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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 792

RIN 3206-AJ77

Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule, with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to revise the final regulations issued March 14, 2000, implementing the child care subsidy program legislation. We are issuing interim regulations because Congress made permanent the law authorizing agencies in the executive branch of the Federal Government to assist lower income employees with their child care costs, thus making child care more affordable for those employees. OPM also is issuing these revisions as part of a broader review of OPM's regulations to make the regulations more readable.

DATES: The regulations will become effective March 24, 2003, and comments must be received on or before May 23, 2003.

ADDRESSES: Send or deliver comments to: U.S. Office of Personnel Management, 1900 E St., NW., Room 7315, Washington, DC 20415, Attn. Bonnie Storm. Comments may also be submitted by email to bstorm@opm.gov.

FOR FURTHER INFORMATION CONTACT: Bonnie Storm by telephone at (202) 606-1313; by fax (202) 606-2091; or by email at bstorm@opm.gov.

SUPPLEMENTARY INFORMATION: OPM is issuing interim regulations to revise the rules included in 5 CFR part 792. Congress enacted Public Law 106-58, section 643, on September 29, 1999,

which allowed executive agencies to use appropriated funds to assist their lower income Federal employees with the costs of child care. The authority was first established as a pilot program effective from March 14, 2000, until September 30, 2001.

OPM issued regulations to implement the authority, and they were published in the **Federal Register** on March 14, 2000. The authority for the child care subsidy program was made permanent on November 12, 2001, by § 630, Public Law 107-67, the 2001 Treasury and General Government Appropriations Act. These interim regulations address the permanency of this legislation by deleting irrelevant dates, changing the Public Law number, and deleting references to the law as new (§ 792.201; § 792.202; § 792.204; § 792.209; § 792.214). Additionally, the law now authorizes advance payments to child care providers under certain circumstances as described in § 792.231. Revisions make the regulations easier to understand by substituting the words "child care subsidy" for "tuition assistance" to avoid any confusion associated with educational programs versus custodial care programs.

The regulations clarify that agencies must use child care providers that meet State and local licensing standards, and that employees are free to choose among both accredited and non-accredited providers in order to qualify. OPM wants to ensure that Federal employees have the widest possible choice in child care providers by making clear that all State and locally licensed or regulated child care providers, meaning those subject to the State and local standards of safety and care for children, qualify under the program.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Pursuant to section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because it is necessary for agencies to budget for and implement a child care subsidy program in FY2003.

The interim regulations are amended as follows:

Section 792.201—(interim § 792.200) Overseas locations: During the pilot program from March 14, 2000, to September 30, 2001, agencies asked OPM to address implementation of this

legislation in overseas locations and the revisions clarify that the legislation applies to overseas locations.

Section 792.201 and Sec. 792.218—(interim § 792.200 and § 792.216) Eligible programs: The revisions include a change in policy that the legislation applies to daytime summer programs and continues to apply to full-time and part-time care, including before and after school programs.

Section 792.203—(interim § 792.202) Notification to Congress: The revisions clarify that notification to Congress is an annual obligation.

Section 792.205—(interim § 792.204) Data collection: The revisions state that OPM will collect data annually for a report the agencies can use.

Section 792.206—(no interim section) Benefits to the agency: This section has been removed from the regulations and is included in OPM's child care subsidy program guidance.

Section 792.207—(interim § 792.205) Use of funds: The revisions clarify that the agencies may use appropriated funds ordinarily used for salaries as well as funds for expenses.

Section 792.212—(interim § 792.210) Definition of civilian employee: The revisions clarify that private contractors are not eligible for the child care subsidy program.

Section 792.214—(interim § 792.212) Definition of contractor: The revisions make the definition more readable by removing redundancies.

Section 792.217—(interim § 792.215) Definition of a child with a disability: The revisions make the definition more readable.

Section 792.221—(no interim section) The process for helping lower income employees with child care subsidy: We removed this section from the regulations and included it in OPM's child care subsidy program guidance.

Section 792.223—(interim § 792.220) Are there any conditions which the child care provider must meet in order to participate in this program: Has been revised to rename the section for clarity purposes to "What are the requirements that child care providers must meet in order to participate in this program?"

Revisions also clarify that overseas agencies do not have to be state licensed and/or regulated and that agencies must not restrict the use of funds to apply to accredited child care providers only.

Section 792.225—(interim § 792.222) Definition of lower income Federal