



# Individuals With Disabilities Education Act Part C: Early Intervention Program for Infants and Toddlers With Disabilities



Final Regulations Side-by-Side  
Comparison  
SUBPART H  
October 2011



Council for  
Exceptional  
Children



Division for  
Early Childhood

The voice and vision of special education



# Subpart H- Monitoring and Enforcement; Reporting; and Allocation of Funds

Individuals with Disabilities Education Act: Part C Early Intervention Program for Infants and Toddlers with Disabilities Final Regulations

This side-by-side comparison of the 2011 final regulations to the 1999 Part C regulations serves as a tool to assist readers in understanding the new regulations and preparing their own analysis related to Part C. Permission to copy is not required and distribution is encouraged. Please give credit to CEC/DEC/ITCA



**The Council for Exceptional Children (CEC)** is the largest international professional organization dedicated to improving the educational success of individuals with disabilities and/or gifts and talents. CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice. [www.cec.sped.org](http://www.cec.sped.org)

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**Division of Early Childhood** is one of seventeen divisions of the Council for Exceptional Children (CEC) - the largest international professional organization dedicated to improving educational outcomes for individuals with exceptionalities, students with disabilities, and/or the gifted. DEC is especially for individuals who work with or on behalf of children with special needs, birth through age eight, and their families. [www.dec-sped.org](http://www.dec-sped.org)

For more information, please contact Sarah Mulligan, Executive Director for the Division for Early Childhood at [sara.mulligan@dec.sped.org](mailto:sara.mulligan@dec.sped.org), or 406-543-872 x224, or Sharon Walsh, Governmental Liaison at [WALSHTAYLO@aol.com](mailto:WALSHTAYLO@aol.com).



**Infant and Toddler Coordinators Association**

The Individuals with Disabilities Education Act (IDEA) Infant and Toddler Coordinators Association is organized as a not-for-profit corporation to promote mutual assistance, cooperation, and exchange of information and ideas in the administration of Part C and to provide support to state and territory Part C coordinators. [www.ideainfanttoddler.org](http://www.ideainfanttoddler.org)

For more information, please contact Maureen Greer, Executive Director or Sharon Walsh, Governmental Liaison at (317)251-0125 or [ideaitca@aol.com](mailto:ideaitca@aol.com)

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# Introduction

On Sept. 28, 2011, new regulations for the Part C Early Intervention Program for Infants and Toddlers with Disabilities were published in the Federal Register. These regulations, promulgated under the Individuals with Disabilities Education Act (IDEA), were in response to IDEA 2004, the most recent reauthorization of IDEA. Public comments had been received on a Noticed of Proposed Rulemaking (NPRM) for Part C published May 9, 2007. These final regulations are effective Oct. 28, 2011.

The Council for Exceptional Children (CEC), its Division for Early Childhood (DEC) and the IDEA Infant Toddler Coordinators Association (ITCA) are pleased to provide this side-by-side comparison of the 2011 final Part C regulations to the 1999 Part C regulations. This document is designed as a tool to assist readers in understanding the new regulations in relation to the 1999 regulations.

The document is available for downloading in two different formats. The complete document, organized into its eight subparts, can be downloaded or selected subparts can be downloaded. The document is organized according to the subparts in the 1999 regulations with the exception of a new Subpart H, which is based on the new regulations.

Subpart A: General

Subpart B: State Application for a Grant and Requirements for a Statewide System

Subpart C: Procedures for Making Grants to States

Subpart D: Program and Service Components of a Statewide System of Early Intervention Services

Subpart E: Procedural Safeguards

Subpart F: State Administration

Subpart G: State Interagency Coordinating Council

Subpart H: Monitoring and Enforcement; Reporting; and Allocation of Funds

Both formats of the document are available at the Web sites of all three associations:

[www.cec.sped.org](http://www.cec.sped.org)

[www.dec-sped.org](http://www.dec-sped.org)

[www.ideainfanttoddler.org](http://www.ideainfanttoddler.org)

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The side-by-side format of the document includes:

- *Left column* “1999 Part C Regulations” includes the current Part C regulations last published in the Federal Register on March 12, 1999.
- *Middle column* “2011 Part C Regulations” provides sections of the new regulations aligned next to the applicable 1999 regulatory section.
- *Right column* “U.S. Department of Education Selected Analysis of Comments and Changes” includes selected quotes from this introductory section of the new Part C regulations package. These quotes are selected to provide the reader with an understanding of why a particular regulation was changed or not as compared with the NPRM. These quotes also provide additional clarification of the Department’s intent when revising or adding a particular final regulation.

The reader should note a few things in reviewing the new regulations. First, all “notes” that are included in the current regulations have been removed. Also, specific language from 34 CFR Part 300, related to confidentiality and dispute resolution, has been incorporated into relevant sections of the Part C regulations package with necessary changes made for applicability to Part C.

Finally, the reader should note that in many instances, the final regulations represent a reorganization of the existing regulations. Numerous provisions have been moved and resulting citations have changed. These changes made the task of alignment difficult. While we have made every effort to ensure accurate alignment of the new provisions, there may be instances in which this was not possible.

The final Part C regulations contain numerous changes and additions. The reader is encouraged to consider and review the new regulations completely. The following are a selected list of changes made and areas to review:

- Definitions of key terms, including multidisciplinary, natural environments, and native language, have been revised and new definitions, including local educational agency (LEA) and scientifically-based research have been added.
- Transition requirements have been revised, including provisions related to notification to the local educational agency (LEA) and state educational agency (SEA), timelines, an opt-out policy, the transition conference, and the transition plan.

- An optional state screening policy has been added as part of a new organizational structure of pre-referral, referral, and post-referral activities.
- The two working-day requirement from identification to referral has been changed to “as soon as possible but no more than 7 calendar days after identification.”
- The 45-day required timeline from referral to the IFSP meeting has been retained with the addition of some provisions permitting documentation of extraordinary circumstances for a delay.
- Child Find provisions have been changed to add programs with which the lead agency must collaborate.
- Definitions and provisions for evaluation and assessment including family assessment have been revised.
- Required provisions for the “use of informed clinical opinion” have been clarified.
- Natural environment provisions have been revised to reflect the 2004 statutory change.
- Changes in the content of the IFSP have been made including in the “early intervention services” and “other services” components.
- Several changes have been made to procedural safeguards, including provisions related to written prior notice, confidentiality, surrogate parents, and dispute resolution.
- Changes have been made in provisions related to financial responsibility, systems of payment, and ability to pay, as well as to the use of public benefits and insurance and private insurance.
- Provisions related to monitoring, enforcement, reporting, and allocation have been included in a new subpart of the Part C regulations.

The Department has announced plans to publish a Notice of Proposed Rulemaking (NPRM) related to maintenance of effort (MOE) requirements with an opportunity for public comment in the near future.

As you work to implement these new regulations in order to serve infants and toddlers with disabilities and their families, CEC, DEC, and ITCA stand ready to serve as a resource for you.

**SUBPART H – MONITORING AND ENFORCEMENT; REPORTING; AND ALLOCATION OF FUNDS**

1999 Part C Regulations	2011 Part C Regulations	U.S. Department of Education Selected Analysis of Comments and Changes
<p><b><u>§303.501 Supervision and monitoring of programs.</u></b>                      (a) General. Each lead agency is responsible for--                      (1) The general administration and supervision of programs and activities receiving assistance under this part; and                      (2) The monitoring of programs and activities used by the State to carry out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part.                      (b) Methods of administering programs. In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including--                      (1) Monitoring agencies, institutions, and organizations used by the State to carry out this part;                      (2) Enforcing any obligations imposed on those agencies under part C of the Act and these regulations;                      (3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and                      (4) Correcting deficiencies that are identified through monitoring.</p>	<p><b><u>§303.700 State monitoring and enforcement.</u></b>                      (a) The lead agency must--                      (1) Monitor the implementation of this part;                      (2) Make determinations annually about the performance of each EIS program using the categories identified in §303.703(b);                      (3) Enforce this part consistent with §303.704, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in §303.704(a)(1) (technical assistance) and §303.704(a)(2) (imposing conditions on the lead agency’s funding of an EIS program or, if the lead agency does not provide Part C funds to the EIS program, an EIS provider), §303.704(b)(2)(i) (corrective action or improvement plan) and §303.704(b)(2)(iv) (withholding of funds, in whole or in part by the lead agency), and §303.704(c)(2) (withholding of funds, in whole or in part by the lead agency); and                      (4) Report annually on the performance of the State and of each EIS program under this part as provided in §303.702.</p>	<p>The Department indicates that “Sections 616(a)(1)(C) and 642 of the Act require the Secretary to require States (and the designated lead agencies charged with implementing Part C of the Act in the State under section 635(a)(10) of the Act) to monitor and enforce Part C of the Act in accordance with the monitoring priorities established by the Secretary under section 616(a)(3) of the Act (as modified by section 642 of the Act) and the statutory enforcement options identified in section 616(e) of the Act.”</p> <p>The Department further states that “These statutory provisions must be read in conjunction with sections 616(b)(2)(C) and 642 of the Act, which require State lead agencies to: (1) publicly report on the performance of each EIS program using the State’s targets established in its SPP under the priority areas described in section 616(a)(3) of the Act, and (2) report annually to the Secretary through the APR on the performance of the State in meeting the State’s targets in the SPP. Thus, lead agencies must make annual determinations about the performance of each EIS program using the categories in section 616(d)(2) and (e) of the Act and §303.703(b). This requirement stems from the statutory requirement that lead agencies must monitor EIS providers located in the State using quantifiable and qualitative indicators as specified in section 616(a)(3) of the Act (as modified by section 642 of the Act), enforce Part C of the Act in accordance with section 616(e) of the Act (which refers to the requirement that the Secretary make annual determinations about the performance of each State using these same determination</p>

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		categories), and from sections 616(b)(2)(C)(i) and (b)(2)(C)(ii)(I) and 642 of the Act, which require lead agencies to analyze and publicly report on the performance of each EIS program on an annual basis.”
	<p><b><u>§303.700 State monitoring and enforcement.</u></b>                      (b) The primary focus of the State’s monitoring activities must be on--                      (1) Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and                      (2) Ensuring that EIS programs meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.</p>	The Department clarifies “Section 303.700(b) incorporates the language from section 616(a)(2) of the Act (as modified by section 642 of the Act), regarding the primary focus of Federal and State monitoring. State monitoring requirements are addressed in more detail, including the areas mentioned by the commenter, through the SPP/APR process. For example, as part of the SPP/APR process, the Secretary has established monitoring priorities and indicators for States that reflect the goals of improving early intervention results and functional outcomes for infants and toddlers with disabilities while ensuring that EIS programs comply with key Part C requirements, including those relating to the timely provision of early intervention services, child outcomes, family capacity, timely evaluations, assessments, initial IFSP development, and transition.”
	<p><b><u>§303.700 State monitoring and enforcement.</u></b>                      (c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.</p>	
	<p><b><u>§303.700 State monitoring and enforcement.</u></b>                      (d) The lead agency must monitor each EIS program located in the State, using quantifiable</p>	The Department notes “Section 616(a) of the Act (as modified by section 642 of the Act) requires States to focus their monitoring activities on

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	<p><b><u>§303.700 State monitoring and enforcement.</u></b> indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:</p> <p>(1) Early intervention services in natural environments.</p> <p>(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution sessions (if the State adopts Part B due process hearing procedures under §303.430(d)(2)), mediation, and a system of transition services as defined in section 637(a)(9) of the Act.</p>	<p>improving early intervention results and functional outcomes for infants and toddlers with disabilities and meeting the program requirements in Part C of the Act. Section 616 of the Act further requires that the Secretary establish indicators to adequately measure performance in several priority areas.</p> <p>The Secretary has established 14 such indicators under Part C of the Act for State reporting in the SPP/APR, and, through the OMB public review process for information collections, has solicited public comments on these indicators several times since the 2004 amendments to the Act. These indicators address critical, substantive requirements of Part C of the Act, including those relating to child find for children ages birth to one year and birth to three years; provision of early intervention services in natural environments; early intervention child outcomes; family capacity; timely initial evaluations, assessments and IFSP development; timely service provision; and transition services. While not specifically included as an SPP/APR indicator, the Department’s position is that public awareness is covered under the two child find indicators. For example, a State must have an effective public awareness program to ensure that eligible infants and toddlers are identified for early intervention services.</p> <p>Finally, issues related to family outcomes are adequately addressed by the SPP/APR indicator that measures family capacity because that indicator is designed to evaluate whether families know their rights, can effectively communicate their needs, and can assist their children to develop</p>

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		and learn. Moreover, we believe that it is not appropriate to include in these regulations any specific SPP/APR indicator because the Secretary must retain flexibility to revise indicators as necessary. “
	<p><b><u>§303.700 State monitoring and enforcement.</u></b>                      (e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by EIS programs and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the State’s identification of the noncompliance.</p>	<p>The Department indicates “Correcting noncompliance as soon as possible is a critical responsibility of lead agencies and EIS providers, and, as discussed in the preamble of subpart B of these regulations, the Department’s position is that correction as soon as possible but no later than one year is a reasonable timeframe for an EIS provider to correct noncompliant policies, procedures, or practices and for the lead agency to verify that the EIS program or EIS provider is complying with the requirements of Part C of the Act.</p> <p>Through [the Department’s] monitoring experience, [the Department] has observed that, in most cases, when a lead agency makes a good faith effort, the needed corrective actions can be accomplished and their effectiveness verified within one year from identification of the noncompliance. Timely correction of noncompliance is critical to ensure proper and effective implementation of Part C of the Act. Therefore, it is the Department’s position that correction as soon as possible, but not later than one year from identification, is appropriate.”</p>
	<p><b><u>§303.701 State performance plans and data collection.</u></b>                      (a)General. Each State must have in place a performance plan that meets the requirements described in section 616 of the Act; is approved by the Secretary; and includes an evaluation of the</p>	<p>The Department noted “the Secretary has established 14 indicators in the SPP for Part C of the Act. One of these indicators (Indicator 14) requires each State to demonstrate that it reports timely and accurate data under the reporting requirements in section 618 of the Act and in the</p>

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	<p><b><u>§303.701 State performance plans and data collection.</u></b>                      State's efforts to implement the requirements and purposes of Part C of the Act, a description of how the State will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in §303.700(d).</p>	<p>SPP and APR. Further, to ensure valid and reliable data for each SPP/APR indicator, States must report data in their SPP/APR submissions according to required measurements and from specified data sources. In addition to the percentages required in the indicators, lead agencies are required to provide the actual numbers used in their calculations.”</p>
	<p><b><u>§303.701 State performance plans and data collection.</u></b>                      (b) Review of State performance plan. Each State must review its State performance plan at least once every six years and submit any amendments to the Secretary.</p>	
	<p><b><u>§303.701 State performance plans and data collection.</u></b>                      (c) Data collection. (1) Each State must collect valid and reliable information as needed to report annually to the Secretary under §303.702(b)(2) on the indicators established by the Secretary for the State performance plans.                      (2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects data for a particular indicator through State monitoring or sampling, the State must collect and report data on those indicators for each EIS program at least once during the six-year period of a State performance plan.                      (3) Nothing in Part C of the Act or these regulations may be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.</p>	

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	<p><b><u>§303.702 State use of targets and reporting.</u></b>                      (a)General. Each State must use the targets established in the State’s performance plan under §303.701 and the priority areas described in §303.700(d) to analyze the performance of each EIS program in implementing Part C of the Act.</p>	<p>The Department expects, “in most cases, that the lead agency will designate its EIS programs on a geographic basis (e.g., counties, parishes, and health or school districts), it is not always feasible to do so. Therefore, it is the Department’s position that it is not necessary to require States to make EIS program designations by geographic areas. States currently administer their Part C programs through a variety of administrative structures. For example, multiple EIS providers may provide services in one or more overlapping geographic areas. Therefore, States cannot be expected to revise their existing administrative structures for the sole purpose of reporting performance data by geographic areas within a State.”</p>
	<p><b><u>§303.702 State use of targets and reporting.</u></b>                      (b) Public reporting and privacy. (1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must--                      (A) Report annually to the public on the performance of each EIS program located in the State on the targets in the State’s performance plan as soon as practicable but no later than 120 days following the State’s submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and                      (B) Make the State’s performance plan under §303.701(a), annual performance reports under paragraph (b)(2) of this section, and the State’s annual reports on the performance of each EIS program under paragraph (b)(1)(i)(A) of this section available through public means, including by posting on the Web site of the lead agency, distribution to the media, and distribution to EIS programs.</p>	<p>The Department notes that “it is important for the public to be informed in a timely manner regarding the performance of each EIS program in meeting the targets in the State’s SPP. ... [The Department] considers 120 days to be an appropriate timeframe for States to develop and make public the reports on the performance of EIS programs on the targets in the SPP and have made this change in the regulations. With this change, a State will have four months before the State reports its APR data by EIS program to the public.”</p>

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	<p><b><u>§303.702 State use of targets and reporting.</u></b>                      (ii) If the State, in meeting the requirements of paragraph (b)(1)(i)(A) of this section, collects data through State monitoring or sampling, the State must include in its public report on EIS programs under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each EIS program and the date the data were collected.                      (2) State performance report. The State must report annually to the Secretary on the performance of the State under the State’s performance plan.                      (3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.</p>	
	<p><b><u>§303.703 Secretary’s review and determination regarding State performance.</u></b>                      (a) Review. The Secretary annually reviews the State’s performance report submitted pursuant to §303.702(b)(2).</p>	
	<p><b><u>§303.703 Secretary’s review and determination regarding State performance.</u></b>                      (b) Determination. (1) General. Based on the information provided by the State in the State’s annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State--                      (i) Meets the requirements and purposes of Part C of the Act;                      (ii) Needs assistance in implementing the requirements of Part C of the Act;</p>	

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	<p><b><u>§303.703 Secretary’s review and determination regarding State performance.</u></b>                      (iii) Needs intervention in implementing the requirements of Part C of the Act; or                      (iv) Needs substantial intervention in implementing the requirements of Part C of the Act.                      (2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations.                      (ii) The hearing described in paragraph (b)(2)(i) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Secretary should not make the determination described in paragraph (b)(1)(iii) or (b)(1)(iv) of this section.</p>	
	<p><b><u>§303.704 Enforcement.</u></b>                      (a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under §303.703(b)(1)(ii) in implementing the requirements of Part C of the Act, the Secretary takes one or more of the following actions:                      (1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work</p>	

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	<p><b><u>§303.704 Enforcement.</u></b>                      with appropriate entities. This technical assistance may include—</p> <ul style="list-style-type: none"> <li>(i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;</li> <li>(ii) Assistance in identifying and implementing professional development, early intervention service provision strategies, and methods of early intervention service provision that are based on scientifically based research;</li> <li>(iii) Designating and using administrators, service coordinators, service providers, and other personnel from the EIS program to provide advice, technical assistance, and support; and</li> <li>(iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.</li> </ul> <p>(2) Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part C of the Act.</p>	
	<p><b><u>§303.704 Enforcement.</u></b>                      (b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under §303.703(b)(1)(iii) in implementing the requirements of Part C of the Act, the following apply:</p> <ul style="list-style-type: none"> <li>(1) The Secretary may take any of the actions described in paragraph (a) of this section.</li> </ul>	<p>The Department noted “In instances where the determinations for a State are different in consecutive years (e.g., “needs assistance” in year one and “needs intervention” in the following year), the Department may use the enforcement mechanisms under GEPA and EDGAR in addition to those identified in the Act and §303.707. Whether the Department will need to use additional enforcement mechanisms will depend on the</p>

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	<p><b><u>§303.704 Enforcement.</u></b></p> <p>(2) The Secretary takes one or more of the following actions:</p> <p>(i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year.</p> <p>(ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended (GEPA), 20 U.S.C. 1234f, if the Secretary has reason to believe that the State cannot correct the problem within one year.</p> <p>(iii) Seeks to recover funds under section 452 of GEPA, 20 U.S.C. 1234a.</p> <p>(iv) Withholds, in whole or in part, any further payments to the State under Part C of the Act.</p> <p>(v) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.</p>	<p>unique facts of the situation. Thus, it is not possible for the Department to identify in these regulations all situations in which the use of those enforcement mechanisms may be appropriate.”</p>
	<p><b><u>§303.704 Enforcement.</u></b></p> <p>(c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part C of the Act or that there is a substantial failure to comply with any requirement under Part C of the Act by the lead agency or an EIS program in the State, the Secretary takes one or more of the following actions:</p> <p>(1) Recovers funds under section 452 of GEPA, 20 U.S.C. 1234a.</p> <p>(2) Withholds, in whole or in part, any further payments to the State under Part C of the Act.</p>	

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	<p><b><u>§303.704 Enforcement.</u></b>                      (3) Refers the case to the Office of Inspector General of the Department of Education.                      (4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.</p>	
	<p><b><u>§303.704 Enforcement.</u></b>                      (d) Report to Congress. The Secretary reports to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.</p>	
	<p><b><u>§303.705 Withholding funds.</u></b>                      (a) Opportunity for hearing. Prior to withholding any funds under Part C of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the lead agency involved, pursuant to the procedures in §§303.231 through 303.236.</p>	
	<p><b><u>§303.705 Withholding funds.</u></b>                      (b) Suspension. Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part C of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part C of the Act should not be suspended.</p>	
	<p><b><u>§303.705 Withholding funds.</u></b>                      (c) Nature of withholding. (1) Limitation. If the Secretary determines that it is appropriate to withhold further payments under section 616(e)(2)</p>	<p>The Department noted “Under §303.12, EIS providers are entities or individuals that provide early intervention services under Part C of the Act, regardless of whether they receive Part C Federal</p>

**SUBPART H – MONITORING AND ENFORCEMENT; REPORTING; AND ALLOCATION OF FUNDS**

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	<p><b><u>§303.705 Withholding funds.</u></b>                      or (e)(3) of the Act, the Secretary may determine--                      (i) That such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary’s determination under §303.703(b)(1); or                      (ii) That the lead agency must not make further payments of funds under Part C of the Act to specified State agencies, EIS programs or, if the lead agency does not provide Part C funds to the EIS program, EIS providers that caused or were involved in the Secretary’s determination under §303.703(b)(1).                      (2) Withholding until rectified. Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified--                      (i) Payments to the State under Part C of the Act must be withheld in whole or in part; and                      (ii) Payments by the lead agency under Part C of the Act must be limited to State agencies and EIS providers whose actions did not cause or were not involved in the Secretary’s determination under §303.703(b)(1).</p>	<p>funds, and may include, where appropriate, the lead agency and other public agencies responsible for providing early intervention services to infants and toddlers with disabilities in the State. EIS programs are different; under §303.11, an EIS program is an entity designated by the lead agency for reporting under sections 616 and 642 of the Act and §§303.700 through 303.702.</p> <p>Lead agencies do not always provide Part C funds directly to an EIS provider, but instead may provide Part C funds to an EIS program. Thus, it would be appropriate to clarify in §303.705(c)(1)(ii) that the lead agency must not make further payments of funds under Part C of the Act to specified State agencies, EIS programs or, if the lead agency does not provide Part C funds to the EIS program, EIS providers that caused or were involved in the Secretary’s determination under §303.703(b)(1).”</p>
	<p><b><u>§303.706 Public attention.</u></b>                      Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to §303.704, the State must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to section 616(e) of the Act and §303.704 of the regulations to the attention of the public within the State, including by posting the notice on the Web site of the lead agency and distributing the notice to the media and to EIS programs.</p>	

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	<p><b><u>§303.707 Rule of construction.</u></b>                      Nothing in this subpart may be construed to restrict the Secretary from utilizing any authority under GEPA, 20 U.S.C. 1221 et seq., and its regulations in 34 CFR parts 76, 77, 80, and 81, including the imposition of special conditions under 34 CFR 80.12, to monitor and enforce the requirements of the Act.</p>	
	<p><b><u>§303.708 State enforcement.</u></b>                      Nothing in this subpart may be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of the Act.</p>	
<p><b><u>§303.540 Data collection.</u></b>                      (a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must--                      (1) Include a process for—                      (i) Collecting data from various agencies and service providers in the State;                      (ii) Making use of appropriate sampling methods, if sampling is permitted; and                      (iii) Describing the sampling methods used, if reporting to the Secretary; and                      (2) Provide for reporting data required under section 618 of the Act that relates to this part.</p>	<p><b><u>§303.720 Data requirements--general.</u></b>                      (a) The lead agency must annually report to the Secretary and to the public on the information required by section 618 of the Act at the times specified by the Secretary.</p>	
<p><b><u>§303.540 Data collection.</u></b>                      (b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.</p>	<p><b><u>§303.720 Data requirements--general.</u></b>                      (b) The lead agency must submit the report to the Secretary in the manner prescribed by the Secretary.</p>	
	<p><b><u>§303.721 Annual report of children served--report requirement.</u></b>                      (a) For the purposes of the annual report required by section 618 of the Act and §303.720, the lead</p>	<p>The Department indicated “States must choose a date between October 1st and December 1st of each year and collect point-in-time child count and settings data on that date. To ensure consistency,</p>

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	<p><b><u>§303.721 Annual report of children served-- report requirement.</u></b>                      agency must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year. The report must include--</p> <p>(1) The number and percentage of infants and toddlers with disabilities in the State, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to it by tribes, tribal organizations, and consortia under §303.731(e)(1));</p> <p>(2) The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and</p> <p>(3) The number and percentage of at-risk infants and toddlers (as defined in section 632(1) of the Act), by race and ethnicity, who are receiving early intervention services under Part C of the Act.</p>	<p>States are encouraged to use the same date from year to year. [The Department] believes it is appropriate to continue to require States to report point-in-time data on child count and settings because the Department has required point-in-time data under Part C of the Act since 1992. Revising this standard would impose burdens on States as they would need to redesign their data collection systems, and it also would affect the Department’s ability to compare data from multiple years and develop trend data. While States are not required to submit cumulative child count data, they may provide such additional information in the child count data information collection form (Table 1 -- Report of Children Receiving Early Intervention Services in Accordance with Part C).”</p>
	<p><b><u>§303.721 Annual report of children served-- report requirement.</u></b>                      (b) If a State adopts the option under section 635(c) of the Act and §303.211 to make services under this part available to children ages three and older, the State must submit to the Secretary a report on the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for those children to continue to receive early intervention services.</p>	
	<p><b><u>§303.721 Annual report of children served-- report requirement.</u></b>                      (c) The number of due process complaints filed</p>	

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	<p><b><u>§303.721 Annual report of children served--report requirement.</u></b>                      under section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.</p>	
	<p><b><u>§303.722 Data reporting.</u></b>                      (a) Protection of identifiable data. The data described in section 618(a) of the Act and in §303.721 must be publicly reported by each State in a manner that does not result in disclosure of data identifiable to individual children.</p>	
	<p><b><u>§303.722 Data reporting.</u></b>                      (b) Sampling. The Secretary may permit States and outlying areas to obtain data in section 618(a) of the Act through sampling.</p>	
	<p><b><u>§303.723 Annual report of children served--certification.</u></b>                      The lead agency must include in its report a certification signed by an authorized official of the agency that the information provided under §303.721 is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.</p>	<p>The Department noted “It is critical that data reported by States be accurate. One way to ensure accuracy of that data is to require lead agency officials to submit a certification attesting to the data’s accuracy, as is required by §303.723. Concerning the accuracy of data collected through sampling, when a State uses sampling as a methodology to obtain its child count data, the State must first, in accordance with OMB-approved information collection requirements, have its sampling plan approved by the Department. Prior to receiving approval of a sampling plan, the State must demonstrate that its proposed sampling plan will result in the collection of valid, reliable, and accurate data. Currently no State has elected to use sampling when collecting the data required under section 618 of the Act and §303.721.”</p>

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	<p><b><u>§303.724 Annual report of children served-- other responsibilities of the lead agency.</u></b>                      In addition to meeting the requirements of §§303.721 through 303.723, the lead agency must conduct its own child count or use EIS providers to complete its child count. If the lead agency uses EIS providers to complete its child count, then the lead agency must--</p> <p>(a) Establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services;</p>	<p>The Department clarified, “Collection of accurate, unduplicated data begins at the EIS provider level. Therefore, requiring the lead agency to establish procedures that must be implemented by EIS providers, including certifications about the accuracy of the data and the dates by which EIS providers must report that data to the lead agency, is reasonable and necessary.”</p>
	<p><b><u>§303.724 Annual report of children served-- other responsibilities of the lead agency.</u></b>                      (b) Establish dates by which those EIS providers must report to the lead agency to ensure that the State complies with §303.721(a);</p>	
	<p><b><u>§303.724 Annual report of children served-- other responsibilities of the lead agency.</u></b>                      (c) Obtain certification from each EIS provider that an unduplicated and accurate count has been made;</p>	<p>The Department noted “in some States with electronic systems for collecting and maintaining data, the State lead agency does not use EIS providers to collect State child count data. However, in those States where EIS providers still play a key role in collecting State child count data, it is appropriate for each EIS provider to certify that the data it reports to the lead agency are unduplicated and accurate. Therefore, [the Department) has revised §303.724 to only require that, as one of the commenters suggested, the EIS provider certify the accuracy and nonduplication of data that the EIS provider is required to collect and report to the lead agency.”</p>
	<p><b><u>§303.724 Annual report of children served-- other responsibilities of the lead agency.</u></b>                      (d) Aggregate the data from the count obtained from each EIS provider and prepare the report required under §§303.721 through 303.723; and</p>	

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	<p><b><u>§303.724 Annual report of children served-- other responsibilities of the lead agency.</u></b>                      (e) Ensure that documentation is maintained to enable the State and the Secretary to audit the accuracy of the count.</p>	
<p><b><u>§303.204 Payments to the jurisdictions.</u></b>                      (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 Sec. 303.2 in accordance with their respective needs.</p>	<p><b><u>§303.730 Formula for State allocations.</u></b>                      (a) Reservation of funds for outlying areas. 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>§303.204 Payments to the jurisdictions.</u></b>                      (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><b><u>§303.730 Formula for State allocations.</u></b>                      (b) Consolidation of funds. 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><b><u>§303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.</u></b>                      (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 families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. (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</p>	<p><b><u>§303.731 Payments to Indians.</u></b>                      (a) General. (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), 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>The Department notes “section 643(b) of the Act requires the Secretary of the Interior to distribute the entirety of Part C funds received from the Secretary of Education to tribes, tribal organizations, or consortia of those entities for the coordination of assistance and 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>

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Education Assistance Act), or combinations of those entities, in accordance with section 684(b) of the Act. (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").	<b>§303.731 Payments to Indians.</b> (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. (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.	
<b>§303.203 Payments to the Secretary of the Interior.</b> The amount of the payment to the Secretary of the Interior under Sec. 303.180 for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under Sec. 303.204.		
	<b>§303.731 Payments to Indians.</b> (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 number of those children served by all tribes, tribal organizations, or consortia.	
	<b>§303.731 Payments to Indians.</b> (c) Information. 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	

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	<b><u>§303.731 Payments to Indians.</u></b> section.	
	<b><u>§303.731 Payments to Indians.</u></b> (d) Use of funds. (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. (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.	The Department noted “Under section 634(1), the lead agency is responsible for ensuring that early intervention services are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers residing on a reservation geographically located in the State. Under section 643(b)(4), Indian tribes, tribal organizations, and consortia that receive funds from the Secretary of the Interior must coordinate with the State, through the lead agency responsible for providing early intervention services under Part C of the Act in that State. This coordination is to ensure that eligible Indian infants and toddlers with disabilities under the age of three in the State are identified, evaluated, and provided early intervention services.”
<b><u>§303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.</u></b> (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. (2) The report must include-- (i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year; (ii) The amount of each payment;	<b><u>§303.731 Payments to Indians.</u></b> (e) Reports. (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 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	The Department indicates, “the Secretary of the Interior, in accordance with section 643(b)(5) of the Act, must submit to the Secretary of Education on a biennial basis a report that includes a summary of the information that tribes, tribal organizations, or consortia that receive Part C funds must submit to the Secretary of the Interior under this section.”

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<p><b><u>§303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.</u></b>                      (iii) The date of each payment.</p>	<p><b><u>§303.731 Payments to Indians.</u></b>                      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.                      (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.                      (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--                      (i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;                      (ii) The amount of each payment; and                      (iii) The date of each payment.</p>	
	<p><b><u>§303.731 Payments to Indians.</u></b>                      (f) Prohibited uses of funds. 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>	

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<p><b><u>§303.200 Formula for State allocations.</u></b>                      (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.                      (b) For the purpose of allotting funds to the States under paragraph (a) of this section-- (1) Aggregate amount 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 Sec. 303.203 and to the jurisdictions under Sec. 303.204;                      (2) Infants and toddlers 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) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.</p>	<p><b><u>§303.732 State allotments.</u></b>                      (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>§ 303.202 Minimum grant that a State may receive.</u></b>                      No State receives less than 0.5 percent of the aggregate amount available under Sec. 303.200 or \$500,000, whichever is greater.</p>	<p><b><u>§303.732 State allotments.</u></b>                      (b) Minimum allocations. 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><b><u>§303.732 State allotments.</u></b>                      (c) Ratable reduction. (1) If the sums made available under 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</p>	

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	<p><b><u>§303.732 State allotments.</u></b> 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><b><u>§303.200 Formula for State allocations.</u></b> (b) For the purpose of allotting funds to the States under paragraph (a) of this section-- (1) Aggregate amount 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 Sec. 303.203 and to the jurisdictions under Sec. 303.204; (2) Infants and toddlers 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) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.</p>	<p><b><u>§303.732 State allotments.</u></b> (d) Definitions. For the purpose of allotting funds to the States under this section-- (1) Aggregate amount 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) Infants and toddlers 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) State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.</p>	<p>The Department notes “it is not necessary to define ‘most recent satisfactory data’ because this phrase also has a plain meaning--that is, it refers to the most recent population data on the number of infants and toddlers in States that are available to the Department at the time the Department calculates State allocations under Part C of the Act. For the purpose of these allocations, the Department uses the most recent data provided by the United States Bureau of the Census (U.S. Census Bureau) as the ‘most recent satisfactory data.’</p> <p>It is the Department’s position that the regulations should not require the Secretary to inform States of their allocations 120 days prior to making the funds available to the States because the Department believes that the final allocations should be based on the most recent U.S. Census Bureau data available at the time the Department issues Part C grants, and that data could, in some years, result in changes in the estimated allocations within 120 days of making awards.”</p>
<p><b><u>§303.201 Distribution of allotments from non-participating States.</u></b> If a State elects not to receive its allotment, the Secretary reallots those funds among the remaining States, in accordance with</p>	<p><b><u>§303.733 Reallotment of funds.</u></b> If a State (as defined in §303.35) elects not to receive its allotment, the Secretary reallots those funds among the remaining States (as defined in §303.732(d)(3)), in accordance with</p>	

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<b><u>§303.201 Distribution of allotments from non-participating States.</u></b> Sec. 303.200(a).	<b><u>§303.733 Reallotment of funds.</u></b> §303.732(c)(2).	
	<b><u>§303.734 Reservation for State incentive grants.</u></b> (a) General. For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 of the Act exceeds \$460,000,000, the Secretary reserves 15 percent of the appropriated amount exceeding \$460,000,000 to provide grants to States that are carrying out the policy described in section 635(c) of the Act and in §303.211 (including a State that makes Part C services available under §303.211(a)(2)), in order to facilitate the implementation of that policy.	
	<b><u>§303.734 Reservation for State incentive grants.</u></b> (b) Amount of grant. (1) General. Notwithstanding section 643(c)(2) and (c)(3) of the Act, the Secretary provides a grant to each State under this section in an amount that bears the same ratio to the amount reserved under paragraph (a) of this section as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under paragraph (a) of this section. (2) Maximum amount. No State may receive a grant under paragraph (a) of this section for any fiscal year in an amount that is greater than 20 percent of the amount reserved under that paragraph for the fiscal year.	The Department reported “In FY 2009, the appropriation exceeded \$460,000,000 due to the enactment of ARRA and the Department reserved funding for SIG grants under section 643(c) of the Act. The Department received applications from, and made SIG grants to, two States that submitted policies under section 635(c) of the Act to serve children beyond age three and four. No States applied to implement section 635(c) of the Act in FY 2005 through FY 2008 or FY 2010, which the Department believes can be explained by the lack of funding in those years for the SIG grants.”
	<b><u>§303.734 Reservation for State incentive grants.</u></b> (c) Carryover of amounts pursuant to section 643(e)(3) of the Act. (1) First succeeding fiscal year. Pursuant to section 421(b) of GEPA, 20 U.S.C. 1221 et seq., amounts under a grant	

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	<p><b><u>§303.734 Reservation for State incentive grants.</u></b>                      provided under paragraph (a) of this section that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which those amounts were appropriated must remain available for obligation and expenditure during the first succeeding fiscal year.</p> <p>(2) Second succeeding fiscal year. Amounts under a grant provided under paragraph (a) of this section that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which those amounts were appropriated must be returned to the Secretary and used to make grants to States under section 633 of the Act (from their allotments identified in §§303.731 through 303.733) during the second succeeding fiscal year.</p>	