

for child care slots that are not funded directly with assistance provided under this subchapter because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

**(3) Employment in general**

**(A) Prohibition**

A child care provider that receives assistance under this subchapter shall not discriminate in employment on the basis of the religion of the prospective employee if such employee's primary responsibility is or will be working directly with children in the provision of child care services.

**(B) Qualified applicants**

If two or more prospective employees are qualified for any position with a child care provider receiving assistance under this subchapter, nothing in this section shall prohibit such child care provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates such provider.

**(C) Present employees**

This paragraph shall not apply to employees of child care providers receiving assistance under this subchapter if such employees are employed with the provider on November 5, 1990.

**(4) Employment and admission practices**

Notwithstanding paragraphs (1)(B), (2), and (3), if assistance provided under this subchapter, and any other Federal or State program, amounts to 80 percent or more of the operating budget of a child care provider that receives such assistance, the Secretary shall not permit such provider to receive any further assistance under this subchapter unless the grant or contract relating to the financial assistance, or the employment and admissions policies of the provider, specifically provides that no person with responsibilities in the operation of the child care program, project, or activity of the provider will discriminate against any individual in employment, if such employee's primary responsibility is or will be working directly with children in the provision of child care, or admissions because of the religion of such individual.

**(b) Effect on State law**

Nothing in this subchapter shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this subchapter.

(Pub. L. 97-35, title VI, § 658N, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-245; 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.

**§ 9858m. Amounts reserved; allotments**

**(a) Amounts reserved**

**(1) Territories and possessions**

The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under this subchapter in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

**(2) Indians<sup>1</sup> tribes**

**(A) In general**

The Secretary shall reserve not less than 2 percent of the amount appropriated under section 9858 of this title in each fiscal year for payments to Indian tribes and tribal organizations with applications approved under subsection (c).

**(B) Limitations**

Notwithstanding subparagraph (A), the Secretary shall only reserve an amount that is greater than 2 percent of the amount appropriated under section 9858 of this title, for payments described in subparagraph (A), for a fiscal year (referred to in this subparagraph as the "reservation year") if—

- (i) the amount appropriated under section 9858 of this title for the reservation year is greater than the amount appropriated under section 9858 of this title for fiscal year 2014; and
- (ii) the Secretary ensures that the amount allotted to States under subsection (b) for the reservation year is not less than the amount allotted to States under subsection (b) for fiscal year 2014.

**(3) National toll-free hotline and Web site**

The Secretary shall reserve up to \$1,500,000 of the amount appropriated under this subchapter for each fiscal year for the operation of a national toll-free hotline and Web site, under section 9858j(b) of this title.

**(4) Technical assistance**

The Secretary shall reserve up to ½ of 1 percent of the amount appropriated under this subchapter for each fiscal year to support technical assistance and dissemination activities under paragraphs (3) and (4) of section 9858g(a) of this title.

**(5) Research, demonstration, and evaluation**

The Secretary may reserve ½ of 1 percent of the amount appropriated under this subchapter for each fiscal year to conduct research and demonstration activities, as well as periodic external, independent evaluations of the impact of the program described by this subchapter on increasing access to child care services and improving the safety and quality

<sup>1</sup> So in original. Probably should be "Indian".

of child care services, using scientifically valid research methodologies, and to disseminate the key findings of those evaluations widely and on a timely basis.

**(b) State allotment**

**(1) General rule**

From the amounts appropriated under section 9858 of this title for each fiscal year remaining after reservations under subsection (a), the Secretary shall allot to each State an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

**(2) Young child factor**

The term “young child factor” means the ratio of the number of children in the State under 5 years of age to the number of such children in all States as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

**(3) School lunch factor**

The term “school lunch factor” means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of such children in all the States as determined annually by the Department of Agriculture.

**(4) Allotment percentage**

**(A) In general**

The allotment percentage for a State is determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

**(B) Limitations**

If an allotment percentage determined under subparagraph (A)—

(i) exceeds 1.2 percent, then the allotment percentage of that State shall be considered to be 1.2 percent; and

(ii) is less than 0.8 percent, then the allotment percentage of the State shall be considered to be 0.8 percent.

**(C) Per capita income**

For purposes of subparagraph (A), per capita income shall be—

- (i) determined at 2-year intervals;
- (ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and
- (iii) equal to the average of the annual per capita incomes for the most recent pe-

riod of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

**(c) Payments for benefit of Indian children**

**(1) General authority**

From amounts reserved under subsection (a)(2), the Secretary may make grants to or enter into contracts with Indian tribes or tribal organizations that submit applications under this section, for the planning and carrying out of programs or activities consistent with the purposes of this subchapter.

**(2) Applications and requirements**

An application for a grant or contract under this section shall provide that:

**(A) Coordination**

The applicant will coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out programs or activities under this section.

**(B) Services on reservations**

In the case of an applicant located in a State other than Alaska, California, or Oklahoma, programs and activities under this section will be carried out on the Indian reservation for the benefit of Indian children.

**(C) Reports and audits**

The applicant will make such reports on, and conduct such audits of, programs and activities under a grant or contract under this section as the Secretary may require.

**(D) Licensing and standards**

In lieu of any licensing and regulatory requirements applicable under State or local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards that shall be applicable to Indian tribes and tribal organizations receiving assistance under this subchapter. Such standards shall appropriately reflect Indian tribe and tribal organization needs and available resources, and shall include standards requiring a publicly available application, health and safety standards, and standards requiring a reservation of funds for activities to improve the quality of child care services provided to Indian children.

**(3) Consideration of secretarial approval**

In determining whether to approve an application for a grant or contract under this section, the Secretary shall take into consideration—

(A) the availability of child care services provided in accordance with this subchapter by the State or States in which the applicant proposes to carry out a program to provide child care services; and

(B) whether the applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity.

**(4) Three-year limit**

Grants or contracts under this section shall be for periods not to exceed 3 years.

**(5) Dual eligibility of Indian children**

The awarding of a grant or contract under this section for programs or activities to be conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to participate in programs and activities carried out under a grant to the State or States under this subchapter.

**(6) Construction or renovation of facilities****(A) Request for use of funds**

An Indian tribe or tribal organization may submit to the Secretary a request to use amounts provided under this subsection for construction or renovation purposes.

**(B) Determination**

With respect to a request submitted under subparagraph (A), and except as provided in subparagraph (C), upon a determination by the Secretary that adequate facilities are not otherwise available to an Indian tribe or tribal organization to enable such tribe or organization to carry out child care programs in accordance with this subchapter, and that the lack of such facilities will inhibit the operation of such programs in the future, the Secretary may permit the tribe or organization to use assistance provided under this subsection to make payments for the construction or renovation of facilities that will be used to carry out such programs.

**(C) Limitation****(i) In general**

Except as provided in clause (ii), the Secretary may not permit an Indian tribe or tribal organization to use amounts provided under this subsection for construction or renovation if the use will result in a decrease in the level of child care services provided by the Indian tribe or tribal organization as compared to the level of child care services provided by the Indian tribe or tribal organization in the fiscal year preceding the year for which the determination under subparagraph (B) is being made.

**(ii) Waiver**

The Secretary shall waive the limitation described in clause (i) if—

(I) the Secretary determines that the decrease in the level of child care services provided by the Indian tribe or tribal organization is temporary; and

(II) the Indian tribe or tribal organization submits to the Secretary a plan that demonstrates that after the date on which the construction or renovation is completed—

(aa) the level of child care services will increase; or

(bb) the quality of child care services will improve.

**(D) Uniform procedures**

The Secretary shall develop and implement uniform procedures for the solicitation

and consideration of requests under this paragraph.

**(d) Data and information**

The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

**(e) Reallotments****(1) In general**

Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 9858c(d) of this title, in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

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

The amount of any reallotment 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) Reallotments**

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

**(3) Amounts reallotted**

For purposes of any other section of this subchapter, any amount reallotted 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, §6580, 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