

Enclosure C



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY  
September 26, 2007

Honorable Togiola Talalelei Tulafona  
Governor of American Samoa  
Office of the Governor  
Executive Office Building  
Pago Pago, AS 96799

Dear Governor Tulafona:

We appreciate the continued cooperation and efforts being made by representatives of the Government of American Samoa (ASG), including the American Samoa Department of Education, to help address the challenging grant management and accountability issues that ASG has been facing regarding the administration of Federal education grants. However, the U.S. Department of Education (Department) is very concerned by indications of serious issues, particularly in the areas of procurement, property management, and payroll, affecting ASG's administration and accountability of Department grant funds that have recently come to our attention. In addition, the Department has not received a draft corrective action plan (CAP) from the ASG Office of Procurement and Office of Property Management as required by the July 2007 special conditions. Corrective actions involving these agencies are a critical piece of the ASG CAP.

Consequently, the Department is imposing additional special conditions on all program funds awarded to ASG agencies. Please note that the enclosed special conditions contain a limitation on ASG's drawdown of Department grant award funds and a requirement for ASG to have a payroll attestation conducted by an independent public accountant. Enclosed are the special conditions that will be incorporated in the grant awards made by the Department to ASG for all of the Federal education programs it administers and that also apply to grant funds previously awarded by the Department to ASG that are still available for obligation or liquidation on the date of these special conditions. Also, because of the problems noted in the enclosure, ASG's status as a "high-risk" grantee will continue under 34 C.F.R. § 80.12.

We look forward to continuing to work with ASG and to seeing continued progress as ASG works to address its challenges in the areas of grants management, financial management, and accountability and meets these special conditions. We are encouraged by the efforts and progress being made by the ASG Treasury Department to implement systems, policies and procedures, and internal controls at the central level, and we hope to see these efforts continue to be implemented at the local level. We know that you take seriously our mutual responsibilities to ensure that Federal program funds are being spent properly to assist students, and we look forward to continuing to work with you to improve the delivery of Federal education services so that no child in American Samoa is left behind.

Sincerely,

A handwritten signature in black ink, appearing to read "Hudson La Force III".

Hudson La Force III  
Senior Counselor to the Secretary

Cc: Dr. Claire Poumele, Director of Education  
Manupo Turituri, High-Risk Status Task Force

Enclosure

400 MARYLAND AVE., S.W., WASHINGTON, D.C. 20202-0100  
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*Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.*

## American Samoa Government – Special Conditions

PREAMBLE: These special conditions are imposed on all program grants issued by the U.S. Department of Education (the Department) to all recipient agencies of the Government of American Samoa (ASG) on or after the date of these special conditions. Additionally, the special conditions apply to grant funds previously awarded by the Department to ASG that are still available for obligation or liquidation on the date of these special conditions. These special conditions are applied to these program grants and funds in accordance with the Department's regulations governing "high risk" grantees in 34 CFR §80.12. The special conditions are imposed to help ensure that ASG's awards are expended in accordance with applicable legal requirements and with appropriate fiscal accountability measures, management practices, and controls.

### I. EXPLANATION OF HIGH-RISK STATUS

Under the authority of the Education Department General Administrative Regulations (EDGAR), 34 CFR §80.12, the Department has determined that ASG is a "high-risk" grantee for purposes of these grant awards because of problems in ASG's fiscal and program accountability and related areas. Our conclusion is based on the following:

- A. The Department remains very concerned about the serious internal control issues raised by the findings in the fiscal year (FY) 2005 single audit, as well as in prior-year single audits, which caused auditors to give a qualified opinion on ASG's financial statements and to disclaim an opinion on federal program compliance in the FY 2005 single audit. These audit findings show a substantial number of underlying fiscal and management problems (such as an inadequate system of internal controls to ensure compliance with the following requirements: cash management, allowable costs and cost principles, administrative requirements, reporting, and claims for reimbursements; significant failures in the operation of the internal control structure related to general accounting and grants administration; budget overruns; and inadequate payroll documentation), which raise concerns about ASG's ability to properly administer and provide services with Department funds.
- B. ASG is currently not in compliance with the Single Audit Act of 1984 as amended, which requires single audits to be completed and the report published within nine months after the end of each FY. Over a period of many years, ASG had submitted its single audits significantly late or had not submitted them at all. Although ASG has made significant progress by submitting its delinquent single audits through FY 2005, ASG's FY 2006 single audit is currently overdue.
- C. ASG has taken some efforts toward instituting corrective actions to address the findings related to fiscal accountability and management of Department funds; however, ASG still needs to complete additional work to fully address the single audit findings and the underlying issues that affect its ability to ensure that Department funds are administered correctly for allowable purposes and accounted for properly and in accordance with Federal laws and regulations, and that sufficient program progress is being made. The Department is very concerned by indications of serious issues in American Samoa, particularly in the areas of procurement, property management, and payroll, affecting proper administration and accountability of Department grant funds.

### II. SPECIAL CONDITIONS

#### A. Drawdown Authority

The Department will allow ASG to draw down grant funds only up to fifty percent of the funds available in each of the grants issued on or after the date of these special conditions, as well as in each of the FY 2007 grants awarded before the date of these special conditions, until such time as the required corrective action plan (See Section II.C) has been completed and determined to be acceptable by the Department, the FY 2006 single audit has been submitted to the Federal Audit Clearinghouse (See Section II.D), and the required independent payroll attestation (See Section II.E.1) has been completed and provided to the Department.

## B. Reporting Requirements

1. ASG will provide a detailed semiannual report on the administration by ASG of each program funded by the Department, the expenditures made by ASG in Department programs that will satisfy the accountability needs of the Department (Expenditure Report), and descriptions of the progress of each significant aspect of the program at school, ASDOE, and ASG levels (Program Progress Report). For each affected program and each obligation made on or after the date of these special conditions, the reports must show that the funds are being spent for allowable purposes, that sufficient program progress is being made, and that the funds drawn down are being recorded and spent in a timely manner with appropriate certifications. Expenditures (or liquidations) may be grouped by category (e.g., purchase of computers, professional development, etc.), but they must be in sufficient detail for the Department to match against the program application or spending plan, if applicable, and allow the Department to determine the allowability of the expenditures (or liquidations). These expenditures may also be subject to further monitoring, auditing, and review. The descriptions on program progress must also provide enough detail on program activities to determine if sufficient progress is being made in each program.
2. The semiannual reports shall include a certification signed by an authorized official of each ASG agency that administers Department grant funds attesting, under penalty of federal law, to the accuracy and completeness of the reports, including verification that all of the expenditures are being made for authorized purposes under each of the programs.
3. The semiannual reports shall include an update on resolving relevant audit findings, including the following:
  - ASG shall report progress towards resolving audit findings on all matters affecting funds under Department grant programs, such as procurement and internal controls. This will include the resolution of all pending findings resulting from single audits, other audits or reviews, and from findings made by the Territorial Audit Office.
  - If any audits by other federal agencies, other single or other audits, or reviews of any other part of the ASG contain findings on cross-cutting issues (e.g., procurement, property, financial management) affecting the administration of Department program funds, or that cover funds under any Department grant programs, ASG shall promptly report such findings to the Department and outline the corrective actions to be taken.
4. The semiannual reports shall include an update on the status of other management and program issues affecting the administration of federally funded education programs. At a minimum, ASG must report on:
  - The status of connections to and use of IFAS, AS Treasury's financial management system, by ASDOE (including the divisions and the schools) and other ASG agencies that receive Department funds; and
  - The progress being made to capture data on students, assessments, teachers, and class assignments; to create the reporting capacity needed to implement school improvement; and to develop an information management system that meets these needs.
5. Also, in each of the semiannual reports, ASG shall report on its consideration of, and progress in adopting, a "transparent" budgeting and expenditure reporting system that would be readily available to the public, and the Department and its representatives, so that all of these parties can easily understand the expenditures that are planned and carried out under each of the Department grant programs. At a minimum, ASG must post on an Internet web site (available to the general public) that it maintains, the budget, application, and reports mentioned above, and the information in the reports must be updated on the site on a monthly basis. ASDOE may continue to post its portion of the semiannual reports on its website; however, ASG needs to report on its progress in this area as well.

ASG must submit these reports and certifications to the Department no later than thirty days after the end of each semiannual period. Therefore, semiannual reports shall be submitted to the Department by April 30<sup>th</sup> for

the period covering October 1<sup>st</sup> to March 31<sup>st</sup> and by October 31<sup>st</sup> for the period covering April 1<sup>st</sup> to September 30<sup>th</sup>. If a report is not timely or is not considered acceptable by the Department, it may result in the Department taking one or more remedies including the following for any applicable program(s): the reinstatement of quarterly reporting; the imposition of further conditions; the recovery of misspent funds; or the implementation of a contract with a third party to provide services.

C. Corrective Action Plan

1. As of the drafting of these special conditions, ASG and the Department are continuing the process of creating a comprehensive corrective action plan (CAP) that will outline measures that ASG must implement to address and resolve the problems that have led to its designation as a high-risk grantee and that will assist ASG and the Department in tracking ASG's progress in addressing and resolving these problems. In accordance with the special conditions imposed on Department grant awards to ASG in July 2007, most ASG agencies have submitted a draft CAP to the Department for review. However, as of the drafting of these special conditions, the Department has not received a draft CAP from the ASG Office of Procurement and Office of Property Management. Corrective actions involving these agencies are a critical piece of the ASG CAP. ASG and the Department will continue to work together to reach agreement on the contents of the final version of the CAP by September 30, 2007. In any event, the Department will allow ASG to draw down grant funds only up to fifty percent of the funds available in each of the grants issued on or after the date of these special conditions, as well as in each of the FY 2007 grants awarded before the date of these special conditions, until such time as the CAP has been completed and determined to be acceptable by the Department and the conditions in sections II.D and II.E.1 have been met.
2. Once the CAP referenced in paragraph 1 above has been finalized and become effective, ASG will be required to provide a semiannual report to the Department on its progress in implementing measures required under the CAP, including the current status of ASG's implementation of the various measures and, if necessary, any changes in the targeted completion dates included in the CAP. ASG must submit the CAP reports to the Department no later than thirty days after the end of each semiannual period. Therefore, semiannual reports shall be submitted to the Department by April 30<sup>th</sup> for the period covering October 1<sup>st</sup> to March 31<sup>st</sup> and by October 31<sup>st</sup> for the period covering April 1<sup>st</sup> to September 30<sup>th</sup>. If the CAP is finalized by September 30, 2007, the first semiannual report under the CAP will be due on April 30, 2008 for the period covering October 1, 2007 to March 31, 2008. If the CAP is not finalized by September 30, 2007, then ASG must report for the period covering October 1, 2007 to March 31, 2008 in accordance with section II.B of these special conditions. If a report is not timely or is not considered acceptable by the Department, it may result in the Department taking one or more remedies including the following for any applicable program(s): the reinstatement of quarterly reporting; the imposition of further conditions; the recovery of misspent funds; or the implementation of a contract with a third party to provide services.
3. Until such time as the CAP referenced in paragraphs 1 and 2 above has been finalized and become effective, semiannual high-risk reports will continue to be required as outlined in Section B above. Thus, a semiannual report in accordance with Section B above will be due on October 31, 2007 for the period covering April 1, 2007 to September 30, 2007. However, once the CAP has been finalized, the semiannual high-risk reporting required under Section B above will be replaced by semiannual reporting required under the CAP as outlined in paragraph 2 above.

D. Single Audits

ASG shall conduct single audits and submit reports on an annual basis in a timely and complete manner. ASG's FY 2006 single audit is currently past due, and shall be submitted to the Federal Audit Clearinghouse as soon as possible. Thereafter, all of ASG's required single audits shall be completed and the report published within nine months after the end of each fiscal year as required by the Single Audit Act of 1984 as amended. If, for any reason, ASG expects an audit or report to be delayed, it shall notify the Department's contact person of the reason and extent of the delay as soon as possible. Based on the information provided, the Department may take one or more remedies including, but not limited to, the imposition of further conditions, the recovery of misspent funds, or the implementation of a contract with a third party to provide services. As noted above (in

Section II.A), the Department will allow ASG to draw down grant funds only up to fifty percent of the funds available in each of the grants issued on or after the date of these special conditions, as well as in each of the FY 2007 grants awarded before the date of these special conditions, until such time as the FY 2006 single audit has been submitted to the Federal Audit Clearinghouse and the conditions in sections II.C.1 and II.E.1 have been met.

E. Oversight and Independent Payroll Attestation

1. Because of ASG's high-risk status and demonstrated risk to Federal program funds, as noted in a number of its single audits, and in conjunction with the Department's serious concerns regarding indications of payroll issues affecting Federal education funds, ASG shall provide the Department, through the services of an independent public accountant, a payroll attestation covering all employees paid with Federal education funds. ASG and the Department will negotiate and agree on the terms of this attestation within thirty days after the issuance of these special conditions, and the payroll attestation must be completed and submitted to the Department within six months after the issuance of these special conditions. The independent public accountant must have full access to all ASG staff and all relevant information, records, reports, and documentation necessary to complete this attestation. As noted above (in Section II.A), the Department will allow ASG to draw down grant funds only up to fifty percent of the funds available in each of the grants issued on or after the date of these special conditions, as well as in each of the FY 2007 grants awarded before the date of these special conditions, until such time as this payroll attestation has been completed and provided to the Department by the independent public accountant and the conditions in sections II.C.1 and II.D have been met. Since this payroll attestation is related to Department programs, administrative funds from Department programs may be used to support the cost of this attestation, consistent with Federal program statutory and regulatory requirements and cost principles in Office of Management and Budget (OMB) Circular A-87.
2. All Department grant recipients are required to provide assurances that grant funds are being spent according to program and legislative requirements. The Department relies on these assurances to approve grant applications. The Department is concerned that the FY 2006 single audit is currently past due; however, since ASG made significant progress in submitting its delinquent single audits through FY 2005, and since ASG has a Comptroller in place who is making diligent efforts to correct issues contained in ASG's audits and who has advised that the FY 2006 audit will be submitted soon, the Department will continue to rely on ASG's single audits, along with monitoring conducted by the Department, to perform oversight of ASG's administration of Department grants. However, ASG must submit its FY 2006 single audit as soon as possible and, if ASG continues to be unable to submit timely single audits, the Department may reinstate the requirement for ASG to provide the Department with timely confirmation of the matters covered in its semi-annual reports through the services of an independent Oversight Agent or through an appropriate independent internal audit unit of ASG that would provide extra monitoring of ASG's expenditures and progress.

F. Prompt Access

ASG shall promptly provide the Department and/or its representatives access to any requested staff, locations, records, and information associated with the affected grant funds.

G. Program-Specific Conditions

Special conditions may be imposed on FY 2007 grant awards made under one or more Department programs, in addition to the special conditions that are contained in this document. Each such program-specific special condition will be contained in an attachment to the grant award notification document in question that is provided by the Department to ASG.

H. Failure to Comply with Conditions

In addition to the remedies described in Sections II.A-E above, if the Department determines that ASG has not made substantial progress in meeting the objectives of the programs, or has not met program requirements or the special conditions contained in Sections II.A-F above, then the Department may consider not continuing the grant(s), taking further enforcement action steps, or applying additional conditions such as the following:

1. ASG would receive no further funds under the grant award(s) or only on a reimbursement basis;
2. ASG would be required to prepare and submit a separate corrective action plan for each program in which problems have occurred or in which there is insufficient progress; and
3. ASG would contract with a third party, who must be approved by the Department, to provide services or financial management under the grant award(s). The third party would, at a minimum, assist in preparing the vouchers to be submitted to the Department for reimbursement, and would verify their accuracy and legitimacy as an appropriate expenditure under the grant award(s).

### III. OTHER TERMS

#### A. Enforcement

If ASG fails to meet any of the above special conditions, the Department is authorized to take other appropriate enforcement action. These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

#### B. Submission of Reports

All reports that are required to be submitted by ASG to the Department under these special conditions, including the finalized CAP due by September 30, 2007, shall be submitted to:

Tina Otter  
Office of the Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Room 7E210  
Washington, DC 20202

#### C. Reconsideration and Modifications

At any time, ASG may request reconsideration of the above special conditions by contacting the Department and stating reasons why ASG believes particular conditions are no longer needed. Additionally, the Department may impose additional special conditions or modify these special conditions as appropriate. The Department will remove the special conditions at such time as ASG meets, to the Department's satisfaction, the conditions mentioned above.

Dated: \_\_\_\_\_