

Enclosure C



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

July 21, 2008

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

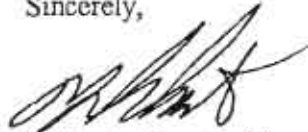
Dear Governor Tulafona:

We are pleased with the effort and cooperation demonstrated by representatives of the Government of American Samoa (ASG), including the American Samoa Department of Education, to address the challenging grant management and fiscal accountability issues that ASG is facing regarding the administration of Federal education grants awarded to it by the U.S. Department of Education (Department). However, there are still very serious deficiencies in ASG's administration of Federal education funds that it must address, particularly with respect to payroll, procurement, property management, and generally, the development and implementation of effective internal controls to ensure accountability for Federal funds. ASG's failure to implement proper policies and procedures in these areas is having a substantial negative effect on its ability to administer and account properly for the use of Department grant funds. The Department's concerns are underscored by a recent Examination Level Payroll Attestation conducted by R.C. Holsinger & Associates, P.C. (in accordance with the special conditions imposed on ASG's Federal Fiscal Year (FFY) 2007 grants), whose initial report based on the Attestation reveals major compliance issues related to ASG's use of funds for payroll costs.

As a result, ASG's status as a "high-risk" grantee will continue under 34 C.F.R. § 80.12, and the Department is imposing special conditions on all Department program funds awarded to ASG agencies. Enclosed are the special conditions that will be incorporated in the FFY 2008 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. Please note that the special conditions include ASG's agreement that it may not draw down any of the remainder of its FFY 2007 grant funds or any FFY 2008 grant funds until after ASG has met the following two conditions: (1) completed and submitted the comprehensive corrective action plan that was required under the FFY 2007 special conditions and the Department has approved the plan; and (2) obtained and provided to the Department a final report based on the Examination Level Payroll Attestation required under the FFY 2007 special conditions and performed by public accountant R.C. Holsinger & Associates, P.C. (RCHA) in February/March 2008. After ASG has met these two conditions, all FFY 2007 grant funds remaining available for obligation or liquidation will be available for drawdown by ASG, but there will be a restriction on the amount of FFY 2008 grant funds that ASG may draw down until after it has met the following additional conditions: (1) submitted the Fiscal Year 2007 single audit to the Federal Audit Clearinghouse; and (2) developed a Payroll Attestation Corrective Action Plan approved by the Department to address the deficiencies identified in the final report based on the Attestation performed by RCHA.

We appreciate your willingness to take actions necessary to address internal and operational control deficiencies that have affected ASG's management of Department grant funds and encourage you to continue to work diligently to address the challenges facing ASG in the areas of financial management and accountability and to meet the requirements of these special conditions. We know that we 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 'P. Maestri', written in a cursive style.

Philip A. Maestri, Director  
Risk Management Service

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

Enclosure

American Samoa Government – Special Conditions  
Federal Fiscal Year (FFY) 2008

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 continues to be 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 is extremely concerned with the internal control deficiencies and material weaknesses identified in ASG's fiscal year (FY) 2006 single audit and prior year single audits. Due to the seriousness of the deficiencies, the auditors have once again qualified their opinion on ASG's FY 2006 audited financial statements and issued a disclaimed opinion on the FY 2006 report on Federal program compliance. The systemic internal control failures in ASG's general accounting and program operations demonstrate an overall breakdown of fiscal and operational controls that are intended to protect Federal as well as local funds from misuse. Since the breakdown of controls is widespread across ASG, it emphasizes the magnitude of the 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, fixed asset accounting/management, physical inventory and reconciliations, recordkeeping, 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 grave 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 fiscal year. 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 2006, ASG has requested and received an extension from the U.S. Department of Interior until September 30, 2008 to file its FY 2007 single audit because it will not be able to meet the nine-month filing requirement in the Single Audit Act.
- C. ASG is making an effort toward instituting corrective actions (as demonstrated by its willingness to work constructively with the Department) to address its systemic internal control deficiencies and material weaknesses in its fiscal accountability and operations identified in the FY 2006 single audit and prior year single audits. However, as ASG has yet to implement these corrective actions, significant fiscal and programmatic weaknesses still remain, which draw into question ASG's ability to properly administer and account for Federal program funds as prescribed by Federal laws and program rules. Specifically, because of the material breakdown of fiscal and operational controls across much of ASG's operations, the Department remains very concerned that significant risk still exists to Department funds, particularly in the areas of procurement, property management, fiscal operations and payroll.

## II. SPECIAL CONDITIONS

### A. Drawdown Authority

1. ASG agrees that by accepting grant awards in accordance with the terms of these special conditions, it may not draw down funds under the grants (including FFY 2007 funds remaining available for obligation or liquidation and any FFY 2008 funds), and the Department will not permit it to draw down funds under these grants, until such time as ASG has (1) completed and submitted the comprehensive corrective action plan that was required under the FFY 2007 special conditions and the Department has approved the plan (see Section II.B.1 below) and (2) obtained and provided to the Department a final report based on the Examination Level Payroll Attestation (Attestation) required under the FFY 2007 special conditions and performed by public accountant R.C. Holsinger & Associates, P.C. (RCHA) in February/March 2008 (see section II.D.1 below).
2. ASG agrees that once the Department has advised ASG that it has satisfied the two conditions described above in section II.A.1, it may draw down funds as follows:
  - a. All FFY 2007 grant funds remaining available for obligation or liquidation will be available for drawdown by ASG; and
  - b. With respect to FFY 2008 grant funds, the Department will allow ASG to draw down only up to fifty percent of the funds available in each FFY 2008 grant award issued on or after the date of these special conditions until such time as ASG has (1) submitted the FY 2007 single audit to the Federal Audit Clearinghouse (see Section II.C below) and (2) developed a Payroll Attestation Corrective Action Plan approved by the Department (see Section II.D.2 below) to address the deficiencies identified in the final report based on the Attestation performed by RCHA (see Section II.D.1 below).

### B. Corrective Action Plan

1. As of the drafting of these special conditions, ASG has not complied with section II.C of the FFY 2007 special conditions, which required ASG to complete the development of a comprehensive Corrective Action Plan (CAP), approvable by the Department, that outlines measures that ASG must implement to address and resolve the problems that 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. ASG must complete and submit its CAP to the Department and obtain final approval thereof by September 30, 2008. As noted in section II.A.1 above, ASG agrees that it may not draw down any of the remainder of its FFY 2007 grant funds or any of its FFY 2008 grant funds available in each of the grants issued on or after the date of these special conditions until such time as ASG has provided the Department with a final, approvable CAP and has also met the condition in section II.D.1 below.
2. Once the CAP has been finalized and approved by the Department, ASG is 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 and/or person(s) responsible for ensuring that a particular corrective action is implemented. 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 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 all of the corrective actions in the CAP referenced in paragraphs B.1 and B.2 above have been implemented and deficiencies and material weaknesses addressed, semiannual high-risk reports will continue to be required as stipulated in paragraph B.2 above.

#### C. Single Audits

ASG shall conduct single audits and submit reports on an annual basis in a timely and complete manner. ASG must complete its FY 2007 single audit and submit it to the Federal Audit Clearinghouse by September 30, 2008, in accordance with the extension that it received from the U.S. Department of Interior. 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. 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. If, for any reason, ASG expects an audit or report to be delayed, it shall notify the Department 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 in Section II.A.2.b above, once ASG has satisfied the conditions in section II.A.1 above, ASG may draw down only up to fifty percent of the funds available in each FFY 2008 grant award issued on or after the date of these special conditions until such time as ASG has submitted the FY 2007 single audit to the Federal Audit Clearinghouse and has also met the condition in section II.D.2 below.

#### D. Payroll Attestation Corrective Action Plan

1. Because of ASG's high-risk status and demonstrated risk to Federal program funds, as noted in a number of its most recent single audits, and in conjunction with the Department's serious concerns regarding payroll inaccuracies and reporting affecting Federal education funds, the FFY 2007 special conditions required ASG to undergo an Attestation administered by an independent public accountant, covering all ASG employees paid with Federal education funds. RCHA conducted the Attestation in February/March 2008 and has issued a draft report to the Department. The draft report identifies significant problems in the manner in which ASG accounts for Federal funds used for payroll costs and indicates that ASG is not in compliance with Federal requirements for using Federal funds for payroll costs. As of the date of these special conditions, RCHA expects to issue a final Attestation report, which it anticipates will remain largely unchanged, in August 2008. ASG must provide a copy of the final Attestation report to the Department by September 30, 2008. As noted in section II.A.1 above, ASG agrees that it may not draw down any of the remainder of its FFY 2007 grant funds, or any of its FFY 2008 grant funds available in each of the grants issued on or after the date of these special conditions, until such time as it has provided to the Department a copy of the final Attestation report and has also met the condition in section II.B.1 above.
2. Because of the significant problems identified in the Attestation and their impact on the expenditure of Department grant funds for payroll costs, ASG must develop a payroll corrective action plan (PCAP) to address all deficiencies that are cited in the final version of RCHA's Attestation report. The PCAP, which must be approved by the Department, will be used by ASG (and monitored by the Department) to develop and implement internal controls, policies and procedures to eliminate the significant deficiencies identified by the Attestation and to bring ASG into compliance with Federal requirements for using Department grant funds for payroll costs. ASG will be required to provide the Department with quarterly reports on its efforts and initiatives to develop and implement corrective actions and controls in accordance with the PCAP. The Department will provide the due dates for these quarterly reports to ASG upon approval of the PCAP. As noted in Section II.A.2.b above, once ASG has satisfied the conditions in section II.A.1 above, ASG may draw down only up to fifty percent of the funds available in each FFY 2008 grant award issued on or after the date of these special conditions until such time as ASG has completed and obtained approval from the Department of the PCAP and has also met the condition in section II.C above.

#### E. 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.

#### F. Program-Specific Conditions

Special conditions may be imposed on FFY 2008 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.

#### G. Failure to Comply with Conditions

In addition to the remedies described in Sections II.A-D 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, but not limited to, 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 and plans (including the CAP and PCAP) that are required to be submitted by ASG to the Department under these special conditions shall be submitted to:

Keith Kistler  
Office of the Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Room 7E232  
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 contained herein.

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