42908, July 20, 2012]

### Subpart B—Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

SOURCE: 77 FR 42908, July 20, 2012, unless otherwise noted.

#### § 792.201 Purpose.

The purpose of this subpart is to implement section 590(g) of title 40, United States Code, which permits an Executive agency to use appropriated funds to improve the affordability of child care for lower-income employees. The law applies to child care in the United States and in overseas locations. Employees can benefit from reduced child care rates at Federal child care centers, non-Federal child care centers, and in family child care homes.

#### § 792.202 Definitions.

In this subpart—

*Child* means a child who bears any of the following relationships to an employee, the employee's spouse, or the employee's domestic partner:

- (1) A biological child;
  - (2) An adopted child;
  - (3) A stepchild;
  - (4) A foster child;
  - (5) A child for whom a judicial determination of support has been obtained;
- or

(6) A child to whose support the employee, the employee's spouse, or the employee's domestic partner makes regular and substantial contributions.

*Child care provider* means an individual or entity providing child care services for which Federal employees' families are eligible. The provider must be licensed or regulated, and the provider's services can be provided in a Federally-sponsored child care center, a non-Federal center, or a family child care home.

*Child care subsidy program* means the program established by an agency in using appropriated funds, as provided

in this subpart, to assist lower-income employees with child care costs. The program can include such activities as determining which employees receive a subsidy and the size of their subsidies; distributing agency funds to participating providers; and tracking and reporting information to OPM such as total cost and employee use of the program.

*Disabled child* means a child who is unable to care for himself or herself because of a physical or mental condition as determined by a physician or licensed or certified psychologist.

*Domestic partner* means a person in a domestic partnership with an employee of the same sex.

*Domestic partnership* means a committed relationship between two adults of the same sex in which the partners—

(1) Are each other's sole domestic partner and intend to remain so indefinitely;

(2) Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);

(3) Are at least 18 years of age and mentally competent to consent to a contract;

(4) Share responsibility for a significant measure of each other's financial obligations;

(5) Are not married or joined in a civil union to anyone else;

(6) Are not the domestic partner of anyone else;

(7) Are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which the domestic partnership was formed;

(8) Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under 18 U.S.C. 1001, and that the method for securing such certification, if required, will be determined by the agency; and

(9) Are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

*Employee* means an employee as defined in section 2105 of title 5, United States Code.

*Executive agency* means an Executive agency as defined in 5 U.S.C. 105 but does not include the Government Accountability Office.

*Federally-sponsored child care center* means a child care center located in a building or space that is owned or leased by the Federal Government.

*OPM* means the U.S. Office of Personnel Management.

#### **§ 792.203 Child care subsidy programs; eligibility.**

(a)(1) An Executive agency may establish a child care subsidy program in which the agency uses appropriated funds, in accordance with this subpart, to assist lower-income employees of the agency with their child care costs. The assistance may be provided for both full-time and part-time child care, and may include before-and-after-school programs and daytime summer programs.

(2) Two or more agencies may pool their funds to establish a child care subsidy program for the benefit of employees who are served by a Federally-sponsored child care center in a multi-tenant facility.

(3)(i) Except as provided under paragraph (a)(3)(ii) of this section, an agency may impose restrictions on the use of appropriated funds for its child care subsidy program based on consideration of employees' needs, its own staffing needs, the local availability of child care, and other factors as determined by the agency. For example, an agency may decide to restrict eligibility for subsidies to—

(A) Full-time permanent employees;

(B) Employees using an agency on-site child care center;

(C) Employees using full-time child care; or

(D) Employees using child care in specific locations.

(ii) An agency may not limit the payment of subsidies to accredited child care providers.