

**(2) Limitations****(A) Reduction**

The amount of any reallocation to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 9858c(d) of this title.

**(B) Reallocments**

The amount of such reduction shall be similarly reallocated among States for which no reduction in an allotment or reallocation is required by this subsection.

**(3) Amounts reallocated**

For purposes of any other section of this subchapter, any amount reallocated to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

**(4) Indian tribes or tribal organizations**

Any portion of a grant or contract made to an Indian tribe or tribal organization under subsection (c) that the Secretary determines is not being used in a manner consistent with the provision of this subchapter in the period for which the grant or contract is made available, shall be allotted by the Secretary to other tribes or organizations that have submitted applications under subsection (c) in accordance with their respective needs.

**(f) "State" defined**

For the purposes of this section, the term "State" includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 97-35, title VI, §658O, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-246; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §613, Aug. 22, 1996, 110 Stat. 2286; Pub. L. 105-33, title V, §5602(4), Aug. 5, 1997, 111 Stat. 646; Pub. L. 106-78, title VII, §752(b)(17), Oct. 22, 1999, 113 Stat. 1170; Pub. L. 113-186, §9, Nov. 19, 2014, 128 Stat. 1998.)

## REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(3), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

## AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113-186, §9(1)(A), designated existing provisions as subpar. (A), inserted heading, substituted "2 percent" for "1 percent, and not more than 2 percent.", and added subpar. (B).

Subsec. (a)(3) to (5). Pub. L. 113-186, §9(1)(B), added pars. (3) to (5).

Subsec. (c)(2)(D). Pub. L. 113-186, §9(2)(A), added subpar. (D).

Subsec. (c)(6)(C). Pub. L. 113-186, §9(2)(B), added subpar. (C) and struck out former subpar. (C). Prior to amendment, text read as follows: "The Secretary may not permit an Indian tribe or tribal organization to use amounts provided under this subsection for construction or renovation if such use will result in a decrease

in the level of child care services provided by the tribe or organization as compared to the level of such services provided by the tribe or organization in the fiscal year preceding the year for which the determination under subparagraph (B) is being made."

1999—Subsec. (b)(3). Pub. L. 106-78 substituted "Richard B. Russell National School Lunch Act" for "National School Lunch Act".

1997—Subsec. (c)(6)(C). Pub. L. 105-33 substituted "subparagraph (B)" for "subparagraph (A)".

1996—Subsec. (a)(1). Pub. L. 104-193, §613(1)(A), made technical amendment to heading, inserted "and" before "the Commonwealth of the Northern Mariana Islands", and struck out "and the Trust Territory of the Pacific Islands" before "to be allotted in accordance".

Subsec. (a)(2). Pub. L. 104-193, §613(1)(B), substituted "less than 1 percent, and not more than 2 percent," for "more than 3 percent".

Subsec. (c)(5). Pub. L. 104-193, §613(2)(A), substituted "activities carried out" for "activities carried out".

Subsec. (c)(6). Pub. L. 104-193, §613(2)(B), added par. (6).

Subsec. (e)(4). Pub. L. 104-193, §613(3), added par. (4). 1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

## EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

**§ 9858n. Definitions**

As used in this subchapter:

**(1) Caregiver**

The term "caregiver" means an individual who provides a service directly to an eligible child on a person-to-person basis.

**(2) Child care certificate**

The term "child care certificate" means a certificate (that may be a check or other disbursement) that is issued by a State or local government under this subchapter directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider. Nothing in this subchapter shall preclude the use of such certificates for sectarian child care services if freely chosen by the parent. For purposes of this subchapter, child care certificates shall not be considered to be grants or contracts.

**(3) Child with a disability**

The term "child with a disability" means—

(A) a child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401);

(B) a child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.);

(C) a child who is less than 13 years of age and who is eligible for services under section 794 of title 29; and

(D) a child with a disability, as defined by the State involved.

**(4) Eligible child**

The term “eligible child” means an individual—

- (A) who is less than 13 years of age;
- (B) whose family income does not exceed 85 percent of the State median income for a family of the same size, and whose family assets do not exceed \$1,000,000 (as certified by a member of such family); and
- (C) who—
  - (i) resides with a parent or parents who are working or attending a job training or educational program; or
  - (ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

**(5) English learner**

The term “English learner” means an individual who is an English learner, as defined in section 7801 of title 20, or who is limited English proficient, as defined in section 9832 of this title.

**(6) Eligible child care provider**

The term “eligible child care provider” means—

- (A) a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—
  - (i) is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(F) of this title; and
  - (ii) satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(I) of this title;

applicable to the child care services it provides; or

- (B) a child care provider that is 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, if such provider complies with any applicable requirements that govern child care provided by the relative involved.

**(7) Family child care provider**

The term “family child care provider” means one individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in a private residence.

**(8) Indian tribe**

The term “Indian tribe” has the meaning given it in section 5304(e) of title 25.

**(9) Lead agency**

The term “lead agency” means the agency designated or established under section 9858b(a) of this title.

**(10) Parent**

The term “parent” includes a legal guardian, foster parent, or other person standing in loco parentis.

**(11) Scientifically valid research**

The term “scientifically valid research” includes applied research, basic research, and

field-initiated research, for which the rationale, design, and interpretation are soundly developed in accordance with principles of scientific research.

**(12) Secretary**

The term “Secretary” means the Secretary of Health and Human Services unless the context specifies otherwise.

**(13) Sliding fee scale**

The term “sliding fee scale” means a system of cost sharing by a family based on income and size of the family.

**(14) State**

The term “State” means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**(15) Tribal organization**

**(A) In general**

The term “tribal organization” has the meaning given it in section 5304(l) of title 25.

**(B) Other organizations**

Such term includes a Native Hawaiian Organization, as defined in section 4909(4)<sup>1</sup> of title 20 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

(Pub. L. 97-35, title VI, §658P, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-248; amended Pub. L. 102-401, §3, Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 103-171, §8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104-193, title VI, §614, Aug. 22, 1996, 110 Stat. 2287; Pub. L. 105-33, title V, §5602(5), Aug. 5, 1997, 111 Stat. 646; Pub. L. 113-186, §10, Nov. 19, 2014, 128 Stat. 2000; Pub. L. 114-95, title IX, §9215(p)(2), Dec. 10, 2015, 129 Stat. 2170.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in par. (3)(B), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Section 4909 of title 20, referred to in par. (15)(B), was repealed by Pub. L. 103-382, title III, §363, Oct. 20, 1994, 108 Stat. 3975.

AMENDMENTS

2015—Par. (5). Pub. L. 114-95 substituted “an individual who is an English learner, as defined in section 7801 of title 20, or who is limited English proficient, as defined in section 9832 of this title” for “an individual who is limited English proficient, as defined in section 7801 of title 20 or section 9832 of this title”.

2014—Pars. (3), (4). Pub. L. 113-186, §10(1), added pars. (3) and (4) and struck out former par. (4) which defined “eligible child”.

Par. (5). Pub. L. 113-186, §10(3), added par. (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 113-186, §10(2), (4), redesignated par. (5) as (6) and substituted “9858c(c)(2)(F)” for “9858c(c)(2)(E)” in subpar. (A)(i) and “9858c(c)(2)(I)” for

<sup>1</sup> See References in Text note below.

“9858(c)(2)(F)” in subpar. (A)(ii). Former par. (6) redesignated (7).

Pars. (7), (8). Pub. L. 113-186, §10(2), redesignated pars. (6) and (7) as (7) and (8), respectively. Former pars. (7) and (8) redesignated (8) and (9), respectively.

Par. (9). Pub. L. 113-186, §10(2), (5), redesignated par. (8) as (9) and substituted “designated or established under section 9858b(a)” for “designated under section 9858(a)”. Former par. (9) redesignated (10).

Par. (10). Pub. L. 113-186, §10(2), (6), redesignated par. (9) as (10) and inserted “, foster parent,” after “guardian”.

Pars. (11) to (15). Pub. L. 113-186, §10(7), (8), added par. (11) and redesignated former pars. (11) to (14) as (12) to (15), respectively.

1997—Par. (13). Pub. L. 105-33 substituted “and” for “or” after “American Samoa.”

1996—Par. (2). Pub. L. 104-193, §614(1), in first sentence, inserted “or as a deposit for child care services if such a deposit is required of other children being cared for by the provider” after “payment for child care services”.

Par. (3). Pub. L. 104-193, §614(2), struck out heading and text of par. (3). Text read as follows: “The term ‘elementary school’ means a day or residential school that provides elementary education, as determined under State law.”

Par. (4)(B). Pub. L. 104-193, §614(3), substituted “85 percent” for “75 percent”.

Par. (5)(B). Pub. L. 104-193, §614(4), inserted “great grandchild, sibling (if such provider lives in a separate residence),” after “grandchild,” struck out “is registered and” after “such provider”, and substituted “any applicable requirements” for “any State requirements”.

Par. (10). Pub. L. 104-193, §614(5), struck out heading and text of par. (10). Text read as follows: “The term ‘secondary school’ means a day or residential school which provides secondary education, as determined under State law.”

Par. (13). Pub. L. 104-193, §614(6), inserted “or” after “Samoa,” and struck out “, and the Trust Territory of the Pacific Islands” after “Northern Mariana Islands”.

Par. (14). Pub. L. 104-193, §614(7), designated existing text as subpar. (A), inserted heading, and added subpar. (B).

1993—Pars. (7), (14). Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, §8(c)(2). See 1992 Amendment note below.

1992—Pub. L. 102-401, §3(a), and Pub. L. 102-586, §8(c)(1), made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

Par. (7). Pub. L. 102-586, §8(c)(2)(A), as amended by Pub. L. 103-171, which directed the amendment of par. (7) by substituting “section 5304(e) of title 25” for “section 5304(b) of title 25”, could not be executed because the words “section 5304(b) of title 25” did not appear subsequent to execution of the amendment by Pub. L. 102-401, §3(b)(1). See below.

Pub. L. 102-401, §3(b)(1), substituted “section 5304(e) of title 25” for “section 5304(b) of title 25”.

Par. (14). Pub. L. 102-586, §8(c)(2)(B), as amended by Pub. L. 103-171, which directed the amendment of par. (14) by substituting “section 5304(l) of title 25” for “section 5304(c) of title 25”, could not be executed because the words “section 5304(c) of title 25” did not appear subsequent to execution of the amendment by Pub. L. 102-401, §3(b)(2). See below.

Pub. L. 102-401, §3(b)(2), substituted “section 5304(l) of title 25” for “section 5304(c) of title 25”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114-95, set out as a note under section 6301 of Title 20, Education.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Respon-

sibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102-586 effective Nov. 4, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 8(d) of Pub. L. 102-586, set out as a note under section 9858h of this title.

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

### § 9858o. Parental rights and responsibilities

#### (a) In general

Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

#### (b) Parental rights to use child care certificates

Nothing in this subchapter shall be construed in a manner—

(1) to favor or promote the use of grants and contracts for the receipt of child care services under this subchapter over the use of child care certificates; or

(2) to disfavor or discourage the use of such certificates for the purchase of child care services, including those services provided by private or nonprofit entities, such as faith-based providers.

(Pub. L. 97-35, title VI, §658Q, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-249; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 113-186, §11, Nov. 19, 2014, 128 Stat. 2001.)

#### AMENDMENTS

2014—Subsec. (a). Pub. L. 113-186 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

### § 9858p. Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter shall be severable.

(Pub. L. 97-35, title VI, §658R, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-249; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

#### AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.