

Office of Personnel Management

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intentions to file) any petition for review filed under 5 U.S.C. 7701(e)(1)(A), or

(3) When the applicant for employment or employee requests or reaches agreement with the agency that the interim relief ordered in the initial decision be cancelled;

(c) Interim relief shall entitle the applicant for employment or employee to the same compensation and benefits he or she would receive if the relief effected had not been on an interim basis except as provided in paragraph (f) of this section;

(d) An interim personnel action shall not be taken if the MSPB administrative judge, pursuant to 5 U.S.C. 7701(b)(2)(A)(i), determines that granting interim relief is not appropriate;

(e) An interim personnel action under this part shall not entitle the applicant for employment or employee to an award of back pay or attorney fees.

[57 FR 3712, Jan. 31, 1992, as amended at 59 FR 36353, July 18, 1994; 59 FR 65704, Dec. 21, 1994]

PART 792—FEDERAL EMPLOYEES' HEALTH, COUNSELING, AND WORK/LIFE PROGRAMS

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

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AUTHORITY: 5 U.S.C. 7361–7363; Sec. 643, Pub. L. 106–58, 113 Stat. 477; 40 U.S.C. 590(g).

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

§ 792.101 Statutory requirements.

Sections 7361 and 7362 of title 5, United States Code, provide that the Office of Personnel Management is responsible for developing and maintaining, in cooperation with the Secretary of the Department of Health and Human Services and with other agencies, appropriate prevention, treatment, and rehabilitation programs and services for Federal civilian employees with alcohol and drug abuse problems. To the extent feasible, agencies are encouraged to extend services to families (including domestic partners and their children) of alcohol and/or drug abusing employees and to employees who have family members (including domestic partners and their children) who have alcohol and/or drug problems. Such programs and services should make optimal use of existing Government facilities, services, and skills.

[77 FR 42907, July 20, 2012]

§ 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 drug problems. Short-term counseling or referral, or offers thereof, constitute the appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse, alcoholism, and drug abuse required under subchapter VI of chapter 73 of title 5, United States Code. Federal agencies must establish programs to assist employees with these problems in accordance with that subchapter.

[77 FR 42907, July 20, 2012]

§ 792.103 Coverage.

This part applies to all positions in Executive agencies as defined in section 105 of title 5 of the United States

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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.

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(b) Subject to any restrictions applicable under paragraph (a)(3)(i) of this section, an employee who qualifies as a lower-income employee under the agency's child care subsidy program is eligible to receive a child care subsidy for the care of each child under age 13 or, in the case of a disabled child, under age 18.

§ 792.204 Agency responsibilities; reporting requirement.

(a) Before funds may be obligated as provided in this subpart, an agency intending to initiate a child care subsidy program must provide notice to the Subcommittees on Financial Services and General Government of the House and Senate Appropriations Committees, as well as to OPM.

(b) Agencies must notify the committees referred to in paragraph (a) of this section and OPM annually of their intention to provide child care subsidies. Funds may be obligated immediately after the notifications have been made.

(c) Agencies are responsible for tracking the utilization of their funds and reporting the results to OPM in a manner prescribed by OPM.

(d) OPM will produce a biannual report on agencies' use of the authority to pay child care subsidies; however, OPM will collect annual data from the agencies.

EFFECTIVE DATE NOTE: At 80 FR 75786, Dec. 4, 2015, § 792.204 was amended by removing paragraph (d) and revising paragraph (c), effective Jan. 4, 2016. For the convenience of the user, the revised text is set forth as follows:

§ 792.204 Agency responsibilities; reporting requirement.

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(c) Agencies are responsible for tracking the utilization of their funds and reporting the results to OPM at such time and in such manner as OPM prescribes.

§ 792.205 Administration of child care subsidy programs.

(a) An agency may administer its child care subsidy program directly or by contract with another entity, using procedures prescribed under the Federal Acquisition Regulations. Regardless of what entity administers the program, the Federal agency is responsible

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for establishing how eligibility and subsidy amounts will be determined.

(b) An agency contract must specify that any unexpended funds will be returned to the agency after the contract is completed.

§ 792.206 Payment of subsidies.

(a) Payment of child care subsidies must be made directly to child care providers, unless one of the following exceptions applies:

(1) In overseas locations, the agency may pay the employee if the provider deals only in foreign currency.

(2) In unique circumstances, an agency may obtain written permission from OPM to pay the employee directly.

(b) An agency may make advance payments to a child care provider in certain circumstances, such as when the provider requires payment up to one month in advance of rendering services. An agency may not make advance payments for more than one month before the employee receives child care services except where an agency has contracted with another entity to administer the child care subsidy program, in which case the agency may advance payments to the entity administering the program as long as the requirements in § 792.205(b) are met.

PART 831—RETIREMENT

Subpart A—Administration and General Provisions

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