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<p><i>Sec. 303.175 Policy for contracting or otherwise arranging for services.</i> Each application must include a policy that meets the requirements in Sec. 303.526.</p> <p><i>Sec. 303.526 Policy for contracting or otherwise arranging for services.</i> Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include:</p> <p>(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;</p> <p>(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and</p> <p>(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.</p> <p>Note: In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and individuals meet the requirements of this part.</p>	<p><i>§303.121 Policy for contracting or otherwise arranging for services.</i> <i>Each system must include a policy pertaining to the contracting or making of other arrangements with public or private individual or agency service providers to provide early intervention services in the State, consistent with the provisions of Part C of the Act, including the contents of the application, and the conditions of the contract or other arrangements. The policy must--</i></p> <p><i>(a) Include a requirement that all early intervention services must meet State standards and be consistent with the provisions of this part; and</i></p> <p><i>(b) Be consistent with The Education Department General Administrative Regulations in 34 CFR part 80.</i></p>	<p><i>§303.121 Policy for contracting or otherwise arranging for services.</i> Each system must include a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the State, consistent with the provisions of Part C of the Act, including the contents of the application, and the conditions of the contract or other arrangements. The policy must--</p> <p>(a) Include a requirement that all early intervention services must meet State standards and be consistent with the provisions of this part; and</p> <p>(b) Be consistent with the Education Department General Administrative Regulations in 34 CFR part 80.</p>

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<p><i>Sec. 303.528 Reimbursement procedures.</i> Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with Sec. 303.527(b).</p>	<p><u>§303.122 Reimbursement procedures.</u> <i>Each system must include procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with subpart F of this part.</i></p>	<p><u>§303.122 Reimbursement procedures.</u> Each system must include procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with subpart F of this part.</p>
<p><u>Sec. 303.143 Designation regarding financial responsibility.</u> Each application must include a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies.</p>	<p><u>§303.202 Certification regarding financial responsibility.</u> <i>Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under §303.511 and the lead agency’s contracts with EIS providers regarding financial responsibility for the provision of Part C services both meet the requirements in subpart F of this part (§§303.500 through 303.521) and are current as of the date of submission of the certification.</i></p>	<p><u>§303.202 Certification regarding financial responsibility.</u> Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under §303.511 and the lead agency’s contracts with EIS providers regarding financial responsibility for the provision of Part C services both meet the requirements in subpart F of this part (§§303.500 through 303.521) and are current as of the date of submission of the certification.</p>
	<p><u>§303.203 Statewide system and description of services.</u> Each application must include-- (a) A description of services to be provided under this part to infants and toddlers with disabilities and their families through the State’s system; (b) The State’s policies and procedures regarding the identification and coordination of all available resources within the State from Federal, State, local, and private sources (including any system of payments regarding the use of public insurance or benefits, private</p>	<p><u>§303.203 Statewide system and description of services.</u> Each application must include -- (a) A description of services to be provided under this part to infants and toddlers with disabilities and their families through the State’s system; (b) The State’s policies and procedures regarding the identification and coordination of all available resources within the State from Federal, State, local, and private sources as required under subpart F of this part and including--</p>

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	<p>insurance, or family costs or fees) as required under subpart F of this part; and</p> <p>(c) The State’s rigorous definition of developmental delay as required under §§303.10 and 303.111.</p>	<p>(1) Policies or procedures adopted by the State as its system of payments that meet the requirements in §§303.510, 303.520 and 303.521 (regarding the use of public insurance or benefits, private insurance, or family costs or fees); and</p> <p>(2) Methods used by the State to implement the requirements in §303.511(b)(2) and (b)(3); and</p> <p>(c) The State’s rigorous definition of developmental delay as required under §§303.10 and 303.111.</p>
<p>We have added a new §303.203(b)(2) to clarify that the State must include in its application, those methods used by the State to implement the payor of last resort requirements in §303.511(b)(2) and (b)(3), such as interagency agreements and other appropriate written methods. We require submission of the methods referenced in §303.511(b)(2) and (b)(3) in the State’s application because these methods must be approved by the Secretary before implementation.</p>		
<p><i>Sec. 303.145 Description of use of funds.</i></p> <p>(a) General. Each application must include a description of how a State proposes to use its funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (e) of this section.</p> <p>(b) Administrative positions. Each application must include:</p> <p>(1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part;</p>	<p><i>§303.205 Description of use of funds.</i></p> <p>(a) <u>General.</u> Each State application must include a description of the uses for funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (e) of this section.</p> <p>(b) <u>State administration funds including administrative positions.</u> For lead agencies other than State educational agencies (SEAs), each application must include the total--</p> <p>(1) Amount of funds retained by the lead agency for administration purposes, including</p>	<p><i>§303.205 Description of use of funds.</i></p> <p>(a) <u>General.</u> Each State application must include a description of the uses for funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council and include the information required in paragraphs (b) through (e) of this section.</p> <p>(b) <u>State administration funds including administrative positions.</u> For lead agencies other than State educational agencies (SEAs), each application must include the total--</p> <p>(1) Amount of funds retained by the lead agency for administration purposes, including</p>

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<p>and (2) For each position, the percentage of salary paid with those funds.</p> <p>(c) Maintenance and implementation activities. Each application must include-- (1) A description of the nature and scope of each major activity to be carried out under this part in maintaining and implementing the statewide system of early intervention services; and (2) The approximate amount of funds to be spent for each activity.</p> <p>(d) Direct services. (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, including a description of any services provided to at-risk infants and toddlers as defined in Sec. 303.16(b), and their families, consistent with Secs. 303.521 and 303.527. (2) The description must include information about each type of service to be provided, including-- (i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and (ii) The approximate amount of funds under this part to be used for the service.</p>	<p><i>the amount in paragraph (b)(2) of this section; and (2) Number of full-time equivalent administrative positions to be used to implement Part C of the Act, and the total amount of salaries (including benefits) for those positions.</i></p> <p><i>(c) <u>Maintenance and implementation activities.</u> Each application must include a description of the nature and scope of each major activity to be carried out under this part, consistent with §303.501, and the approximate amount of funds to be spent for each activity.</i></p> <p><i>(d) <u>Direct services.</u> Each application must include a description of any direct services that the State expects to provide to infants and toddlers with disabilities and their families with funds under this part, consistent with §303.501, and the approximate amount of funds under this part to be used for the provision of each direct service.</i></p> <p><i>(e) <u>Activities by other agencies.</u> If other agencies are to receive funds under this part, the application must include-- (1) The name of each agency expected to receive funds; (2) The approximate amount of funds each agency will receive; and (3) A summary of the purposes for which the</i></p>	<p>the amount in paragraph (b)(2) of this section; and (2) Number of full-time equivalent administrative positions to be used to implement Part C of the Act, and the total amount of salaries (including benefits) for those positions.</p> <p>(c) <u>Maintenance and implementation activities.</u> Each application must include a description of the nature and scope of each major activity to be carried out under this part, consistent with §303.501, and the approximate amount of funds to be spent for each activity.</p> <p>(d) <u>Direct services.</u> Each application must include a description of any direct services that the State expects to provide to infants and toddlers with disabilities and their families with funds under this part, consistent with §303.501, and the approximate amount of funds under this part to be used for the provision of each direct service.</p> <p>(e) <u>Activities by other public agencies.</u> If other public agencies are to receive funds under this part, the application must include-- (1) The name of each agency expected to receive funds; (2) The approximate amount of funds each agency will receive; and (3) A summary of the purposes for which the</p>

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<p>(e) At-risk infants and toddlers. For any State that does not provide direct services for at-risk infants and toddlers described in paragraph (d)(1) of this section, but chooses to use funds as described in Sec. 303.3(e), each application must include a description of how those funds will be used.</p> <p>(f) Activities by other agencies. If other agencies are to receive funds under this part, the application must include--</p> <p>(1) The name of each agency expected to receive funds;</p> <p>(2) The approximate amount of funds each agency will receive; and</p> <p>(3) A summary of the purposes for which the funds will be used.</p>	<p><i>funds will be used.</i></p>	<p>funds will be used.</p>
<p><u>Sec. 303.127 Assurance regarding expenditure of funds.</u> The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in Sec. 303.3.</p> <p><u>Sec. 303.144 Assurance regarding use of funds.</u> Each application must include an assurance that funds received under this part will be used to assist the State to maintain and implement the statewide system required</p>	<p><u>§303.221 Expenditure of funds.</u> <i>The State must ensure that Federal funds made available to the State under section 643 of the Act will be expended in accordance with the provisions of this part, including §303.501.</i></p>	<p><u>§303.221 Expenditure of funds.</u> The State must ensure that Federal funds made available to the State under section 643 of the Act will be expended in accordance with the provisions of this part, including §§303.500 and 303.501.</p>

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<p>under subparts D through F of this part.</p> <p><u>Sec. 303.126 Payor of last resort.</u> The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in Sec. 303.527, including the requirements on: (a) Nonsubstitution of funds; and (b) Non-reduction of other benefits.</p>	<p><u>§303.222 Payor of last resort.</u> <i>The State must ensure that it will comply with the requirements in §§303.501 through 303.521 in subpart F of this part.</i></p>	<p><u>§303.222 Payor of last resort.</u> The State must ensure that it will comply with the requirements in §§303.510 and 303.511 in subpart F of this part.</p>
<p><u>Sec. 303.123 Prohibition against commingling.</u></p> <p>The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.</p> <p>Note: As used in this part, commingle means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified--with a clear audit trail for each source--it is appropriate for those funds to be consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity</p>	<p><u>§303.225 Prohibition against commingling and supplanting; indirect costs.</u></p> <p>(a) <u>Prohibition against commingling.</u> (1) <i>The State must ensure that funds made available under this part will not be commingled with State funds.</i></p> <p>(2) <u>Comingle means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure.</u></p> <p>(b) <u>Requirement to supplement and not supplant State funds.</u> (1)(i) <i>The State must ensure that Federal funds made available under this part will be used to supplement and increase the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds.</i> (ii) <i>To meet the requirement in paragraph (b)(1)(i) of this section, the total amount of State and local funds budgeted for</i></p>	<p><u>§303.225 Prohibition against supplanting; indirect costs.</u></p> <p>(a) Each application must provide satisfactory assurance that the Federal funds made available under section 643 of the Act to the State: (1) Will not be commingled with State funds; and (2) Will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds.</p> <p>(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the</p>

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<p>or function related to the State's early intervention program.</p> <p>Thus, the assurance in this section is satisfied by the use of an accounting system that includes an "audit trail" of the expenditure of funds awarded under this part. Separate bank accounts are not required.</p> <p>Sec. 303.124 Prohibition against supplanting.</p> <p>(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.</p> <p>(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available.</p> <p>Allowance may be made for:</p> <p>(1) Decreases in the number of children who are eligible to receive early intervention</p>	<p><i>expenditures in the current fiscal year for early intervention services for infants and toddlers with disabilities and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these infants and toddlers and their families in the most recent preceding fiscal year for which the information is available.</i></p> <p><i>(2) The State may reduce the level of expenditures under Part C of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:</i></p> <p><i>(i) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this part.</i></p> <p><i>(ii) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment and the construction of facilities.</i></p> <p><i>(iii) The voluntary departure, by retirement or otherwise, or departure for just cause, of personnel under Part C of the Act.</i></p> <p><i>(iv) The termination of the obligation of the lead agency, consistent with this part, to make available early intervention services to a particular infant or toddler with a disability that are exceptionally costly, as determined by the lead agency, because the infant or toddler--</i></p> <p><i>(A) Has left the State;</i></p> <p><i>(B) Has reached the age at which the obligation of the lead agency to make available early intervention services has</i></p>	<p>information is available. Allowance may be made for—</p> <p>(1) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this part; and</p> <p>(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.</p> <p>(c) <u>Requirement regarding indirect costs.</u> (1) Except as provided in paragraph (c)(2) of this section, a lead agency under this part may not charge indirect costs to its Part C grant.</p> <p>(2) If approved by the lead agency's cognizant Federal agency or by the Secretary, the lead agency must charge indirect costs through either--</p> <p>(i) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or</p> <p>(ii) A cost allocation plan that meets the non-supplanting requirements in paragraph (b) of this section and 34 CFR part 76 of EDGAR.</p> <p>(3) In charging indirect costs under paragraph (c)(2)(i) and (c)(2)(ii) of this section, the lead agency may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.</p>

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<p>services under this part; and (2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.</p>	<p><i>terminated; or</i> <i>(C) No longer needs early intervention services.</i></p> <p><i>(c) Requirement regarding indirect costs.</i> <i>(1) Except as provided in paragraph (c)(2) of this section, a lead agency under this part may not charge indirect costs to its Part C grant.</i> <i>(2) If approved by the lead agency’s cognizant Federal agency or by the Secretary, the lead agency must charge indirect costs through either--</i> <i>(i) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or</i> <i>(ii) A cost allocation plan that meets the non-supplanting requirements in paragraph (b) of this section and 34 CFR part 76 of EDGAR.</i> <i>(3) In charging indirect costs under paragraphs (c)(2)(i) and (ii) of this section, the lead agency may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.</i></p>	
<p><u>Prohibition against supplanting; indirect costs (§303.225)</u> Comment: The Department received several comments on proposed §303.225 in the following areas: the Single Audit Act, the phrase “and increase” in proposed §303.225(b)(1)(i), and whether States must certify and verify that they have maintained fiscal effort from year to year. Discussion: Since the publication of the NPRM in May 2007, the Department has received many informal inquiries requesting guidance on MOE requirements (which implement the supplement not supplant requirements under Part C of the Act). States also have expressed concern about their ability to meet the MOE requirements and their continued participation in the Part C program. So that we can seek further input on the MOE requirements, the Department intends to issue an NPRM on the MOE requirements. Therefore, we are not finalizing proposed §303.225 and instead are incorporating into §303.225(a) the provisions in section 637(b)(5) of the Act, which prohibit the comingling of Federal funds with</p>		

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<p>State funds and supplanting State and local funds with Federal funds. We also are incorporating into §303.225(b) the MOE requirements in current §303.124 and are retaining the indirect cost provisions in proposed §303.225(c). <u>Changes:</u> We have revised proposed §303.225(a) to include language from section 637(b)(5) of the Act and replaced proposed §303.225(b) with current §303.124.</p>		
<p><u>Sec. 303.125 Fiscal control.</u> The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.</p>	<p><u>§303.226 Fiscal control.</u> <i>The State must ensure that fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part.</i></p>	<p><u>§303.226 Fiscal control.</u> The State must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, Federal funds paid under this part.</p>
<p><u>Sec. 303.3 Activities that may be supported under this part.</u> Funds under this part may be used for the following activities:</p> <p>(a) To maintain and implement a statewide system of early intervention services for children eligible under this part and their families.</p> <p>(b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.</p> <p>(c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with Sec. 303.527.</p> <p>(d) To provide a free appropriate public education, in accordance with part B of the Act, to children with disabilities from their</p>	<p><u>§ 303.501 Permissive use of funds by the lead agency.</u> <i>A lead agency may use funds under this part for activities or expenses that are reasonable and necessary for implementing the State's early intervention program for infants and toddlers with disabilities including funds—</i></p> <p><i>(a) For direct early intervention services for infants and toddlers with disabilities and their families under this part that are not otherwise funded through other public or private sources (subject to §§ 303.510 through 303.521);</i></p> <p><i>(b) To expand and improve on services for infants and toddlers with disabilities and their families under this part that are otherwise available;</i></p>	<p><u>§303.501 Permissive use of funds by the lead agency.</u> Consistent with §§303.120 through 303.122 and §§303.220 through 303.226, a lead agency may use funds under this part for activities or expenses that are reasonable and necessary for implementing the State's early intervention program for infants and toddlers with disabilities including funds--</p> <p>(a) For direct early intervention services for infants and toddlers with disabilities and their families under this part that are not otherwise funded through other public or private sources (subject to §§303.510 through 303.521);</p> <p>(b) To expand and improve services for infants and toddlers with disabilities and their families under this part that are otherwise available;</p>

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<p>third birthday to the beginning of the following school year.</p> <p>(e) To strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purpose of:</p> <p>(1) Identifying and evaluating at-risk infants and toddlers; (2) Making referrals of the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and (3) Conducting periodic follow-up on each referral under paragraph (e)(2) of this section to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.</p> <p>Sec. 303.560 Use of funds by the lead agency. A lead agency may use funds under this part that are reasonable and necessary for administering the State's early intervention program for infants and toddlers with disabilities.</p>	<p><i>(c)(1) To provide FAPE as that term is defined in § 303.15, in accordance with Part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year;</i></p> <p><i>(2) The provision of FAPE under paragraph (c)(1) of this section does not apply to children who continue to receive early intervention services under this part in accordance with paragraph (d) of this section and § 303.211;</i></p> <p><i>(d) With the written consent of the parents, to continue to provide early intervention services under this part, in lieu of FAPE provided in accordance with Part B of the Act, to children with disabilities from their third birthday (pursuant to Sec. 303.211) until those children enter, or are eligible under State law to enter, kindergarten; and</i></p> <p><i>e) In any State that does not provide services under Sec. 303.204 for at-risk infants and toddlers as defined in Sec. 303.5, to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of--</i></p> <p><i>(1) Identifying and evaluating at-risk infants and toddlers;</i></p>	<p>(c)(1) To provide FAPE as that term is defined in §303.15, in accordance with Part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year;</p> <p>(2) The provision of FAPE under paragraph (c)(1) of this section does not apply to children who continue to receive early intervention services under this part in accordance with paragraph (d) of this section and §303.211;</p> <p>(d) With the written consent of the parents, to continue to provide early intervention services under this part, in lieu of FAPE provided in accordance with Part B of the Act, to children with disabilities from their third birthday (pursuant to §303.211) until those children enter, or are eligible under State law to enter, kindergarten; and</p> <p>(e) In any State that does not provide services under §303.204 for at-risk infants and toddlers, as defined in §303.5, to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of--</p> <p>(1) Identifying and evaluating at-risk infants and toddlers;</p> <p>(2) Making referrals for the infants and toddlers identified and evaluated under</p>

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	<p><i>(2) Making referrals for the infants and toddlers identified and evaluated under paragraph (e)(1) of this section; and</i></p> <p><i>(3) Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.</i></p>	<p>paragraph (e)(1) of this section; and</p> <p>(3) Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.</p>
<p>Sec. 303.527 Payor of last resort.</p> <p>(a) Nonsubstitution of funds. Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of part C of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.</p> <p>(b) Interim payments--reimbursement.</p> <p>(1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the</p>	<p><u>§303.510 Payor of last resort.</u></p> <p><i>(a) Nonsubstitution of funds. Except as provided in paragraph (b) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this part may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source (subject to §§303.520 and 303.521).</i></p> <p><i>(b) Interim payments--reimbursement. If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under this part may be used to pay the provider of services (for services and functions authorized under this part, including health</i></p>	<p><u>§303.510 Payor of last resort.</u></p> <p>(a) <u>Nonsubstitution of funds.</u> Except as provided in paragraph (b) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this part may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source (subject to §§303.520 and 303.521).</p> <p>(b) <u>Interim payments--reimbursement.</u> If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under this part may be used to pay the provider of services (for services and functions</p>

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<p>payment.</p> <p>(2) Payments under paragraph (b)(1) of this section may be made for--</p> <p>(i) Early intervention services, as described in Sec. 303.12;</p> <p>(ii) Eligible health services (see Sec. 303.13); and</p> <p>(iii) Other functions and services authorized under this part, including child find and evaluation and assessment.</p> <p>(3) The provisions of paragraph (b)(1) of this section do not apply to medical services or "well-baby" health care (see Sec. 303.13(c)(1)).</p> <p>(c) Non-reduction of benefits. Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (SSA) (relating to maternal and child health) or title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State.</p> <p>Note: The Congress intended that the enactment of part C not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue,</p>	<p><i>services as defined in §303.16 (but not medical services), child find functions described in §§303.115 through 303.117 and §§303.300 through 303.303, and evaluations and assessments in §303.320), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.</i></p> <p><i>(c) Non-reduction of benefits. Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701 et seq., (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), within the State. (Authority: 20 U.S.C. 1440(a), 1440(c))</i></p>	<p>authorized under this part, including health services, as defined in §303.16 (but not medical services), functions of the child find system described in §§303.115 through 303.117 and §§303.301 through 303.320, and evaluations and assessments in §303.321), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.</p> <p>(c) Non-reduction of benefits. Nothing in this part may be construed to permit a State to reduce medical or other assistance available in the State or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701, et seq. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted pursuant to Part C of the Act.</p>

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<p>and that there would be greater coordination among agencies regarding the payment of costs.</p> <p>The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) an amendment to title XIX of the Social Security Act. That amendment states, in effect, that nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) of section 1903 of the Social Security Act for medical assistance for covered services furnished to an infant or toddler with a disability because those services are included in the child's IFSP adopted pursuant to part C of the Act.</p>		
<p><u>Payor of last resort (§303.510)</u></p> <p><u>Comment:</u> Several commenters requested that the language from the note following current §303.527 (concerning the intent of Congress that other funding sources continue for services that would be available to eligible children but for the existence of programs under Part C of the Act) be incorporated in the payor of last resort requirements in §303.510. These commenters noted that the language in the note supports congressional intent for an interagency structure to finance early intervention services and is an important statement supporting States' efforts to develop the necessary partnerships to fund the Part C system.</p> <p><u>Discussion:</u> The substance of the note that follows current §303.527 is included in §303.510(c) as a rule of construction. The rule of construction, which references funding sources under the Social Security Act, 42 U.S.C. 701, et seq. (SSA), clarifies that nothing in Part C of the Act may be construed to permit a State (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of Part C of the Act. Thus, funding from other sources would continue to be available to support services that are included in the IFSP. To make this clearer, we have amended §303.510(c) to include a reference to section 1903(a) of the SSA, the specific section of the SSA regarding medical assistance for services and have clarified that nothing in this part may be construed to permit a State to reduce medical or other assistance available in the State.</p>		

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<p><u>Changes:</u> We have amended §303.510(c) by removing the final phrase “within the State” and including the phrases: (1) “in the State” and (2) “including section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child’s IFSP adopted pursuant to Part C of the Act.”</p> <p><u>Comment:</u> One commenter opposed referencing §303.520, regarding use of insurance for payment of services, in §303.510(a), regarding payor of last resort. The commenter noted that in light of Part C’s payor of last resort requirements parental consent should not be required for the use of private insurance in §303.520 because the requirement to obtain parental consent diminishes the lead agency’s capacity to implement a consistent payor of last resort policy. The commenter requested that the Department clarify, amend, or remove the reference to §303.520 in §303.510(a).</p> <p><u>Discussion:</u> The requirement in §303.510(a) directly incorporates the long-standing payor of last resort requirements in section 640(a) of the Act (and reflected in current §303.527(a) and (b)). The reference to §303.520 in §303.510(a) was added to ensure that States do not interpret Part C payor of last resort provisions to override the requirements in §§303.520 and 303.521, concerning use of insurance and systems of payments. As discussed in response to comments on §303.520, the Department has determined that funds from public health insurance or benefits (e.g., Medicaid or CHIP) or private insurance are not considered available funding sources under Part C’s payor of last resort provisions, unless a parent has provided the consent required under §303.520(a)(1) and (b)(1), concerning parental consent for use of public benefits or insurance or private insurance, or one of the exceptions under §303.520(a)(2) or (b)(2) applies. When other public funds are available to pay for Part C services, such as funds from the Department of Defense’s TRI-CARE medical assistance program or TANF, Part C funds are the payor of last resort.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> Several commenters recommended adding a reference to the Children’s Health Insurance Program (CHIP) in §303.510(c), which requires that nothing in this part be construed to permit a State to reduce medical or other available assistance or to alter eligibility under Title V of the SSA or Title XIX of the SSA, within the State, because CHIP is a potential Federal funding source for early intervention services.</p> <p><u>Discussion:</u> Section 303.510(c) directly incorporates the payor of last resort provisions in section 640 of the Act, which only expressly reference Titles V and XIX of the SSA (which are the statutory authorities respectively for the Maternal and Child Health and Medicaid public benefits programs). No other statutory authorities are cited. We believe it would be inappropriate to add a reference to CHIP without also adding statutory authorities for all other funding sources.</p> <p><u>Changes:</u> None.</p>		
<p><i>Sec. 303.173 Policies and procedures related to financial matters.</i> Each application must include: (a) Funding policies that meet the requirements in Secs. 303.520 and 303.521; (b) Information about funding sources, as</p>	<p><i>§303.511 Establishing financial responsibility for, and methods of, ensuring services.</i> (a) <i>General.</i> Each State must ensure that it has in place methods for establishing financial responsibility (consistent with the methods adopted under Part B of the Act, where appropriate) and providing early intervention</p>	<p><i>§303.511 Methods to ensure the provision of, and financial responsibility for, Part C services.</i> (a) <u>General.</u> Each State must ensure that it has in place methods for State interagency coordination. Under these methods, the Chief Executive Officer of a State or designee of the</p>

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<p>required in Sec. 303.522;</p> <p>(c) Procedures to ensure the timely delivery of services, in accordance with Sec. 303.525; and</p> <p>(d) A procedure related to the timely reimbursement of funds under this part, in accordance with Secs. 303.527(b) and 303.528.</p> <p>Sec. 303.520 Policies related to payment for services.</p> <p>(a) General. Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program. The policies must:</p> <p>(1) Meet the requirements in paragraph (b) of this section; and</p> <p>(2) Be reflected in the interagency agreements required in Sec. 303.523.</p> <p>(b) Specific funding policies. A State's policies must:</p> <p>(1) Specify which functions and services will be provided at no cost to all parents;</p> <p>(2) Specify which functions or services, if any, will be subject to a system of payments, and include:</p> <p>(i) Information about the payment system and schedule of sliding fees that will be used; and</p>	<p><i>services under this part. The methods must meet the requirements of this subpart, and be set forth in--</i></p> <p><i>(1) State law or regulation;</i></p> <p><i>(2) Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or</i></p> <p><i>(3) Other appropriate written methods determined by the Governor of the State, or the Governor's designee, and approved by the Secretary through the review and approval of the State's application.</i></p> <p><i>(b) <u>Financial responsibility.</u> Each method must define the financial responsibility of each agency for paying for early intervention services or other functions authorized under this part including child find and evaluations and assessments (consistent with State law and the requirements of this part).</i></p> <p><i>(c) <u>Procedures for resolving disputes.</u></i></p> <p><i>(1) Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention service program. Those procedures must include a mechanism for resolution of intra-agency disputes within agencies and for the Governor, Governor's</i></p>	<p>Officer must ensure that the interagency agreement or other method for interagency coordination is in effect between each State public agency and the designated lead agency in order to ensure--</p> <p>(1) The provision of, and establishing financial responsibility for, early intervention services provided under this part; and</p> <p>(2) Such services are consistent with the requirement in section 635 of the Act and the State's application under section 637 of the Act, including the provision of such services during the pendency of any dispute between State agencies.</p> <p>(b) The methods in paragraph (a) of this section must meet all requirements in this section and be set forth in one of the following:</p> <p>(1) State law or regulation;</p> <p>(2) Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or</p> <p>(3) Other appropriate written methods determined by the Governor of the State, or the Governor's designee, and approved by the Secretary through the review and approval of the State's application.</p> <p>(c) <u>Procedures for resolving disputes.</u> (1) Each method must include procedures for</p>

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<p>(ii) The basis and amount of payments; and (3) Include an assurance that-- (i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and (ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family; and (4) Set out any fees that will be charged for early intervention services and the basis for those fees.</p> <p>(c) Procedures to ensure the timely provision of services. No later than the beginning of the fifth year of a State's participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.</p> <p>(d) Proceeds from public or private insurance. (1) Proceeds from public or private insurance are not treated as program income for purposes of 34 CFR 80.25. (2) If a public agency spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds are not considered State or local funds for purposes of the provisions contained in Sec. 303.124.</p> <p>Sec. 303.522 Identification and coordination</p>	<p><i>designee, or the lead agency to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.</i></p> <p><i>(2) The method must--</i> <i>(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and</i> <i>(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.</i></p> <p><i>(3) If, during the lead agency's resolution of the dispute, the Governor, Governor's designee, or lead agency determines that the assignment of financial responsibility under this section was inappropriately made--</i> <i>(i) The Governor, Governor's designee or lead agency must reassign the responsibility to the appropriate agency; and</i> <i>(ii) The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.</i></p> <p><i>(d) <u>Delivery of services in a timely manner.</u> The methods adopted by the State under this section must--</i> <i>(1) Include a mechanism to ensure that no services that a child is entitled to receive under</i></p>	<p>achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention service program. Those procedures must include a mechanism for resolution of disputes within agencies and for the Governor, Governor's designee, or the lead agency to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.</p> <p>(2) The method must-- (i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and (ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.</p> <p>(3) If, during the lead agency's resolution of the dispute, the Governor, Governor's designee, or lead agency determines that the assignment of financial responsibility under this section was inappropriately made-- (i) The Governor, Governor's designee, or lead agency must reassign the financial responsibility to the appropriate agency; and (ii) The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned</p>

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<p>of resources.</p> <p>(a) Each lead agency is responsible for-- (1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and (2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.</p> <p>(b) The Federal funding sources in paragraph (a)(1) of this section include-- (1) Title V of the Social Security Act (relating to Maternal and Child Health); (2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT); (3) The Head Start Act; (4) Parts B and H of the Act; (5) The Developmental Disabilities Assistance and Bill of Rights Act (Pub. L. 94-103); and (6) Other Federal programs.</p> <p>Sec. 303.523 Interagency agreements.</p> <p>(a) General. Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of</p>	<p><i>this part are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and</i></p> <p><i>(2) Be consistent with the written funding policies adopted by the State under this subpart.</i></p> <p><i>(e) Additional components. Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the lead agency's general supervision (including monitoring) of, all public agencies and early intervention service providers involved in the State's early intervention service programs.</i></p>	<p>financial responsibility.</p> <p>(d) <u>Delivery of services in a timely manner.</u> The methods adopted by the State under this section must-- (1) Include a mechanism to ensure that no services that a child is entitled to receive under this part are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and (2) Be consistent with the written funding policies adopted by the State under this subpart and include any provisions the State has adopted under §303.520 regarding the use of insurance to pay for Part C services.</p> <p>(e) <u>Additional components.</u> Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the lead agency's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in the State's early intervention service programs.</p>

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<p>this section.</p> <p>(b) Financial responsibility. Each agreement must define the financial responsibility, in accordance with Sec. 303.143, of the agency for paying for early intervention services (consistent with State law and the requirements of this part).</p> <p>(c) Procedures for resolving disputes. (1) Each agreement must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved. (2) The agreement with each agency must-- (i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and (ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.</p> <p>(d) Additional components. Each agreement must include any additional components</p>		

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<p>necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.</p> <p>Sec. 303.524 Resolution of disputes.</p> <p>(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in Sec. 303.523(c)(2)(ii).</p> <p>(b)(1) During a dispute, the individual or entity responsible for assigning financial responsibility among appropriate agencies under Sec. 303.143 ("financial designee") shall assign financial responsibility to--</p> <ul style="list-style-type: none"> (i) An agency, subject to the provisions in paragraph (b)(2) of this section; or (ii) The lead agency, in accordance with the "payor of last resort" provisions in Sec. 303.527. <p>(2) If, during the lead agency's resolution of the dispute, the financial designee determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made--</p> <ul style="list-style-type: none"> (i) The financial designee shall reassign the responsibility to the appropriate agency; and (ii) The lead agency shall make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility. <p>(c) To the extent necessary to ensure</p>		

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<p>compliance with its action in paragraph (b)(2) of this section, the lead agency shall--</p> <p>(1) Refer the dispute to the Council or the Governor; and</p> <p>(2) Implement the procedures to ensure the delivery of services in a timely manner in accordance with Sec. 303.525.</p>		
	<p>Sec. 303.520 Policies related to use of insurance or public benefits for payment for services.</p> <p><i>(a) Public insurance and benefits.</i></p> <p><i>(1) The State may use the public insurance or benefits program of a parent or infant or toddler with a disability under this part (consistent with the program requirements of the public insurance or benefits program), if:</i></p> <p><i>(i) The parent or the infant or toddler with a disability is already enrolled or participating in a public insurance or benefits program, provided that the parent provides consent as defined in Sec. 303.7 to disclose personally identifiable information if required under Sec. 303.414;</i></p> <p><i>(ii) The parent has not provided consent under Sec. Sec. 303.7, 303.414, or 303.420(a)(3), but the infant or toddler with a disability is in foster care and eligible to participate in the public insurance or benefits program; or</i></p> <p><i>(iii) The parent is not enrolled in a public insurance or benefits program but agrees to enroll and provides consent to enroll in a public insurance or benefits program in accordance with Sec. Sec. 303.7, 303.414, and</i></p>	<p><u>§303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services.</u></p> <p><u>(a) Use of public benefits or public insurance to pay for Part C services.</u></p> <p>(1) A State may not use the public benefits or insurance of a child or parent to pay for Part C services unless the State provides written notification, consistent with §303.520(a)(3), to the child’s parents, and the State meets the no-cost protections identified in paragraph (a)(2) of this section.</p> <p>(2) With regard to using the public benefits or insurance of a child or parent to pay for Part C services, the State--</p> <p>(i) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;</p> <p>(ii) Must obtain consent, consistent with §§303.7 and 303.420(a)(4), to use a child’s or parent’s public benefits or insurance to pay for Part C services if that use would--</p>

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	<p>303.420(a)(3).</p> <p><i>(2) If the State requires a parent to pay any types of costs that the parent may incur as a result of participating in a public insurance or benefits program (such as co-payments, premiums or deductibles or the required use of private insurance as the primary insurance), those types of costs must be identified in the State's policies regarding its system of payments under Sec. 303.521; otherwise, the State will not be allowed to charge those costs to the parent.</i></p> <p><i>(3) In obtaining parental consent required under this section, the lead agency must provide a copy of the State's system of payments policies that identify potential costs that the parent may incur while enrolled in a public insurance or benefits program (such as co-payments, premiums or deductibles or the required use of private insurance as the primary insurance by the public insurance or public benefits program).</i></p> <p><i>(b) Private insurance.</i></p> <p><i>(1)(i) Except as provided in paragraph (b)(2) of this section, the State may use the private insurance of a parent to pay for services under this part only if the parent provides consent to do so in accordance with Sec. Sec. 303.7, 303.414, and 303.420(a)(3).</i></p> <p><i>(ii) If the State requires a parent to pay any types of costs that the parent may incur as a result of the State's use of private insurance to</i></p>	<p>(A) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;</p> <p>(B) Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;</p> <p>(C) Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or</p> <p>(D) Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.</p> <p>(iii) If the parent does not provide consent under paragraphs (a)(2)(i) or (a)(2)(ii) of this section, the State must still make available those Part C services on the IFSP to which the parent has provided consent.</p> <p>(3) Prior to using a child's or parent's public benefits or insurance to pay for Part C services, the State must provide written notification to the child's parents. The notification must include--</p> <p>(i) A statement that parental consent must be obtained under §303.414, if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child's personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid);</p> <p>(ii) A statement of the no-cost protection provisions in §303.520(a)(2) and that if the</p>

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	<p><i>pay for early intervention services, those types of costs (such as deductibles or co-payments) must be identified in the State's system of payments policies under Sec. 303.521; otherwise, the State will not be allowed to charge those costs to the parent.</i></p> <p><i>(iii) In obtaining parental consent required under this section, the lead agency must provide a copy of the State's system of payments policies that identify the potential types of costs that the parent may incur while enrolled in a private insurance program (such as co-payments, premiums or deductibles).</i></p> <p><i>(iv) If a parent or family is determined unable to pay under the State's definition of inability to pay under Sec. 303.521(a)(3) and does not provide consent under paragraph (b)(1)(i) of this section, the lack of consent may not be used to delay or deny any services under this part to a child or the family.</i></p> <p><i>(2) The parental consent requirements in paragraph (b)(1) of this section do not apply if the State has enacted a State statute regarding private health insurance coverage for early intervention services under Part C of the Act that ensures that the use of private health insurance to pay for Part C services cannot--</i></p> <p><i>(i) Count towards the lifetime coverage caps for the infant or toddler with a disability and parents under their health insurance;</i></p> <p><i>(ii) Negatively affect the availability of health insurance to the infant or toddler with a</i></p>	<p>parent does not provide the consent under §303.520(a)(2), the State lead agency must still make available those Part C services on the IFSP for which the parent has provided consent;</p> <p>(iii) A statement that the parents have the right under §303.414, if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and</p> <p>(iv) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles, or the required use of private insurance as the primary insurance).</p> <p>(4) If a State requires a parent to pay any costs that the parent would incur as a result of the State's using a child's or parent's public benefits or insurance to pay for Part C services (such as co-payments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the State's system of payments policies under §303.521 and included in the notification provided to the parent under paragraph (a)(3) of this section; otherwise, the State cannot charge those costs to the parent.</p> <p>(b) <u>Use of private insurance to pay for Part C</u></p>

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	<p><i>disability and family, and health insurance coverage may not be discontinued due to the use of the health insurance to pay for services under Part C of the Act; or</i></p> <p><i>(iii) Be the basis for increasing the health insurance premiums of the infant or toddler with a disability or the child's family.</i></p> <p><i>(3) If a State has enacted a State statute that meets the requirements in paragraph (b)(2) of this section regarding private health insurance coverage to pay for early intervention services under Part C of the Act, the State may reestablish in the next Federal fiscal year following the effective date of the statute, a new baseline of State and local expenditures under Sec. 303.225(b).</i></p> <p><i>(c) Proceeds or funds from public insurance or benefits or from private insurance.</i></p> <p><i>(1) Proceeds or funds from public insurance or public benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.</i></p> <p><i>(2) If the State receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for services under Part C of the Act, those funds are considered neither State nor local funds under Sec. 303.225(b).</i></p> <p><i>(3) If the State spends funds from a State public insurance or benefits program or the State portion of a Federal public benefits program (such as the State portion of</i></p>	<p><u>services.</u> (1)(i) The State may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with §§303.7 and 303.420(a)(4), to use private insurance to pay for Part C services for his or her child or the State meets one of the exceptions in paragraph (b)(2) of this section. This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained--</p> <p>(A) When the lead agency or EIS provider seeks to use the parent’s private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and</p> <p>(B) Each time consent for services is required under §303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child’s IFSP.</p> <p>(ii) If a State requires a parent to pay any costs that the parent would incur as a result of the State’s use of private insurance to pay for early intervention services (such as co-payments, premiums, or deductibles), those costs must be identified in the State’s system of payments policies under §303.521; otherwise, the State may not charge those costs to the parent</p> <p>(iii) When obtaining parental consent required under paragraph (b)(1)(i) of this section or initially using benefits under a child</p>

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	<p><i>Medicaid costs) for services under this part, those funds may be considered State or local funds under Sec. 303.225(b); however, if a State elects to include such funds for purposes of nonsupplanting provisions in Sec. 303.225(b), it must continue to aggregate such amounts for all future years.</i></p> <p><i>(4) If the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds under Sec. 303.225.</i></p> <p><i>(d) Funds received under a State's system of payments. Funds received by the State from a parent or family under the State's system of payments established under Sec. 303.521 are considered program income under 34 CFR 80.25. These funds--</i></p> <p><i>(1) Do not need to be deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1));</i></p> <p><i>(2) Must be used for the State's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and</i></p> <p><i>(3) Are considered neither State nor local funds under Sec. 303.225(b).</i></p>	<p>or parent's private insurance policy to pay for an early intervention service under paragraph (b)(2) of this section, the State must provide to the parent a copy of the State's system of payments policies that identifies the potential costs that the parent may incur when their private insurance is used to pay for early intervention services under this part (such as co-payments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).</p> <p>(2) The parental consent requirements in paragraph (b)(1) of this section do not apply if the State has enacted a State statute regarding private health insurance coverage for early intervention services under Part C of the Act, that expressly provides that --</p> <p>(i) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy;</p> <p>(ii) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued</p>

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		<p>for these individuals due to the use of the health insurance to pay for services under Part C of the Act; and</p> <p>(iii) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child’s family members covered under that health insurance policy.</p> <p>(3) If a State has enacted a State statute that meets the requirements in paragraph (b)(2) of this section, regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the State may reestablish a new baseline of State and local expenditures under §303.225(b) in the next Federal fiscal year following the effective date of the statute.</p> <p>(c) <u>Inability to pay</u>. If a parent or family of an infant or toddler with a disability is determined unable to pay under the State’s definition of inability to pay under §303.521(a)(3) and does not provide consent under paragraph (b)(1), the lack of consent may not be used to delay or deny any services under this part to that child or family.</p> <p>(d) <u>Proceeds or funds from public insurance or benefits or from private insurance</u>. (1) Proceeds or funds from public insurance or benefits or from private insurance are not</p>

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		<p>treated as program income for purposes of 34 CFR 80.25.</p> <p>(2) If the State receives reimbursements from Federal funds (e.g., Medicaid reimbursements attributable directly to Federal funds) for services under Part C of the Act, those funds are considered neither State nor local funds under §303.225(b).</p> <p>(3) If the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds under §303.225.</p> <p><u>(e) Funds received from a parent or family member under a State’s system of payments.</u> Funds received by the State from a parent or family member under the State’s system of payments established under §303.521 are considered program income under 34 CFR 80.25. These funds--</p> <p>(1) Are not deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1));</p> <p>(2) Must be used for the State’s Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and</p> <p>(3) Are considered neither State nor local funds under §303.225(b).</p>
<p><u>Policies related to use of insurance to pay for Part C services (§303.520)</u> <u>Use of public benefits or insurance to pay for Part C services (§303.520(a))</u> <u>Comment:</u> We received many comments on the use of public benefits or insurance to pay for Part C services. Most commenters, including parents, parent advocacy groups, State lead agencies, and EIS providers, supported proposed §303.520(a)(1)(iii), which would have required</p>		

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<p>parental consent for enrollment in a public benefits or insurance program when a parent is eligible under, but not already enrolled in, such a program. These commenters maintained that a State should not be able to require a parent to enroll in a public benefits or insurance program, such as Medicaid, as a condition of receiving IDEA Part C services because the act of enrollment could impose costs on parents and families, affect their rights under other Federal programs, and have an impact on a parent’s credit rating.</p> <p>However, the vast majority of commenters, including parents, parent advocacy groups, State lead agencies, and EIS providers, opposed proposed §303.520(a)(1)(i) that would have required parental consent for using a child’s or parent’s public benefits or insurance to pay for Part C services when the child or parent is already enrolled in such a program. Several commenters, including a State Interagency Coordinating Council and a parent advocacy group, recommended that States be required to provide notice to parents in lieu of obtaining parental consent when the child or parent is already enrolled in such a program, particularly if the child or parent does not incur specified costs.</p> <p>Commenters gave the following reasons for opposing the parental consent requirement in proposed §303.520(a)(1)(i) when a child or parent is already enrolled in a public benefits or insurance program: (1) the use of public benefits or insurance is an important funding source for IDEA Part C services, (2) there may be an administrative burden on State lead agencies and EIS providers in obtaining parental consent that could result in a delay in providing services to children and families, (3) IDEA statutory provisions, including sections 635(a)(10) and 640, require State lead agencies to coordinate all funding sources and to use IDEA Part C funds as a payor of last resort, respectively; (4) Federal IDEA Part C funds are designed to be the “glue money,” and not the primary funding source and thus only to be used when other Federal, State, and local funds are not available to pay for IDEA Part C services; and (5) when a child or parent is already enrolled in a public benefits or insurance program, a consent requirement does nothing to protect privacy given that the agency responsible for the administration of public insurance or public benefits already has personal information about the child and family and that other concerns, such as avoiding the potential negative impact on a parent’s credit rating, do not apply when a child or parent is already enrolled in a public insurance or benefits program.</p> <p>Additionally, two commenters who opposed the parental consent requirement when a child or parent is already enrolled in a public benefits or insurance program noted that parents already have the right under Part C of the Act to consent to each and every Part C service on the IFSP and that a separate consent provision provided parents with no additional protections.</p> <p>A minority of commenters supported proposed §303.520(a)(1)(i). The primary reasons cited by commenters for supporting a parental consent requirement when a child or family is already enrolled in a public benefits or insurance program were that: (1) parents should be informed of all potential costs regarding use of their benefits; (2) parents should understand any potential limitations in coverage or future negative consequences and consent ensures accountability; (3) the IDEA Part C consent regulations should align with the IDEA Part B consent regulations; and (4) the consent provisions for public and private insurance should be aligned.</p> <p>The commenters who expressed concern regarding the potential costs for parents of using public benefits or insurance to pay for IDEA Part C services cited costs such as decreasing available lifetime coverage for a child or parent; paying for services that would otherwise be covered by the public benefits or insurance program; increasing premiums or discontinuing public benefits or insurance for that child or parent as a result of such use; and risking loss of eligibility for Medicaid home and community-based waivers based on overall health expenses.</p> <p><u>Discussion:</u> We are restructuring and revising §303.520(a) regarding the use of public benefits or insurance to pay for Part C services in response to commenters’ concerns. As described in the following paragraphs, we believe this approach is consistent with the statutory framework and</p>		

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<p>the provisions in sections 632(4)(B), 635(a)(10), 639(a)(2), and 640 of the Act.</p> <p><u>Statutory framework.</u> Section 632(4)(B) of IDEA, which defines early intervention services, includes in the definition a requirement that such services must be provided at no cost, except where Federal or State law provides for a system of payments by families, which can include costs such as charging parents a sliding scale fee for Part C services. Section 635(a)(10)(B) requires the State lead agency to identify and coordinate all available resources in the State from Federal, State, local, and private sources. Section 639(a)(2) of the Act requires the State to ensure the confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law. Section 640 of IDEA requires the State lead agency to use Federal IDEA Part C funds as a payor of last resort; requires State interagency mechanisms to ensure the timely provision of, and payment for, early intervention services; and explicitly references the use of other public funding sources, such as Medicaid, to pay for Part C services. Read together, these IDEA Part C statutory provisions require States to use public benefits or insurance (when available) to pay for Part C services instead of using Federal IDEA Part C funds, and also require States to protect the privacy rights of parents and their children.</p> <p><u>Consent to enroll in a public benefits or insurance program.</u> We appreciate the commenters' concerns that the act of enrolling in a public benefits or insurance program may impose costs on parents and families, affect parents' and families' rights under other Federal programs, or have an effect on a parent's credit rating. The act of enrollment involves disclosure of personally identifiable information regarding the child and family. Therefore, we are retaining the provision in proposed §303.520(a)(1)(iii) in new paragraph (a)(2)(i) of §303.520. This provision specifies that a State may not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain parental consent prior to requiring enrollment. A consent requirement for enrollment protects parents' financial interests by allowing them to consider the costs they may incur by enrolling in a public benefits or insurance program. Additionally, a consent requirement for enrollment protects parents' rights regarding the disclosure of personally identifiable information.</p> <p><u>Children and parents who are already enrolled in a public benefits or insurance program.</u> We are persuaded by commenters who opposed the requirement in proposed §303.520(a)(1)(i) to obtain parental consent when a child or parent is already enrolled in a public benefits or insurance program. The commenters argued that requiring consent could affect the timely provision of Part C services to children and families and that requiring parental consent when a child or parent is already enrolled in a public benefits or insurance program would not provide additional privacy protections given that the public benefits or insurance program already has personal information about the child or parent. We also note that the consent provisions in §303.414 regarding the confidentiality of personally identifiable information (where applicable) already provide parents with privacy protections. Additionally, we recognize the importance of public benefits or insurance as a funding source for Part C services and the provisions in sections 632(4)(B), 635(a)(10), and 640 of the Act, which include a reference to State systems of payments, require States to coordinate all resources, and require States to use Part C funds as a payor of last resort, respectively. Therefore, we are replacing proposed §303.520(a)(1)(i) with §303.520(a)(3) regarding written notification to parents.</p> <p><u>No-cost protections.</u> We agree with commenters who noted that parents must understand the implications of using their public benefits or insurance to pay for Part C services and the importance of parents understanding their confidentiality rights. We also agree with commenters who expressed concern that the State should not use a child's or parent's public benefits or insurance if the parent would incur specific costs as a result of the use of those benefits or insurance. Thus, we are making the following changes in these final regulations:</p>		

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		<p>(1) Adding new §303.520(a)(1) explicitly stating that the State may not use the public benefits or insurance of a child or parent to pay for Part C services unless the State both provides parents with written notification about the IDEA Part C no-cost protections and applicable confidentiality provisions and meets the additional specific no-cost protections identified in new §303.520(a)(2);</p> <p>(2) Adding new §303.520(a)(2)(ii) stating that parental consent must be obtained if use of a child’s or parent’s public benefits or insurance would result in the following specified costs: (a) a decrease in the available lifetime coverage for a child or parent; (b) payment for services that would otherwise be covered by the public benefits or insurance program; (c) increases in premiums or discontinuation of public benefits or insurance for that child or the parents as a result of such use; or (d) a risk of loss of eligibility for the child or the parents for Medicaid home and community-based waivers based on aggregate health expenses.</p> <p>(3) Adding new §303.520(a)(2)(iii) stating that if a parent does not provide consent under new §303.520(a)(2)(ii), the State must still make available those Part C services in the IFSP to which the parent has provided consent.</p> <p><u>Written notification to parents.</u> As noted previously, we agree that parents must be informed regarding the implications of a public agency using their public benefits or insurance. Therefore, we are adding in new §303.520(a)(3) that, prior to using a child’s or parent’s public benefits or insurance to pay for Part C services, the State must provide written notification to the child’s parents. This notification may be provided at any time but in no case later than when the State seeks to use the public benefits or insurance to pay for Part C services; without providing the notice, the State may not use such funds to pay for Part C services. The written notification must include the following four important pieces of information.</p> <p>First, the notice must include a statement that parental consent must be obtained under §303.414, if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child’s personally identifiable information to the State public agency responsible for the administration of the State’s public benefits or insurance program (e.g., Medicaid) at any time. The consent provision in §303.414 applies in States where the State lead agency is not the State Medicaid or public benefits or insurance agency or if the State lead agency chooses to adopt a consent provision even if it is the State Medicaid or public benefits or insurance agency.</p> <p>Second, the notice must include a statement of the no-cost protection provisions in new §303.520(a)(2) (i.e., that parents cannot be required to enroll in public insurance or benefits programs and consent must be obtained if use of such insurance or benefits would result in specified costs) and that if the parent does not provide the consent under §303.520(a)(2), the State lead agency must still make available those Part C services in the IFSP for which the parent has provided consent.</p> <p>Third, the notice must include a statement that parents have the right under §303.414, if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State’s public benefits or insurance program (e.g., Medicaid) at any time.</p> <p>Fourth, the notice must include a statement of the general categories of costs that the parent could incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles). We believe it is important to include this last element in the written notice to ensure that parents are informed of the general potential costs that may result from using their public benefits or insurance to pay for Part C services. Additionally, we are adding this last element in response to the many comments we received about the need to make parents aware of these general costs.</p>

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<p>Finally, we note that, under Title VI of the Civil Rights Act of 1964 and implementing regulations (42 U.S.C. 2000d et seq. and 34 CFR 100.1 et seq.), State lead agencies, as recipients of Federal funds, must take reasonable steps to ensure that persons of limited English proficiency (LEP) have meaningful access to programs and activities funded by the Federal government, including Part C services and any notices required under these regulations and Part C of the Act. Providing meaningful access may require the State lead agency to ensure that the notice is provided in a language other than English either through oral or written translation.</p> <p><u>Consent provisions under Part C and Part B of the Act and alignment between public and private insurance.</u> In response to commenters' concerns about other Part C consent provisions and alignment between Parts B and C of IDEA, we note that under section 639(a)(3) of the Act and §303.420, parents have a separate right to consent to Part C services in the IFSP and to any changes in the frequency or intensity of services in the IFSP and the right to decline at any time the receipt of a particular Part C service without jeopardizing the right to any other Part C service in the IFSP. Thus, while we appreciate the commenters' desire to align the provisions related to the use of public insurance under Parts B and C of the Act, the differences in how these two programs treat costs to families, the responsibility for funding, and the consent for services, as well as the administrative structure of Part C programs argue against treating this issue in precisely the same manner in both programs.</p> <p>We have aligned where practicable the consent provisions for the use of public and private insurance to pay for Part C services, partly in response to commenters. Specifically, for a State to use private insurance or to use public benefits or insurance to pay for Part C services, the State may use such funding sources without obtaining parental consent when the State ensures that parents do not incur specific costs (as set forth in §§303.520(a)(2) and 303.520(b)(2)), but must obtain parental consent when such costs are incurred as a result of using such funding sources. We also place continued importance on informing parents of the potential costs through the notification provisions in §303.520(a)(3) and (a)(4) for public benefits or insurance and ensuring that States provide parents with a copy of the State's system of payments policies under §303.520(b)(1)(iii) for private insurance. The one unique scenario for public benefits or insurance is the initial act of enrollment for which there is no parallel for private insurance and we are maintaining a parent consent requirement in new §303.520(a)(2)(i) for this circumstance for the reasons described earlier.</p> <p><u>Costs associated with using public benefits or insurance.</u> We are retaining in new §303.520(a)(4) the provisions in proposed §303.520(a)(2), which require the State to identify in its system of payments policies under §303.521 any costs that the parent would incur as a result of a State using a child's or parent's public benefits or insurance to pay for Part C services (such as co-payments or deductibles, or the required use of private insurance as the primary insurance). New §303.520(a)(4) also specifies that the written notification provided under new §303.520(a)(3) must identify these costs. The State must comply with both of these requirements in order to use the child's or parent's public benefits or insurance for Part C services. The Secretary believes the notification provision is vital to parents being informed about these potential costs and the system of payments policies requirement ensures that as the State's system of payments policies are being developed and subject to public participation, these potential costs are identified as part of the overall costs in the State's system of payments for Part C services.</p> <p><u>Changes:</u> We have restructured §303.520 to add a new paragraph (a)(1) that requires the State to provide parents with written notification of the no-cost and confidentiality provisions in paragraph (a)(3) and to meet the no-cost protections identified in paragraph (a)(2) before it may use the public benefits or insurance of a child or parent to pay for Part C services.</p>		

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		<p>New §303.520(a)(2)(i) provides that with regard to using the public benefits or insurance of a child or parent to pay for Part C services, a State may not require a parent to enroll in a public benefits or insurance program as a condition of receiving Part C services, and clarifies that the State must obtain parental consent prior to using those benefits or insurance if the child or parent is not already enrolled in a public benefits or insurance program.</p> <p>We have added in new §303.520(a)(2)(ii) the requirement that, in addition to providing the parent the written notification, a State must obtain parental consent if use of a child’s or parent’s public benefits or insurance would result in the following specified costs: a decrease in the available lifetime coverage or any other insured benefit for a child or parent; payment for services that would otherwise be covered by the public benefits or insurance program; increases in premiums or discontinuation of public insurance or benefits for that child or parent as a result of such use; or a risk of loss of eligibility for the child or the parent for Medicaid home and community-based waivers based on aggregate health expenses.</p> <p>We have added in new §303.520(a)(2)(iii) a provision clarifying that if a parent does not provide consent under new §303.520(a)(2)(ii), the State must still make available those Part C services in the IFSP to which the parent has provided consent.</p> <p>The contents of the written notification are specified in §303.520(a)(3). Specifically, the notification must include: (1) a statement that parental consent must be obtained under §303.414, if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child’s personally identifiable information to the State public agency responsible for the administration of the State’s public benefits or insurance program (e.g., Medicaid); (2) a statement of the no-cost protection provisions in new §303.520(a)(2) and that if the parent does not provide the consent under §303.520(a)(2), the State lead agency must still make available those Part C services in the IFSP for which the parent has provided consent; (3) a statement that the parents have the right under §303.414, if that provision applies, to withdraw consent to disclose a child’s personally identifiable information at any time; and (4) a statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles, or the required use of private insurance as the primary insurance).</p> <p>Finally, new §303.520(a)(4) requires the State to identify both in its system of payments policies under §303.521 and the written notification provided under new §303.520(a)(3) any costs that the parent would incur as a result of the State’s using a child’s or parent’s public benefits or insurance to pay for Part C services (such as co-payments or deductibles, or the required use of private insurance as the primary insurance).</p> <p><u>Comment:</u> One commenter supported proposed §303.520(a)(1)(ii), which would allow a public agency to use public insurance or benefits for Medicaid-eligible children in foster care without parental consent. Two commenters suggested that this section should specifically refer to both children in “foster care” and “wards of the State.”</p> <p><u>Discussion:</u> We are removing proposed §303.520(a)(1)(ii) because there is no cost for the use of Medicaid for children who are automatically considered eligible and enrolled under Medicaid because of their status in foster care under section 472 in Title XIX of the Social Security Act (SSA). We also do not need to explicitly add a reference to “wards of the State” because section 472 of the SSA applies to children who are “wards of the State”; therefore, there would be no consent requirement for such children.</p> <p><u>Changes:</u> We have removed proposed §303.520(a)(1)(ii).</p>

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<p><u>Use of private insurance to pay for Part C services (§303.520(b))</u></p> <p><u>Comment:</u> Most commenters, including lead agencies, parent groups, professional organizations, EIS providers, national organizations, a State interagency coordinating council, and individuals, supported the requirement in proposed §303.520(b)(1)(i) that a State may access a parent’s private insurance to pay for Part C services only if it obtains consent from the parent. Commenters supported the requirement that consent be provided in accordance with the definition of this term in §303.7, which requires that the parent be informed of all relevant information and that the consent be in writing.</p> <p>Several commenters opposed requiring parental consent before accessing private insurance stating that requiring consent would result in a loss of funding for States. A few of these commenters recognized the need to protect a family’s confidential information, but encouraged the Department to consider other means to protect personally identifiable information that may not adversely affect funding for early intervention services under Part C of the Act. One commenter opposed the parental consent requirement in proposed §303.520(b) because the commenter noted that the State already must obtain parental consent for services under §303.420 and questioned how the State could bill private insurance without parental knowledge.</p> <p><u>Discussion:</u> The Department agrees with the majority of commenters that a State must obtain parental consent before accessing a parent’s private insurance because of the potential costs that can be incurred by a family with a privately insured child or parent as a direct result of using such insurance, as well as the other potential negative effects on the availability of private insurance for other family medical expenses, including services needed by the child that are not covered by Part C. The Department believes that parental consent must be required when the lead agency or EIS provider seeks to use private insurance to pay for the initial provision of any early intervention service in the IFSP and each time consent for services is required due to an increase in the provision of services in the child’s IFSP.</p> <p>With regard to the potential loss of funds to a State, the Department believes that the potential costs to parents outweigh the need to make private insurance funds available to lead agencies unless the cost protections in proposed §303.520(b)(2) are adopted by the State. We disagree with the commenter who opposed the requirement for separate parental consent for the use of private insurance. We believe separate consent is needed because States implement the IFSP provisions in a variety of ways and may not have identified all funding sources for each service when they obtain consent for that service under §303.420.</p> <p><u>Changes:</u> We have added new §303.520(b)(1)(i) to specify that parental consent is required when the lead agency or EIS provider seeks to use private insurance to pay for the initial provision of any early intervention service in the IFSP and each time consent for services is required due to an increase in the provision of services in the child’s IFSP.</p> <p><u>Comment:</u> Some commenters requested clarification on when consent is required if a State wishes to use insurance or benefits for a parent who is determined unable to pay. Some commenters expressed concerns that parents who had been determined unable to pay would still incur costs as a result of using their insurance or benefits for Part C services.</p> <p><u>Discussion:</u> We agree that the requirements in this section could be more clearly presented. We have restructured §303.520(b) for clarity. Paragraph (b)(1) of this section sets forth the general parental consent requirement and paragraph (b)(2) of this section sets forth the specific</p>		

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<p>exceptions to parental consent. We have reworded the heading for this section to make clear that this section applies to any State that uses private insurance to pay for Part C services. We also have moved the substance of proposed §303.520(b)(1)(iv) concerning a parent's inability to pay and a State's obligation to provide Part C services, to new §303.520(c).</p> <p>Regarding commenters' concerns that parents who had been determined unable to pay would still incur costs as a result of using their insurance or benefits for Part C services, §303.521(a)(6) requires the lead agency to pay for costs such as co-payments or deductibles if a parent is determined unable to pay.</p> <p><u>Changes:</u> We have revised the language in paragraph (b), and added a new paragraph (c).</p> <p><u>Comment:</u> Some commenters expressed concern that the use of private insurance under §303.520(b) for Part C services could make private insurance benefits unavailable for additional medical or other services that are not covered by Part C of the Act. One commenter recommended that exemptions be available to families if using their private insurance to pay for early intervention services reduces the benefits they receive through private providers. The commenter stated that families should not be penalized for allowing a State to use their insurance to pay for early intervention services.</p> <p><u>Discussion:</u> It is the Department's position that including an exception to parental consent is not necessary because consent is voluntary. A parent may always decline a request from the lead agency or EIS provider to consent to the use of the parent's private insurance for all or any specific Part C service.</p> <p>In those very few States that have adopted statutory protections concerning private health insurance coverage for early intervention services under Part C of the Act that meet the requirements in §303.520(b)(2) we agree that is important for a parent to be informed of potential costs if a State were to use a parent's private insurance. Thus, we have added a provision in new §303.520(b)(1)(iii) that requires a State to provide parents with a copy of its system of payments policies when using the parent's private insurance to pay for Part C services. Moreover, the parent may elect to decline services at any time under §303.420(a)(3).</p> <p><u>Changes:</u> We have added the phrase "or initially using benefits under a child or parent's private insurance policy to pay for an early intervention service under paragraph (b)(2) of this section" in §303.520(b)(1)(iii).</p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> For consistency with §303.520(b)(1)(iii), we have added "premiums" as an example of a potential cost in §303.520(b)(1)(ii), which requires a State to identify in its system of payments policies the potential costs that parents would incur if the State uses their private insurance policy to pay for Part C services.</p> <p><u>Changes:</u> We have added a reference to premiums in §303.520(b)(1)(ii).</p> <p><u>Comment:</u> Commenters supported the requirement in proposed §303.520(b)(1)(iii) that a State provide a copy of its system of payments policies when obtaining consent to use the parent's private insurance and some commenters requested that the regulation clarify that this copy be provided to the parent because it is the parent who needs to be informed of potential costs as a result of the use of the parent's private insurance to pay for early intervention services. One commenter requested that a State include in its system of payments policies specific</p>		

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<p>information about any potential effect the use of private insurance could have on the parent’s annual or lifetime caps under the parent’s private insurance.</p> <p><u>Discussion:</u> Section 303.520(b)(1)(iii), as proposed, specifically stated that the lead agency, when obtaining consent, must provide parents with a copy of the State’s system of payments policies that identify the potential costs that the parent may incur as a result of the use of the parent’s insurance to pay for Part C early intervention services. We agree that notifying parents of potential costs under §303.520(b)(1)(iii) requires States to identify out-of-pocket costs such as co-payments, premiums, or deductibles as well as other long-term costs such as loss of benefits due to annual or lifetime insurance caps.</p> <p>We also have revised §303.520(b)(1)(iii) to clarify that the State system of payments policies must identify the potential costs that parents may incur when their private insurance is used to pay for early intervention services under this part.</p> <p><u>Changes:</u> We have revised proposed §303.520(b)(1)(iii) to add a reference to parents and to clarify that potential costs identified in the policies may include other long-term costs such as loss of benefits resulting from annual or lifetime insurance caps under a private insurance policy. We also have replaced the phrase “while enrolled in a private insurance program” with the phrase “when their private insurance is used to pay for early intervention services under this part.”</p> <p><u>Comment:</u> Some commenters supported proposed §303.520(b)(2), which does not require the lead agency to obtain parental consent when a State has enacted specific statutory cost protections. These commenters stated that §303.520(b)(2) would protect families while balancing the need to make private insurance funds available to pay for Part C services. A few commenters requested clarification of §303.520(b)(2).</p> <p>Some commenters opposed this exception to the parental consent requirement because it: (1) would result in litigation; (2) lacks statutory authority; (3) is inconsistent with the Part B regulations in 34 CFR 300.154(e) concerning accessing private insurance to pay for services under Part B of the Act; (4) is inconsistent with confidentiality protections under the Act and HIPAA and also with the Employee Retirement Income Security Act of 1974 (ERISA); and (5) could not be uniformly applied because not all private insurance policies are subject to State statutes.</p> <p><u>Discussion:</u> The purpose of the exception in §303.520(b)(2) is to enable the lead agency in a State that has adopted specific statutory cost protections to use private insurance to pay for Part C services. In those States that have adopted such protections, private insurance funds are used to pay for Part C services (e.g., occupational or speech therapy) that are considered medically necessary for an infant or toddler with a disability. We have clarified proposed §303.520(b)(2) to make clear that the exception to parental consent applies only if the State’s statutory protections expressly provide that for the protections listed in new §303.520(b)(2)(i), (b)(2)(ii), and (b)(2)(iii).</p> <p>The implementation of such State statutory protections is consistent with sections 632(4)(B) and 640 of the Act. Section 632(4)(B) of the Act requires early intervention services to be provided at no cost except where a State has enacted a system of payments. Section 640 of the Act requires Federal Part C funds to be used as the payor of last resort. Providing an exception to parental consent when a State statute expressly provides specific cost protections is consistent with sections 632(4)(B) and 640 of the Act.</p>		

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<p>These statutory cost protections include providing that: (1) a child or parent would not experience a loss of benefits because of annual or lifetime caps under a policy when private insurance is used to pay for Part C services; (2) a child, parent, or family member's health insurance cannot be discontinued because the coverage was used to pay for early intervention services; and (3) health insurance premiums cannot be increased due to use of the health insurance to pay for Part C services.</p> <p>We understand the commenters' concerns about potential litigation by families and the commenters' question about whether all private insurance policies in a State are subject to that State's statutory protections. The exceptions to parental consent identified in proposed §303.520(b)(2) apply only to the extent that the State statute provides the protections in that section for private insurance policies in the State. Additionally, several State statutes that fall under this exception have been in place for years without any litigation.</p> <p>We recognize that this exception to parental consent for use of private insurance to pay for services differs from the implementing regulations of Part B of the Act, which do not contain a similar exception. However, Part B of the Act requires FAPE be provided at no cost. In contrast, Part C of the Act explicitly authorizes States to establish a system of payments that may result in a parent incurring some costs. The exception in proposed §303.520(b)(2) ensures that parents are afforded needed protections while providing the lead agency with the ability to use private insurance to pay for Part C services in those States, maximize funding sources, and use Part C funds as a payor of last resort.</p> <p>The Secretary believes these Part C regulations protect parents in all States by providing them with information about the State's system of payments, including (if applicable) the relevant use of private insurance and exceptions regarding specific statutory no-cost protections. Additionally, parents ultimately retain the right to decline or revoke consent for any particular Part C service in the IFSP for their child if they do not wish to have their private insurance used for a particular service.</p> <p>Concerning the commenter's concern that personally identifiable information would be disclosed to private insurers without consent, we recognize that the filing of claims for early intervention services may reveal limited personally identifiable information not already disclosed to the insurer, but on balance, it is the Department's position that this disclosure is necessary in this limited circumstance to implement the requirements of sections 632(4)(B) and 640 of the Act.</p> <p><u>Changes:</u> We have clarified §303.520(b)(2) by moving the phrase "the use of private health insurance to pay for Part C services cannot" to each of §303.520(b)(2)(i), (b)(2)(ii), and (b)(2)(iii). We also have replaced the word "or" that appears at the end of §303.520(b)(2)(ii) with the word "and". Finally, we have added the phrase "expressly provides" to the introductory text of §303.520(b)(2).</p> <p><u>Inability to pay (§303.520(c))</u></p> <p><u>Comment:</u> None.</p> <p><u>Discussion:</u> Proposed §303.520(b)(1)(iv) should have applied to both the use of public insurance and benefits and private insurance for payment for services. We have removed proposed §303.520(b)(1)(iv), and added a new §303.520(c) to reflect the requirement that the inability to pay provisions in this section apply to both the use of public insurance and benefits and private insurance.</p>		

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<p><u>Changes:</u> We have removed proposed §303.520(b)(1)(iv) and added new §303.520(c). <u>Proceeds or funds from public insurance or benefits or from private insurance (§303.520(c), redesignated §303.520(d))</u> <u>Comment:</u> Some commenters requested clarification on proposed §303.520(c)(3), which provided that States could exclude from the calculation of State and local expenditures under proposed §303.225 (prohibition against supplanting), the State portion of funds from a Federal public benefits program such as Medicaid. Some commenters objected to the provision because they viewed it as administratively burdensome and stated it would create significant challenges with data collection and reporting. <u>Discussion:</u> As discussed in the <u>Analysis of Comments and Changes</u> section accompanying §303.225, since the publication of the IDEA Part C NPRM in May 2007, Part C State lead agencies have raised a number of issues regarding the MOE provisions in the Part C regulations (which implement Part C’s supplement not supplant requirements). Therefore, we are removing proposed §303.520(c)(3) and intend to issue an NPRM addressing MOE requirements under Part C of the Act. <u>Changes:</u> We have removed proposed paragraph (c)(3) and renumbered the paragraphs in this section accordingly. <u>Comment:</u> Several commenters, including a few lead agencies, supported proposed §303.520(c), redesignated §303.520(d), which provided that proceeds or funds from public insurance or benefits or private insurance are not treated as program income for purposes of 34 CFR 80.25, the EDGAR provision regarding program income. However, some commenters, including most lead agencies under Part C of the Act, opposed this provision stating that lead agencies under Part C of the Act generally do not have a mechanism to track or account for the use of funds from public insurance or benefits or private insurance or the ability to direct how these funds will be used. <u>Discussion:</u> The commenters have misinterpreted proposed §303.520(c)(1), redesignated §303.520(d)(1). Proposed §303.520(c)(1), redesignated §303.520(d)(1), states that for purposes of 34 CFR 80.25, proceeds or funds from public insurance or benefits or from private insurance are not treated as program income. Therefore, States do not need to maintain data on these funds for program income purposes. <u>Changes:</u> None. <u>Comment:</u> A few commenters recommended that under section 618 of the Act, the Department require States to collect and report to the Secretary data on the costs assessed to parents and the payments obtained from public and private insurance for early intervention services. These commenters recommended that the Department conduct a study to determine how the regulations concerning the use of private insurance in §303.520 and the States’ systems of payments and fees in §303.521 affect family participation in Part C of the Act. <u>Discussion:</u> Section 618 of the Act does not require States to report data on their use of insurance or a system of payments, and we do not want to place this added data collection and paperwork burden on States. The Department has long required each State that adopts a system of payments (including the use of insurance or family fees to pay for Part C services) to submit its policies and procedures as part of the State's Part C grant application. This requirement is reflected in §303.203(b). Data from FY 2009 indicate that approximately 23 States have a system of payments that includes express authority to charge parents for some Part C services. Data from the last few years indicate an increase in the number of States that have adopted a system of payments and an increase in the fees parents are charged for Part C services in those States that have the authority to charge a parent a fee for Part C services. Through the application process, the Department will continue to obtain information on whether and how a State is implementing a system of payments (including the use of insurance).</p>		

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<p>Each State is unique and its system of payments policies and procedures are subject to the public participation requirements in §303.208. Through the public participation process, all stakeholders, including parents of infants and toddlers with disabilities, have an opportunity to comment on whether and what policies and procedures should be adopted by the State. The decision of whether the Department needs to conduct a study on the impact of a system of payments (including the use of insurance) on a family's decision to participate in Part C of the Act is a policy decision that is best left to the Department and should not be a subject of these regulations.</p> <p>Changes: None.</p>		
<p>Sec. 303.521 Fees.</p> <p>(a) General. A State may establish, consistent with Sec. 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.</p> <p>(b) Functions not subject to fees. The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:</p> <p>(1) Implementing the child find requirements in Sec. 303.321.</p> <p>(2) Evaluation and assessment, as included in Sec. 303.322, and including the functions related to evaluation and assessment in Sec. 303.12.</p> <p>(3) Service coordination, as included in Secs. 303.22 and 303.344(g).</p> <p>(4) Administrative and coordinative activities related to:</p> <p>(i) The development, review, and evaluation of IFSPs in Secs. 303.340 through 303.346; and</p> <p>(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subparts D and F</p>	<p><i>§303.521 System of payments and fees.</i></p> <p><i>(a) General. A State may establish, consistent with §§303.13(a)(3) and 303.203(b), a system of payments for early intervention services under Part C of the Act, including a schedule of sliding fees or cost participation fees (such as co-pays or deductible amounts) required to be paid under Federal, State, local, or private programs of insurance or benefits for which the infant or toddler with a disability or family is enrolled, that meets the requirements of §§303.520 and 303.521. The State's system of payments policies must be in writing and specify which functions or services, if any, will be subject to a system of payments (including any fees charged to the family as a result of using the family's public or private insurance), and include--</i></p> <p><i>(1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;</i></p> <p><i>(2) The basis and amount of payments or fees;</i></p> <p><i>(3) The State's definition of inability to pay (including its definition of income and family expenses); and</i></p> <p><i>(4) An assurance that--</i></p>	<p><i>§303.521 System of payments and fees.</i></p> <p><i>(a) General.</i> If a State elects to adopt a system of payments in §303.500(b), the State's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include--</p> <p><i>(1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;</i></p> <p><i>(2) The basis and amount of payments or fees;</i></p> <p><i>(3) The State's definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the State makes its determination of the ability or inability to pay;</i></p> <p><i>(4) An assurance that--</i></p> <p><i>(i) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under paragraphs (a)(4)(ii), (b), and</i></p>

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<p>of this part.</p> <p>(c) States with mandates to serve children from birth. If a State has in effect a State law requiring the provision of a free appropriate public education to children with disabilities from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.</p>	<p><i>(i) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under paragraphs (a)(4)(ii), (b), and (c) of this section);</i></p> <p><i>(ii) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this part to the child or the child's family such that, if the parent or family meets the State's definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost including any costs to the family under this section and §303.520(a)(2) and (b)(1)(ii); and</i></p> <p><i>(iii) Families will not be charged any more than the actual cost of the Part C service, and families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;</i></p> <p><i>(5) Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and</i></p> <p><i>(6) Provisions that allow but do not require the lead agency to use Part C or other funds to pay for any costs or fees to be paid by a parent under paragraph (a)(1) of this section, or §303.520(a)(2) or (b)(1)(ii). However, for a parent determined unable to pay under</i></p>	<p>(c) of this section);</p> <p>(ii) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this part to the child or the child's family such that, if the parent or family meets the State's definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost.</p> <p>(iii) Families will not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service); and</p> <p>(iv) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;</p> <p>(5) Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and</p> <p>(6) Provisions that permit, but do not require, the lead agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or co-payments.</p> <p>(b) <u>Functions not subject to fees.</u> The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:</p> <p>(1) Implementing the child find requirements</p>

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	<p><i>§303.521(a)(4)(ii), the lead agency must use Part C or other funds to cover the costs for the parent.</i></p> <p><i>(b) <u>Functions not subject to fees.</u> The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:</i></p> <p><i>(1) Implementing the child find requirements in §§303.301 through 303.303.</i></p> <p><i>(2) Evaluation and assessment, in accordance with §303.320, and including the functions related to evaluation and assessment in §303.13(b).</i></p> <p><i>(3) Service coordination services, as defined in §§303.13(b)(9) and 303.33.</i></p> <p><i>(4) Administrative and coordinative activities related to--</i></p> <p><i>(i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§303.342 through 303.345; and</i></p> <p><i>(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subpart D and this subpart.</i></p> <p><i>(c) <u>States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three.</u> If a State has in effect a State law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three</i></p>	<p>in §§303.301 through 303.303.</p> <p>(2) Evaluation and assessment, in accordance with §303.320, and the functions related to evaluation and assessment in §303.13(b).</p> <p>(3) Service coordination services, as defined in §§303.13(b)(11) and 303.33.</p> <p>(4) Administrative and coordinative activities related to--</p> <p>(i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§303.342 through 303.345; and</p> <p>(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subpart D of this part and this subpart.</p> <p>(c) <u>States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three.</u> If a State has in effect a State law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the State may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this part that are part of FAPE for that infant or toddler and the child’s family, and those FAPE services must meet the requirements of both Parts B and C of the Act.</p> <p>(d) <u>Family fees.</u> (1) Fees or costs collected</p>

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	<p><i>(or any subset of infants and toddlers with disabilities under the age of three), the State may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this part that are part of FAPE for that infant or toddler and family, and those FAPE services must meet the requirements of both Parts B and C of the Act.</i></p> <p><i>(d) <u>Family fees.</u></i></p> <p><i>(1) Fees or costs collected from a parent or the child’s family to pay for early intervention services under a State’s system of payments are program income under 34 CFR 80.25. A State may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the State’s Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.</i></p> <p><i>(2) Fees collected under a system of payments are considered neither State nor local funds under §303.225(b).</i></p> <p><i>(Authority: 20 U.S.C. 1432(4)(B), 1440)</i></p>	<p>from a parent or the child’s family to pay for early intervention services under a State’s system of payments are program income under 34 CFR 80.25. A State may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the State’s Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.</p> <p>(2) Fees collected under a system of payments are considered neither State nor local funds under §303.225(b).</p> <p>(e) <u>Procedural Safeguards.</u> (1) Each State system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the State’s determination of the parent’s ability to pay, may do one of the following:</p> <p>(i) Participate in mediation in accordance with §303.431.</p> <p>(ii) Request a due process hearing under §303.436 or 303.441, whichever is applicable.</p> <p>(iii) File a State complaint under §303.434.</p> <p>(iv) Use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny the parent’s procedural rights under this part, including the right to pursue, in a timely manner, the redress options described in paragraphs (e)(3)(i) through (e)(3)(iii) of this section.</p> <p>(2) A State must inform parents of these</p>

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		procedural safeguard options by either-- (i) Providing parents with a copy of the State’s system of payments policies when obtaining consent for provision of early intervention services under §303.420(a)(3); or (ii) Including this information with the notice provided to parents under §303.421.
<p><u>System of payments and fees (§303.521)</u></p> <p><u>Comment:</u> Commenters requested that we define the term, “actual cost of the Part C services” in proposed §303.521, which stated that a State’s system of payments policies must include an assurance that families will not be charged any more than the actual cost of the Part C service. Two commenters requested that this provision expressly specify that a State can bill both insurance and parents for early intervention services as long as the combination of the two does not exceed the actual cost of services. One commenter asked whether family fees can exceed the actual cost of services.</p> <p><u>Discussion:</u> Subject to any consent requirements in §§304.420 and 303.520, the lead agency may use, as part of its system of payments, funds from multiple sources (e.g., public insurance or benefits, private insurance, and family fees) to pay for each Part C service in an IFSP. However, the lead agency may not receive funds (whether from one or a variety of sources, such as family fees or insurance, to pay for a particular service) that exceed the actual cost of providing the service. Under a State’s system of payments, the State may not charge a family an amount that exceeds the actual cost of providing a particular Part C service. Nor may the State charge a family for amounts received by the State from other funding sources for that service. Also, families may not be charged for the cost of services specified in §303.521(b)(2), including evaluations and assessments.</p> <p>The actual cost for a Part C early intervention service may vary by State and, therefore, it is not appropriate to define the term “actual costs of service.”</p> <p>Proposed §303.521(a)(4)(iii) included two distinct requirements relating to families not being charged more than the actual cost of service and families with insurance not being charged disproportionately more than those without insurance. We have clarified this section by separating the two requirements into paragraphs (a)(4)(iii) and (a)(4)(iv) of this section, respectively. The language in new §303.521(a)(4)(iv) is the same as proposed §303.521(a)(4)(iii), regarding the prohibition that families with public insurance or benefits or private insurance not be charged disproportionately more than families who do not have public insurance or benefits or private insurance. In §303.521(a)(4)(iii), we have further clarified in a parenthetical that a family may not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service).</p> <p><u>Changes:</u> We have added the following parenthetical “(factoring in any amount received from other sources for payment for that service)” to revised §303.521(a)(4)(iii), regarding the requirement that the lead agency cannot charge a family more than the actual cost of a service. We</p>		

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		<p>have moved the language from proposed §303.521(a)(4)(iii) to a new §303.521(a)(4)(iv) regarding the provision that families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance.</p> <p><u>Comment:</u> One commenter recommended that the "or" in §303.521(a) should be "and/or."</p> <p><u>Discussion:</u> We agree with the commenter that the language in the second parenthetical in the introductory text of §303.521(a) should be amended to make clear that the fees charged to a family under a State system of payments can include one or more of the following funding sources: a child's or parent's public insurance, public benefits, or private insurance. Therefore, we have amended §303.521(a) accordingly.</p> <p><u>Changes:</u> We have amended the second parenthetical in the introductory text of §303.521(a) to say "(including any fees charged to the family as a result of using one or more of the family's public insurance, public benefits, or private insurance)."</p> <p><u>Comment:</u> One commenter requested that the regulations in §303.521(a) specify how and how often a State must evaluate a family's ability or inability to pay.</p> <p><u>Discussion:</u> A State is not required to reevaluate a parent's ability or inability to pay or inability to pay. Therefore, it is the Department's position that it is not appropriate to add such a provision to §303.521(a) because some States may not wish to reevaluate a parent's ability to pay given that a child may receive services at most for three years and many children do not enter the Part C program until they are at least 18 months of age. However, if a State requires that a lead agency's determination of a parent's ability or inability to pay be reevaluated on an annual or other basis, the State must include such a provision in its system of payments policies that is provided to parents under §303.521(e) in order for parents to be informed of when and how they may be required to provide financial information. We are adding language requiring the policies to specify when and how the State makes its determination of the ability or inability to pay.</p> <p>Upon further review of proposed §303.521(a)(3), we realized that the State's policies must define not only a parent's inability to pay but also a parent's ability to pay. We have added "ability to pay" to the definitional requirement. Additionally, we are clarifying that in defining a parent's ability to pay, the State must include consideration of family expenses such as extraordinary medical expenses as many families with infants and toddlers with disabilities have unusually high medical expenses.</p> <p><u>Changes:</u> We have revised §303.521(a)(3) to provide that the State's system of payments policies must indicate when and how the State makes its determination regarding a parent's ability or inability to pay, and, in defining the ability to pay, include extraordinary medical expenses as an example of family expenses.</p> <p><u>Comment:</u> One commenter requested that the final regulations provide further guidance on developing a State system of payments. The commenter recommended that, to ensure that a system of payments does not discourage families from participating in early intervention programs, the Department should develop regulations that set a maximum contribution limit by families.</p> <p><u>Discussion:</u> Section 632(4)(B) of the Act, concerning the definition of "early intervention services," and §303.521, concerning a system of payments and fees, provide States with the option to establish a system of payments that sets forth policies specifying the amount of fees (including any fees charged to the family as a result of using one or more of the family's public insurance, public benefits, or private insurance) that are subject to the State's system of payments. While we appreciate the commenter's request that the regulations identify maximum fiscal</p>

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<p>contributions for parents, the Department’s position is that States must have flexibility in determining the system of payments, including any fee structure. However, the State’s fee structure is subject to the requirements in §303.521(a), which requires that families not be charged more than the actual cost of the Part C service and that a parent’s inability to pay will not result in a delay or denial of services under this part. We also expect to provide additional technical assistance and guidance to States on State system of payments.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> Two commenters recommended that we revise §303.521(a) to require that States provide families with an explanation of each item that is billed to them or to their insurance to ensure that the parents can confirm that the charges match the level or amount of service provided to children and their families.</p> <p><u>Discussion:</u> Part C of the Act does not address the methods that States must use to bill parents for Part C services. However, many lead agencies have developed policies and procedures regarding billing parents for Part C services. With regard to insurance billing, lead agencies may, but are not required under Part C of the Act to, develop methods or a process to inform a parent of each item billed to the insurance of the parent or the amount of insurance proceeds received for payment of early intervention services for their infant or toddler with a disability and the child’s family. The Department’s position is that including such provisions in the regulations is not necessary because it is best left to States to determine which billing methods are most compatible with established State policies and procedures.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> One commenter recommended requiring States to provide an assurance that the quality of Part C services will be maintained regardless of the financial situation of the child or family.</p> <p><u>Discussion:</u> Consistent with section 635(a)(4) of the Act, regarding requirements for a statewide system, and §303.340, regarding IFSPs, each lead agency under Part C must ensure, for each infant or toddler with a disability, regardless of financial situation, the development, review, and implementation of an IFSP that is consistent with the definition of that term in §303.20, and meets the requirements in §§303.342 through 303.345. The lead agency under Part C of the Act also must ensure the provision of the early intervention services identified in the child’s IFSP, regardless of the financial situation of the child or family. Given these provisions, the Department’s position is that requiring States to provide the additional assurance suggested by the commenter is not necessary.</p> <p><u>Changes:</u> None.</p> <p><u>Comment:</u> One commenter opposed the language in §303.521(a)(6) that permits the lead agency to use Part C or other funds to pay the parent’s share in a State with a system of payments with family fees, when the parent is determined able to pay. According to the commenter, this provision could be read to permit an agency to obligate Part C funds for costs or fees that a parent might otherwise be required to pay. The commenter requested that this paragraph be clarified or that Part C funds be increased to fund this requirement.</p> <p><u>Discussion:</u> Section 303.521(a)(6) provides States with a system of payments the option of using Part C funds to pay for those costs, such as co-payments, that would be incurred by the parent based on the use of the child’s or parent’s public benefits or insurance or private insurance to pay for Part C services. By permitting, but not requiring, lead agencies to use Part C funds to pay for a parent’s out-of-pocket costs even when the parent is able to pay, the lead agency may be able to neutralize the financial impact on a parent and thus encourage the parent to provide any consent needed under §303.520. We also have revised this section to further clarify that if a parent is determined unable to pay, the lead</p>		

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<p>agency must use Part C or other funds to pay for the costs identified in §303.520(b)(2) or the fees charged to the parent under §303.521(a)(1). <u>Changes:</u> We have revised §303.521(a)(6) to clarify that the lead agency may use Part C funds to pay for costs such as premiums, deductibles, or copayments identified in §303.520(b)(2) that it must use Part C or other funds to pay for the costs identified in §303.520(b)(2) or the fees charged to the parent under §303.521(a)(1) for a parent determined unable to pay. <u>Comment:</u> One commenter recommended that a State with a system of payments that requires a family cost share or private insurance component should not be allowed to charge families for services that must be provided to a child in order for the child to receive FAPE under Part B of the Act, particularly once a child turns three and services are provided at no cost to parents. <u>Discussion:</u> If a child is eligible at or before age three under Part B of the Act to receive FAPE and the service is identified on the child’s IEP as part of FAPE for that child, then, under 34 CFR 300.17(a), that service must be provided at no cost to the parent. If a State elects to continue to provide Part C services for children age three and older who were receiving Part C services, and a parent provides consent for such services, the Part C provisions apply, including those relating to a State system of payments. <u>Changes:</u> None. <u>Comment:</u> One commenter asked, with respect to §303.521(c), whether a State that has a FAPE mandate for children under the age of three or a State that uses funds under Part B of the Act to serve children under age three can have a system of payments to provide Part C services to children from age three until kindergarten. <u>Discussion:</u> A State that elects to offer services under §303.211 and has a State law mandating FAPE for children with disabilities for particular ages (such as ages three through five) must ensure that services that are a part of FAPE for an eligible child in that age range are provided at no cost. If there are Part C services that are available to a child with a disability under §303.211 that are not part of FAPE for that child, the State may adopt a system of payments for such services. <u>Changes:</u> None. <u>Comment:</u> One commenter requested clarification on §303.521(b), concerning mandatory public agency functions that are not subject to fees that public agencies must perform. The commenter expressed concern that requiring these functions “to be carried out at public expense by a State” prohibits local early intervention programs from using local funds to pay for these functions. <u>Discussion:</u> The requirement in §303.521(b) does not prohibit local early intervention programs from using local funds to pay for these functions. For clarity, we have removed the phrase “by a State.” <u>Changes:</u> We have removed the phrase “by a State” from §303.521(b). <u>Comment:</u> Several commenters recommended that we require a State to include in its system of payments policies information on the family’s procedural safeguards. <u>Discussion:</u> We agree with commenters that States must inform parents about procedural safeguards when the State determines a parent’s ability to pay or imposes a fee on parents. We have added in new §303.521(e) the requirement that States establish written policies as part of their system of payments to inform parents about the availability of procedural safeguards.</p> <p>We have clarified that the State must inform parents of the availability of existing dispute resolution procedures, including participating in</p>		

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<p>mediation in accordance with §303.431, requesting a due process hearing under §303.436 or §303.441, whichever is applicable, or filing a State complaint under §303.434. Additionally, we have provided States with the flexibility to use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny a parent’s procedural rights under this part. If a State uses such other procedures, it must inform parents of those procedures.</p> <p>We also have clarified that a State may inform parents of these procedural safeguard options by either providing parents with a copy of the State’s system of payments policies when obtaining consent for the provision of early intervention services under §303.420(a)(3) or including this information with the notice provided to parents in §303.421.</p> <p><u>Changes:</u> We have added a new §303.521(e).</p>		
<p><u>Sec 303.204 Payments to the jurisdictions.</u></p> <p>(a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.2 in accordance with their respective needs.</p> <p>(b) The provisions of Pub. L. 95–134, permitting the consolidation of grants to the outlying areas, do not apply to funds provided under paragraph (a) of this section.</p>	<p><u>§303.730 Formula for State allocations.</u></p> <p>(a) <u>Reservation of funds for outlying areas.</u> <i>From the sums appropriated to carry out Part C of the Act for any fiscal year, the Secretary may reserve not more than one percent for payments to American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands in accordance with their respective needs for assistance under Part C of the Act.</i></p> <p>(b) <u>Consolidation of funds.</u> <i>The provisions of the Omnibus Territories Act of 1977, Pub. L. 95-134, permitting the consolidation of grants to the outlying areas, do not apply to the funds provided under Part C of the Act.</i></p>	<p><u>§303.730 Formula for State allocations.</u></p> <p>(a) <u>Reservation of funds for outlying areas.</u> From the sums appropriated to carry out Part C of the Act for any fiscal year, the Secretary may reserve not more than one percent for payments to American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands in accordance with their respective needs for assistance under Part C of the Act.</p> <p>(b) <u>Consolidation of funds.</u> The provisions of the Omnibus Territories Act of 1977, Pub. L. 95-134, permitting the consolidation of grants to the outlying areas, do not apply to the funds provided under Part C of the Act.</p>
<p><u>Sec 303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.</u></p> <p>(a) The Secretary makes payments to the Secretary of the Interior for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their</p>	<p><u>§303.731 Payments to Indians.</u></p> <p>(a) <u>General.</u> <i>(1) The Secretary makes payments to the Secretary of the Interior under Part C of the Act, which the Secretary of the Interior must distribute to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act,</i></p>	<p><u>§303.731 Payments to Indians.</u></p> <p>(a) <u>General.</u> (1) The Secretary makes payments to the Secretary of the Interior under Part C of the Act, which the Secretary of the Interior must distribute to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450b),</p>

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<p>families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior.</p> <p>(b)(1) The Secretary of the Interior shall distribute payments under this part to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or combinations of those entities, in accordance with section 684(b) of the Act.</p> <p>(2) A tribe or tribal organization is eligible to receive a payment under this section if the tribe is on a reservation that is served by an elementary or secondary school operated or funded by the Bureau of Indian Affairs (“BIA”).</p> <p>(c)(1) Within 90 days after the end of each fiscal year the Secretary of the Interior shall provide the Secretary with a report on the payments distributed under this section.</p> <p>(2) The report must include—</p> <p>(i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;</p> <p>(ii) The amount of each payment; and</p> <p>(iii) The date of each payment.</p> <p>Sec 303.203 Payments to the Secretary of the Interior.</p> <p>The amount of the payment to the Secretary of the Interior under § 303.180 for any fiscal year is 1.25 percent of the</p>	<p><i>as amended, 25 U.S.C. 450b), or consortia of those entities, for the coordination of assistance in the provision of early intervention services by States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior.</i></p> <p><i>(2) A tribe, tribal organization or consortium of those entities is eligible to receive a payment under this section if the tribe, tribal organization or consortium of those entities is on a reservation that is served by an elementary or secondary school operated or funded by the Secretary of the Interior.</i></p> <p><i>(3) The amount of the payment to the Secretary of the Interior under this section for any fiscal year is 1.25 percent of the aggregate amount available to all States under Part C of the Act after the Secretary determines the amount of payments to be made to the jurisdictions under §303.730(a).</i></p> <p><i>(b) Allocation. For each fiscal year, the Secretary of the Interior must distribute the entire payment received under paragraph (a)(1) of this section by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of those children served by all tribes, tribal organizations, or consortia.</i></p>	<p>or consortia of those entities, for the coordination of assistance in the provision of early intervention services by States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior.</p> <p>(2) A tribe, tribal organization, or consortium of those entities is eligible to receive a payment under this section if the tribe, tribal organization, or consortium of those entities is on a reservation that is served by an elementary or secondary school operated or funded by the Secretary of the Interior.</p> <p>(3) The amount of the payment to the Secretary of the Interior under this section for any fiscal year is 1.25 percent of the aggregate amount available to all States under Part C of the Act.</p> <p>(b) <u>Allocation</u>. For each fiscal year, the Secretary of the Interior must distribute the entire payment received under paragraph (a)(1) of this section by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total number of those children served by all tribes, tribal organizations, or consortia.</p> <p>(c) <u>Information</u>. To receive a payment under</p>

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<p>aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.204.</p>	<p><i>(c) <u>Information.</u> To receive a payment under this section, the tribe, tribal organization, or consortium must submit the appropriate information to the Secretary of the Interior to determine the amounts to be distributed under paragraph (b) of this section.</i></p> <p><i>(d) <u>Use of funds.</u> (1) The funds received by a tribe, tribal organization, or consortium must be used to assist States in child find, screening, and other procedures for the early identification of Indian children under three years of age and for parent training. The funds also may be used to provide early intervention services in accordance with Part C of the Act. These activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities.</i></p> <p><i>(2) The tribe, tribal organization, or consortium must, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.</i></p> <p><i>(e) <u>Reports.</u> (1) To be eligible to receive a payment under paragraph (b) of this section, a tribe, tribal organization, or consortium must</i></p>	<p>this section, the tribe, tribal organization, or consortium must submit the appropriate information to the Secretary of the Interior to determine the amounts to be distributed under paragraph (b) of this section.</p> <p><i>(d) <u>Use of funds.</u> (1) The funds received by a tribe, tribal organization, or consortium must be used to assist States in child find, screening, and other procedures for the early identification of Indian children under three years of age and for parent training. The funds also may be used to provide early intervention services in accordance with Part C of the Act. These activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Education, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities.</i></p> <p><i>(2) The tribe, tribal organization, or consortium must, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.</i></p> <p><i>(e) <u>Reports.</u> (1) To be eligible to receive a payment under paragraph (b) of this section, a tribe, tribal organization, or consortium must make a biennial report to the Secretary of the Interior of activities undertaken under this</i></p>

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	<p><i>make a biennial report to the Secretary of the Interior of activities undertaken under this section, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the two years following the year in which the report is made. This report must include an assurance that the tribe, tribal organization, or consortium has provided the lead agency in the State child find information (including the names and dates of birth and parent contact information) for infants or toddlers with disabilities who are included in the report in order to meet the child find coordination and child count requirements in sections 618 and 643 of the Act.</i></p> <p><i>(2) The Secretary of the Interior must include a summary of this information (including confirmation that each tribe, tribal organization, or consortium has provided to the Secretary of the Interior the assurance required under paragraph (e)(1) of this section) on a biennial basis to the Secretary along with such other information as required of the Secretary of the Interior under Part C of the Act. The Secretary may require any additional information from the Secretary of the Interior.</i></p> <p><i>(3) Within 90 days after the end of each fiscal year the Secretary of the Interior must provide</i></p>	<p>section, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the two years following the year in which the report is made. This report must include an assurance that the tribe, tribal organization, or consortium has provided the lead agency in the State child find information (including the names and dates of birth and parent contact information) for infants or toddlers with disabilities who are included in the report in order to meet the child find coordination and child count requirements in sections 618 and 643 of the Act.</p> <p>(2) The Secretary of the Interior must provide a summary of this information (including confirmation that each tribe, tribal organization, or consortium has provided to the Secretary of the Interior the assurance required under paragraph (e)(1) of this section) on a biennial basis to the Secretary along with such other information as required of the Secretary of the Interior under Part C of the Act. The Secretary may require additional information from the Secretary of the Interior.</p> <p>(3) Within 90 days after the end of each fiscal year the Secretary of the Interior must provide the Secretary with a report on the payments distributed under this section. The report must include--</p>

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	<p><i>the Secretary with a report on the payments distributed under this section. The report must include--</i></p> <p><i>(i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;</i></p> <p><i>(ii) The amount of each payment; and</i></p> <p><i>(iii) The date of each payment.</i></p> <p><i>(f) <u>Prohibited uses of funds.</u> None of the funds under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.</i></p>	<p>(i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;</p> <p>(ii) The amount of each payment; and</p> <p>(iii) The date of each payment.</p> <p>(f) <u>Prohibited uses of funds.</u> None of the funds under this section may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.</p>
<p><u>Sec 303.200 Formula for State allocations.</u></p> <p>(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.</p> <p>(b) For the purpose of allotting funds to the States under paragraph (a) of this section—</p> <p>(1) <i>Aggregate amount</i> means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior</p>	<p><u>§303.732 State allotments.</u></p> <p>(a) <u>General.</u> <i>Except as provided in paragraphs (b) and (c) of this section, for each fiscal year, from the aggregate amount of funds available under Part C of the Act for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.</i></p> <p>(b) <u>Minimum allocations.</u> <i>Except as provided in paragraph (c) of this section, no State may receive less than 0.5 percent of the aggregate amount available under this section or \$500,000, whichever is greater.</i></p> <p>(c) <u>Ratable reduction.</u></p> <p>(1) <u>General.</u> <i>If the sums made available under</i></p>	<p><u>§303.732 State allotments.</u></p> <p>(a) General. Except as provided in paragraphs (b) and (c) of this section, for each fiscal year, from the aggregate amount of funds available under Part C of the Act for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.</p> <p>(b) <u>Minimum allocations.</u> Except as provided in paragraph (c) of this section, no State may receive less than 0.5 percent of the aggregate amount available under this section or \$500,000, whichever is greater.</p> <p>(c) <u>Ratable reduction.</u> (1) If the sums made available under Part C of the Act for any fiscal</p>

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<p>under § 303.203 and to the jurisdictions under § 303.204; (2) <i>Infants and toddlers</i> means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and (3) <i>State</i> means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. (Authority: 20 U.S.C. 1443(c))</p> <p>Sec 303.202 Minimum grant that a State may receive.</p> <p>No State receives less than 0.5 percent of the aggregate amount available under § 303.200 or \$500,000, whichever is greater.(Authority: 20 U.S.C. 1443(c)(2))</p>	<p><i>Part C of the Act for any fiscal year are insufficient to pay the full amount that all States are eligible to receive under this section for that year, the Secretary ratably reduces the allotments to those States for such year.</i> (2) <u>Additional funds.</u> <i>If additional funds become available for making payments under this section, allotments that were reduced under paragraph (c)(1) of this section will be increased on the same basis the allotments were reduced.</i></p> <p>(d) <u>Definitions.</u> <i>For the purpose of allotting funds to the States under this section--</i> (1) <u>Aggregate amount</u> <i>means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under §303.731 and to the outlying areas under §303.730;</i> (2) <u>Infants and toddlers</u> <i>means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and</i> (3) <u>State</u> <i>means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.</i></p>	<p>year are insufficient to pay the full amount that all States are eligible to receive under this section for that year, the Secretary ratably reduces the allotments to those States for such year. (2) If additional funds become available for making payments under this section, allotments that were reduced under paragraph (c)(1) of this section will be increased on the same basis the allotments were reduced.</p> <p>(d) <u>Definitions.</u> For the purpose of allotting funds to the States under this section-- (1) <u>Aggregate amount</u> means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under §303.731, to the outlying areas under §303.730, and any amount to be reserved for State incentive grants under §303.734; (2) <u>Infants and toddlers</u> means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and (3) <u>State</u> means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.</p>
<p>Sec 303.201 Distribution of allotments from non-participating States. If a State elects not to receive its allotment,</p>	<p>§303.733 Reallotment of funds. If a State (as defined in §303.33) elects not to receive its allotment, the Secretary reallots</p>	<p>§303.733 Reallotment of funds. If a State (as defined in §303.35) elects not to receive its allotment, the Secretary reallots</p>

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the Secretary reallots those funds among the remaining States, in accordance with § 303.200(a).	<i>those funds among the remaining States (as defined in §303.732(d)(3)), in accordance with §303.732(c)(2).</i>	those funds among the remaining States (as defined in §303.732(d)(3)), in accordance with §303.732(c)(2).