

§ 792.215 What is the definition of a child with disabilities?

For the purpose of this subpart, a *child with disabilities* 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.

§ 792.216 Are Federal employees with children who are enrolled in summer programs and part-time programs eligible for the child care subsidy program?

Federal employees with children (birth through age 13) and children with disabilities (children through age 18) who are enrolled in daytime summer programs and part-time programs such as before and after school programs are eligible for the child care subsidy program. The summer and part-time programs must be licensed and/or regulated.

§ 792.217 Are part-time Federal employees eligible for the child care subsidy program?

Federal employees who work part-time are eligible for the child care subsidy program.

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

The bill includes non-Federal center-based child care as well as care in family child care homes, as long as the providers are licensed and/or regulated by the State and/or local regulating authorities.

§ 792.219 Are agencies required to negotiate with their Federal labor organizations concerning the implementation of this law?

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

§ 792.220 What are the requirements that child care providers must meet in order to participate in this program?

The provider, whether center-based or family child care, must be licensed and/or regulated by the State and, where applicable, by local authorities where the child care service is delivered. Outside of the United States, agencies may adopt or create criteria to ensure a child care center or family child care home is safe. Agencies must not restrict the use of funds to apply to accredited child care providers only.

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

The law does not specify a cap on the amount or percentage of child care subsidy that may be subsidized.

§ 792.222 What is the definition of a lower income Federal employee and how is the amount of the child care subsidy determined?

Each agency decides who qualifies as a *lower income Federal employee* within that agency. OPM has provided guidance for determining eligibility in the "Guide for Implementing Child Care Legislation—Public Law 107-67, Sec. 630." This publication is available on OPM's Web site, <http://www.opm.gov/wrkfam>.

§ 792.223 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 subsidy program criteria chosen by the agency. If the agency itself does not administer the program, it must select another organization to do so, using procedures that are in accordance with the Federal Acquisition Regulations. Regardless of what organization administers the program, the model for determining both the subsidy program eligibility and the amount of the subsidy is always determined by the Federal agency.

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

Agencies must pay the child care provider directly, unless one of the following exceptions applies:

- (a) If an agency chooses to have an organization administer its program (see § 792.223), the organization pays the child care provider;
- (b) For overseas locations, the agency may choose to pay the employee if the provider deals only in foreign currency; or
- (c) In unique circumstances, an agency may obtain written permission from OPM to do so.

§ 792.225 May an agency disburse funds to an organization that administers the child care subsidy program prior to the time the employee receives the child care services?

The agency may disburse funds to an organization that administers the child care subsidy program in one lump sum. The organization will be responsible for tracking the funds and providing the agency with regular reports. An agency contract should specify that any unexpended funds shall be returned to

the agency after the contract is completed.

§ 792.226 How may an agency disburse funds to a Federally sponsored child care center in a multi-tenant building?

In a multi-tenant building, funds from the agencies may be pooled together for the benefit of the employees qualified for the child care subsidy program.

§ 792.227 How long will the child care subsidy program be in effect for a Federal employee?

The child care subsidy program, in the form of a reduced child care cost rate, shall be in effect from the time the agency makes a decision for a particular Federal employee and the child is enrolled in the program until one of the following occurs:

- (a) The child is no longer enrolled in the program;
- (b) The employee no longer qualifies as a "lower income employee"; or
- (c) The agency no longer has a child care subsidy program.

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

The funds may be used for children currently enrolled in child care as long as their families meet the child care subsidy program eligibility requirements established by the agency.

§ 792.229 May an agency place restrictions or requirements on the use of these funds, and may the agency restrict the disbursement of such funds to only one type of child care or to one location?

(a) Depending on the agency's staffing needs and the employees' own needs, including the local availability of child care, the agency may choose to place restrictions on the use of its funds for the child care subsidy program. For example, an agency may decide to restrict use to the following:

- (1) Federal employees who are full-time permanent employees;
- (2) Federal employees using an agency on-site child care center;
- (3) Federal employees using full-time child care; or
- (4) Federal employees using child care in specific locations.

(a) With the exception of § 792.229(c) an agency may determine whether and what restrictions to impose on the use of appropriated funds for the child care subsidy program.

(b) Agencies must not restrict the use of funds to apply to accredited child care providers only.