

U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C. 20250

<b>DEPARTMENTAL REGULATION</b>		<b>Number:</b> 4080-811-01
<b>SUBJECT:</b> USDA Child Care Tuition Assistance Program	<b>DATE:</b> August 23, 2002	
	<b>OPI:</b> Office of Human Resources Management	

**1 PURPOSE**

The regulation sets forth the authority, policy, and procedures for implementing the Department of Agriculture (USDA) Child Care Tuition Assistance Program (CCTAP).

**2 POLICY**

Section 630 of Public Law Number 107-67, the Treasury and General Government Appropriations Act, 2002, permanently authorizes Executive agencies that provide or propose to provide child care services for Federal employees to use appropriated funds otherwise available to such agency for salaries and expenses to provide child care in a Federal or leased facility, or through contract, for civilian employees of such agency.

USDA supports programs that provide child care tuition assistance to lower income employees and that allows them to receive quality child care services. We also recognize that this program assists in the recruitment and retention of employees while also improving morale.

Mission areas/agencies/staff offices are authorized to provide child care tuition assistance, and may use appropriated funds, including revolving funds, that are otherwise available to agencies for salaries and expenses, to assist lower income Federal employees with the cost of child care in child care centers and licensed family child care homes. Each mission area/agency/staff office that provides child care tuition assistance will comply with the USDA CCTAP procedures (Appendix A) to ensure that the program may be treated as a dependent care assistance program under Section 129 of the Internal Revenue Code.

**3 DEFINITIONS**

See Appendix A for definitions related to the USDA CCTAP.

#### **4 AUTHORITIES**

- a Section 630 of Public Law Number 107-67, Treasury and General Government Appropriations Act, 2002.
- b 5 CFR 792, Office of Personnel Management regulation implementing the child care tuition assistance legislation.
- c Section 129 of the Internal Revenue Code.

#### **5 REFERENCES**

- a Office of Personnel Management Guide for Implementing the Child Care Legislation dated March 2000.
- b USDA Child Care Tuition Assistance Program procedures (Appendix A).

#### **6 RESPONSIBILITIES**

- a The Assistant Secretary for Administration (ASA) will:  
  
Advise the Secretary of Agriculture, mission area/agency heads, and staff office directors in the development and implementation of policies, programs, and oversight of the USDA child care tuition assistance program.
- b The Director, Office of Human Resources Management (OHRM) will:
  - (1) Advise the ASA in planning, developing, and implementing policies, programs, and system to manage the USDA child care tuition assistance programs; and,
  - (2) Provide and interpret USDA policies and standards for child care tuition assistance programs.
  - (3) Track the funds used in the CCTAP and annually report the results to the Office of Personnel Management.

c The Director, Safety, Health and Employee Welfare Division will:

- (1) Provide oversight of the CCTAP; and,
- (2) Provide agency officials with technical assistance and consultative services for complex child care tuition assistance issues.

d Mission Areas/Agency Heads/Staff Office Heads will:

- (1) Administer the child care tuition assistance program, when feasible, and when it will not have a negative impact on the mission.
- (2) Follow the CCTAP procedures in Appendix A when implementing the child care tuition assistance program including the format of Appendix B; and the “Model Eligibility and Benefits Schedule” of Appendix C, when feasible, to implement the program.
- (3) Designate a CCTAP Coordinator to oversee the program.
- (4) Utilize a single contractor whenever possible to administer the program in order to reduce administrative costs.
- (5) Submit a copy of their CCTAP to the Director of OHRM/SHEWD; Room 3027, South Building, Washington, D.C. 20250-9606, for review prior to implementation.
- (6) Once approved by OHRM, the mission area/agency/staff office’s CCTAP will become a part of the USDA CCTAP and included in Appendix A. Any changes to the CCTAP must be provided to the CCTAP Administrator.
- (7) Ensure any labor-management relations obligations are fulfilled prior to implementing the CCTAP.
- (8) Track the utilization of the funds in the CCTAP and annually report the results to OHRM.

**7 INQUIRIES**

Direct all inquiries to the Office of Human Resources Management; Safety, Health and Employee Welfare Division; Room 3027 South Building, Washington, D.C. 20250; telephone number (202) 720-8248.

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**Appendix A****CHILD CARE TUITION ASSISTANCE PROGRAM****ARTICLE 1 – PURPOSE OF THIS PROGRAM**

- 1.1. The Department of Agriculture (hereafter referred to as USDA) establishes this program under Public Law 107-67, Section 630, to subsidize a portion of the cost of dependent care incurred by USDA's employees.
- 1.2. USDA also intends that the program qualify as a program providing dependent care assistance under Internal Revenue Code Section 129. Only the subsidies provided under these procedures for eligible child care expenses on behalf of a qualifying child who is also a qualifying dependent will be eligible for exclusion from the participant's gross income under Section 129(a). Subsidies disbursed on behalf of a qualifying child who is not also a qualifying dependent must be included in the participant's gross income.

**ARTICLE 2 – DEFINITIONS**

- 2.1. "Benefits" means the amounts paid to participants under the plan to subsidize eligible child care expenses paid or incurred by the participant.
- 2.2. "Child" means a member of a household maintained by an employee who bears the following relationship to the employee:
  - (a) A biological child who lives with the 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 employee who is a parent or legal guardian makes regular and substantial contributions.
- 2.3. "Child Care Tuition Assistance Program Administrator" (CCTAP Administrator) means the Director of the Office of Human Resources Management (OHRM), who oversees the program and assures that child care tuition assistance offered by the organization meets all requirements of these procedures. Mission Areas/Agency Heads and Staff Office Directors implementing the child care tuition assistance program may designate a program administrator for their organization.

- 2.4. “Child Care Tuition Assistance Program Coordinator” (CCTAP Coordinator) means the official within each organization who has been authorized to implement child care subsidies under this program for employees within that organization.
- 2.5. “Code” means the Internal Revenue Code of 1986, as amended.
- 2.6. “Dependent” means any individual who is a dependent of a participant within the meaning of Code Section 152(a).
- 2.7. “Earned Income” means all income, as defined under Code Section 32 (c)(2), including from wages, salaries, tips and other employee compensation, and net earnings from self-employment, but does not include any amounts received: (i) as pre-tax benefits under Code Section 129 on behalf of a qualifying dependent under the CCTAP or any other dependent care assistance program; (ii) as a pension or annuity; or (iii) as unemployment or workers’ compensation.
- 2.8. “Educational Institution” means any college or university, the primary function of which is the presentation of a formal instruction and that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on.
- 2.9. “Effective Date” means (date selected for start of program).
- 2.10. “Eligible Child Care Expenses” means expenses incurred by a participant for qualifying services which are paid to a qualifying provider who is not: (i) a dependent of a participant or a dependent of the spouse of a participant, (ii) a child of a participant under the age of 19, and which are incurred to enable the participant or the participant’s spouse to be gainfully employed.
- 2.11. “Eligible Employee” means an individual employed on a full-time or part-time basis by an organization of USDA which offers child care subsidies, and meeting the eligibility requirements described in the employing organization CCTAP.
- 2.12. “Employee” means an employee of USDA.
- 2.13. “Highly Compensated Employee” means any person who is a highly compensated employee as defined in Code Section 414(q).
- 2.14. “Maintaining a Household” means that an employee or, if married, an employee and spouse together, furnish over one half the cost of maintaining a household.

- 2.15. "Organization" means a major component of USDA such as a mission area, agency, Departmental Staff Office, or Office of the Secretary.
- 2.16. "Participant" means any employee who has satisfied the eligibility requirements of Section 3.1, who has made application and been accepted by the CCTAP Coordinator for benefits under this program.
- 2.17. "Program" means the USDA Child Care Tuition Assistance Program.
- 2.18. "Program Year" means the 12-month period commencing on January 1 and ending on December 31.
- 2.19. "Qualifying Child" means a child of a participant who is: (i) age 13 or younger; or (ii) under age 18 and is physically or mentally incapable of caring for himself or herself.
- 2.20. "Qualifying Day Care Center" means a day care center, as described in Code Section 21 and regulations there under, that (i) complies with all applicable laws and regulations of the State and town, city or village in which it is located, (ii) is licensed to provide day care services in the state or location in which the day care center operates, (iii) provides care for more than six individuals (other than individuals who reside at the day care center) and (iv) receives a fee, payment or grant for services for any of the individuals to whom it provides services (regardless of whether the facility is operated for a profit).
- 2.21. "Qualifying Dependent" means: (i) a dependent of a participant who is under the age of 13; or (ii) a dependent of a participant who is under the age of 18 and who is physically or mentally incapable of caring for himself or herself.
- 2.22. "Qualifying Provider" for subsidies paid out of appropriated funds means an individual or a qualifying day care center licensed to provide child care services in the State or location in which they operate.
- 2.23. "Qualifying Services" means services performed:
- (a) In the home of the participant, or outside the home of the participant, or at a qualifying day care center;
  - (b) For the care of a qualifying child or qualifying dependent of the participant;
  - (c) To enable the participant or the participant's spouse to remain gainfully employed; and
  - (d) For the primary purpose of assuring the qualifying child's or qualifying dependent's well being and protection.

Qualifying services do not include services provided at a camp where the qualifying child or qualifying dependent stays overnight.

- 2.24. "Spouse" means the husband or wife of a participant but does not include an individual legally separated from a participant under a decree of legal separation.
- 2.25. "Student" means an individual who during each of five calendar months during a plan year is a full-time student at an educational institution.
- 2.26. "USDA" means Department of Agriculture.

### **ARTICLE 3 – ELIGIBILITY AND PARTICIPATION**

- 3.1. All employees employed by an organization that has a child care tuition assistance program will receive at least an annual notice in writing or electronically of their potential eligibility for child care tuition assistance.
- 3.2. An employee who is employed by an organization that has a child care tuition assistance program and meets the eligibility requirements described in the CCTAP is an eligible employee.
- 3.3. An employee is eligible for this program immediately upon becoming an eligible employee.
- 3.4. An eligible employee will become a participant in the program upon application for benefits, and approval by the organization's CCTAP Coordinator.
- 3.5. If participant ceases to be an eligible employee, he or she will no longer be eligible to receive benefits under the program. If the employee again becomes an eligible employee, he or she may again become a participant in the program by applying and being accepted.

### **ARTICLE 4 – BENEFITS**

- 4.1. A participant in the program will be eligible to receive benefits under the procedures for all eligible child care expenses incurred by the participant or his or her spouse subject to the limitations of Article 6.
- 4.2. Benefit Amounts.
  - (a) Benefits will be provided as a percentage of the eligible child care expenses according to a schedule based on the participant's total family income.



- (b) The organization's CCTAP Coordinator may adjust their organization's schedules in their CCTAP as necessary based on the availability of funding for the program and to maintain an equitable distribution of benefits for all eligible employees,
  - (c) As changes are made, organizations will issue amendments to their programs noting the effective date and provisions of the adjusted benefits.
- 4.3. A participant will be entitled to benefits under these procedures only for eligible child care expenses incurred after the later of; (a) the date he or she becomes a participant in the program; or (b) the effective date of the program.
- 4.4. Each participant who desires to receive a benefit under the program for eligible child care expenses incurred by the employee for qualifying services must submit to his/her CCTAP Coordinator, on a form to be provided by the Coordinator, a statement containing the following information:
- (a) Name, home address and employment information for each of the child's parents;
  - (b) Name, date of birth, child care enrollment information and weekly cost for each child to be covered;
  - (c) Gross annual salaries of the father, mother and/or guardian, as appropriate, and total gross family income as reported on the most recent Federal income tax return;
  - (d) Amount and source of any other State, county or local child care subsidies or tuition assistance;
  - (e) Completed and signed child care provider information form, along with proof of the provider's licensure and the provider's Federal tax identification number; and
  - (f) Such other information or documents as the CCTAP Coordinator may require to administer the plan.
- 4.5. Following receipt of the information required in Section 4.4, the CCTAP Coordinator will notify the participant whether he or she is eligible to receive benefits.
- 4.6. Approval for and payment of benefits will be subject to the availability of appropriated funds, including revolving funds.
- 4.7. If a participant ceases to be an eligible employee:

- (a) No benefits will be paid for eligible child care expenses incurred after the date the participant ceases to be an eligible employee; and
  - (b) Unless the participant was discharged from employment for cause, requests for benefits may be made after the date of termination for eligible child care expenses incurred prior to the date of termination.
- 4.8. The participant is responsible for notifying his/her CCTAP Coordinator immediately of any change to information submitted for the purpose of qualifying for benefits.

#### **ARTICLE 5 – AUTHORIZATION AND PAYMENT OF BENEFITS**

- 5.1. At the end of each calendar month, the CCTAP Coordinator will send an invoice approval form to the qualifying provider named by the participant on his or her benefits application.
- 5.2. The qualifying provider will certify on the invoice approval form that the qualifying services for that billing period were actually performed on behalf of the participant's qualifying child.
- 5.3. The participant will certify on the invoice approval form that the participant's qualifying child in fact received the qualifying services for that billing period.
- 5.4. The qualifying provider will then submit the completed invoice approval form to the CCTAP Coordinator for review and payment.
- 5.5. The CCTAP Coordinator will review the submitted invoice approval form and may pay the benefit amount directly to the qualifying provider. Any amounts due the qualifying provider over and above that paid by the CCTAP Coordinator is the sole responsibility of the participant.

#### **ARTICLE 6 - LIMITATIONS ON BENEFITS**

- 6.1. The following amounts will not be subject to exclusion from the participant's gross income:
- (a) Benefits payable for eligible child care expenses on behalf of a qualifying child who is not a qualifying dependent; or
  - (b) Benefits payable for eligible child care expenses that exceed the following maximum amounts for the program year:
    - (i) For a participant who is not married at the close of the calendar year, the lesser of the participant's earned income for the program year (after all reductions in compensation), or \$5,000;

- (ii) For a participant who is married at the close of the program year, the least amount of the following:
  - (a) The participant's earned income for the calendar year;
  - (b) The earned income of the participant's spouse for the calendar year;
  - (c) \$5,000, if the participant and his or her spouse file a joint Federal income tax return; or
  - (d) \$2,500, if the participant and his or her spouse file a separate Federal income tax returns.

If the foregoing amounts are changed by an amendment to Code Section 129, the amounts set forth shall be adjusted automatically to reflect the new amounts.

- 6.2. For purposes of Section 6.1, a spouse of a participant who is not employed during any month in which the participant incurs eligible child care expenses, and which spouse is either physically or mentally incapable of caring for himself or herself or is a student, will be deemed to have earned income for such month of:
  - (a) \$200, if there is one qualifying dependent for whom the participant incurs eligible child care expenses; or
  - (b) \$400, if there is more than one qualifying dependent for whom the participant incurs eligible child care expenses.
- 6.3. In accordance with Code Section 129(d), the average benefits provided to participants who are not highly compensated employees will be at least 55 percent of the average benefits provided to highly compensated employees. The organization's CCTAP Coordinator may adjust the benefits payable to highly compensated employees to assure that the program remains in compliance with this provision.

## **ARTICLE 7 – FUNDING**

- 7.1. USDA organizations that offer child care tuition assistance will authorize the amounts required to pay benefits under these procedures from appropriated funds, including revolving funds. There will be no special fund out of which benefits are paid, nor will participants be required to make a contribution as a condition of receiving benefits.

**ARTICLE 8 – PLAN ADMINISTRATION**

- 8.1. USDA will administer the CCTAP according to its terms and subject to applicable law, for the exclusive benefit of persons entitled to participate in the program, without discrimination among them. In addition to all other powers provided by these procedures, USDA has authority to:
- (a) Make and enforce rules and regulations as it deems necessary or proper to efficiently administer the CCTAP;
  - (b) Interpret the program in good faith, and its interpretations will be final and conclusive on all persons claiming benefits under the CCTAP;
  - (c) Decide all questions concerning the plan and the eligibility of any person to participate in the CCTAP;
  - (d) Appoint agents, counsel, accountants, consultants and other persons as needed to help administer the CCTAP; and
  - (e) Allocate and delegate, in writing, its responsibilities under the CCTAP.
- 8.2. Organizations which elect to offer child care tuition assistance under this CCTAP must submit to the CCTAP Administrator a statement in a format prescribed by the CCTAP Administrator (Appendix B) that includes:
- (a) The formula for determining eligibility for child care subsidies in that organization;
  - (b) Procedures for notifying employees of the availability of benefits;
  - (c) The application process;
  - (d) The name, phone number and mailing address of the Child Care Tuition Assistance Program Coordinator;
  - (e) Whether the program will be administered in-house or under contract;
  - (f) The name and mailing address of the official designated to serve as the reviewing official for denial of claims under Article 9 below, if different from the CCTAP Coordinator;
  - (g) The effective date of the program; and
  - (h) The signature of the organization's head, or the person delegated authority to act in his/her behalf, and effective date of the program.

- 8.3. USDA organizations will make available to each eligible employee such records under the CCTAP as pertains to the eligible employee, by request under the Privacy Act.
- 8.4. In administering the program, OHRM will be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, counsel or other experts employed or engaged, by USDA.
- 8.5. Whenever, in the administration of the program, any discretionary action by USDA organizations are required, USDA organizations will exercise their authority in a nondiscriminatory manner so that all persons similarly situated will receive substantially the same treatment.
- 8.6. The CCTAP Coordinators will provide to each participant a statement of the amount of benefits received by the participant during the program year. This statement will be furnished to the participant by January 31<sup>st</sup> following the end of the program year. The amount of child care tuition assistance provided to the employee will be reported on the employee's Form W-2.

#### **ARTICLE 9 – CLAIMS PROCEDURE**

- 9.1. A participant may make a claim for benefits by completing the invoice approval form in conjunction with the qualified provider, as described in Article 5.
- 9.2. If a claim is wholly or partially denied, notice of the decision will be furnished to the participant and to the qualifying provider within a reasonable period of time, not to exceed 90 days after receipt of the claim by the CCTAP Coordinator or his/her designee, unless special circumstances require an extension or time for CCTAP Coordinator or designee will notify the participant prior to the end of the initial 90-day period. The extension may not exceed 90 days from the end of the initial period. The notification will include:
  - (a) The specific reason(s) for the denial;
  - (b) A description of any additional information necessary to make a decision; and,
  - (c) An explanation of the program's claims review procedure, as described in Section 9.3.
- 9.3. If a claim is denied, the participant may request in writing that the CCTAP Coordinator [or reviewing official, as designated under Article 8.2(f)] review the claim. Upon receipt of a request for review, the CCTAP Coordinator or reviewing official will review the decision and respond to the participant within 60 days of receipt of the written request. If the CCTAP Coordinator or reviewing

official affirms the original denial of the claim, the participant may invoke the applicable grievance procedure, either:

- (a) The negotiated grievance procedure outlined in the collective bargaining agreement between the employing organization and the union for bargaining unit employees; or
  - (b) The administrative grievance procedure currently in effect in the organization for non-bargaining employees.
- 9.4. If a dispute arises on any matter under this program, the CCTAP Coordinator may refrain from taking any other or further action in connection with the matter involved in the controversy until the dispute has been resolved.

#### **ARTICLE 10 – AMENDMENT AND TERMINATION OF PLAN**

- 10.1. USDA may amend or terminate this program at any time. The benefits hereunder are not guaranteed and may be reduced by amendment to these procedures.

#### **ARTICLE 11 – MISCELLANEOUS PROVISIONS**

- 11.1. This program and the benefits it offers do not provide any additional rights to participants or employees other than those expressly set forth herein.
- 11.2. This program will be constructed administered and enforced according to the laws of the United States of America.

**Appendix B****CHILD CARE TUITION ASSISTANCE PROGRAM  
(INSERT MISSION AREA/AGENCY/STAFF OFFICE)****Appropriated Funds Program****I. Eligibility and Benefit Schedule**

Describe eligibility requirements and formula for determining level of child care tuition assistance.

**II. Notification**

USDA requires that employees receive due notification of the availability of the child care tuition assistance. Briefly describe your notification procedures. (Under the USDA Child Care Tuition Assistance Program there must be at least an annual notification).

**III. Program Administration and Application**

Describe how the program will be administered. If contracted, identify the contractor that will administer the program. Describe how employees may apply and where forms may be obtained.

**IV. Child Care Tuition Assistance Program Coordinator**

Provide the name, phone number and mailing address of the individual who will serve as the Child Care Tuition Assistance Program Coordinator for the mission area/agency/staff office.

**V. Systems Administrator**

Provide the title and mailing address of the individual who will serve as the Systems Administrator for the System of Records maintained in order to process applications for child care subsidies. The Department has a USDA-wide Notice of Systems of Record and will amend it to include each mission area/agency/staff office system.

**VI. Reviewing Official**

If someone other than the Child Care Tuition Assistance Program Coordinator is to serve as the reviewing official for purposes of claims denials, list that person's name, phone number and mailing address here.

VII. Appeals

Briefly describe the process for appealing a denial of claims.

VIII. Signature of Approval

Adopted to become effective as of **(insert date)** by:

(Insert Organization Name)

\_\_\_\_\_ Date: \_\_\_\_\_  
**(Signature of Mission Area Administrator/Agency Head/Staff Office Director or Person with Delegated Authority)**



**Appendix C****MODEL ELIGIBILITY AND BENEFIT SCHEDULE****CHILD CARE TUITION ASSISTANCE PROGRAM**

The following eligibility and benefit schedule is recommended for implementation by mission areas/agencies and staff offices implementing a child care tuition assistance program.

<b>If Eligible Employee's Total Family Income is <sup>1</sup></b>	<b>Then the Plan will pay this percentage of the Participant's Eligible Child Care Expenses<sup>2</sup></b>	<b>Monthly Subsidy Not to Exceed<sup>3</sup></b>
Less than \$39,000	50%	\$500.00
\$39,000 - \$51,000	30%	\$300.00
\$51,000 - \$59,999	20%	\$200.00

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<sup>1</sup>Total Family Income refers to line 22 on Internal Revenue Service (IRS) Tax Return Form 1040 or line 14 on IRS Tax Return Form 1040A.

<sup>2</sup>A Participant's Benefits under this program will be reduced by the amount of other state or local child care subsidies received by the Participant and will be paid directly to the child care provider.

<sup>3</sup>Subsidy Amounts apply to total costs of child care, not cost per child