UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

June 23, 2009

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

Dear Governor Tulafono:

We appreciate your efforts and continued cooperation to address the challenging grant management and fiscal accountability issues that the Government of American Samoa (ASG) is facing regarding the administration of Federal education grants awarded to it by the U.S. Department of Education (Department), including the efforts demonstrated by representatives of the American Samoa Department of Education (ASDOE). Nonetheless, significant deficiencies in ASG's administration of Federal education funds still remain that must be resolved, particularly with respect to payroll, procurement, property management, and generally, the development and implementation of effective internal controls to ensure accountability for Federal funds. Even though we recognize ASG's efforts to improve its control environment and fiscal operations, lack of adequate policies and procedures and enforcement in these areas draw into question ASG's ability to administer and account properly for the use of Department grant funds. We are pleased that ASG has developed and begun implementing both a comprehensive Corrective Action Plan (CAP) and Payroll Corrective Action Plan (PCAP) to address its systemic control and fiscal deficiencies, and we continue to commit our support to ASG to assist it in improving its management and administration of the Department's program funds in accordance with applicable Federal requirements.

Because ASG is in the early stages of correcting the deficiencies addressed by the CAP and PCAP, its status as a "high-risk" grantee will continue under 34 CFR § 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 Federal Fiscal year (FFY) 2009 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, including grants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA). Please note that the special conditions require ASG to report quarterly to the Department on its efforts and initiatives to implement corrective actions and controls in accordance with the PCAP and 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.

We look forward to continuing to work with ASG and to seeing continued progress as ASG addresses its challenges in the areas of grants management, financial management, and accountability and meets these special conditions.

We are encouraged by ASG's willingness to implement systems, policies and procedures, and internal controls at the central level as set forth in the CAP and PCAP, and we hope to see these efforts continue until all corrective actions have been taken and all deficiencies corrected. 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 for students in American Samoa.

Sincerely,

Philip A. Maestri, Director
Risk Management Service

Cc: Dr. Claire Poumele, Director of Education
Suli Sopoaga, Financial Administrator

Enclosure

American Samoa Government – Special Conditions
Federal Fiscal Year (FFY) 2009

PREAMBLE: These special conditions are imposed on all program grants issued by the U.S. Department of Education (Department) to all recipient agencies of the Government of American Samoa (ASG) on or after the date of these special conditions, including grants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA). 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 continues to be extremely concerned with the internal control deficiencies and material weaknesses identified in ASG's fiscal year (FY) 2007 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 2007 audited financial statements and issued a disclaimed opinion on the FY 2007 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: activities allowed or unallowed, eligibility, financial reporting, cash management, allowable cost/cost principles, administrative requirements, standards for financial management systems, grant payment requirements, claims for advances and reimbursement, equipment and real property management, retention and access requirement for records, special provisions, procurement and suspension and disbarment, matching, level of effort, earmarking, Davis-Bacon Act; 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. The Single Audit Act of 1984 as amended 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 2007, it has continued to submit its audits late. ASG had requested and received an extension form the U.S. Department of Interior until September 30, 2008 to file its FY 2007 single audit but failed to meet the extended filing deadline.

II. SPECIAL CONDITIONS

A. Corrective Action Plan

1. In accordance with section II.C of the FFY 2007 special conditions, ASG developed and obtained Department approval of a comprehensive Corrective Action Plan (CAP) 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. The Department notified ASG in a letter dated October 7, 2008, that it had approved the CAP that ASG submitted.

2. ASG is required to provide a semiannual report to the Department on its progress in implementing measures required under the CAP. The semiannual reports must include the current status of ASG's implementation of the various measures, including a description of activities and progress for each task during the reporting period, documentation of measures of performance and results, and other data or documentation as specified within the action steps for each task, 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 30th for the period covering October 1st to March 31st and by October 31st for the period covering April 1st to September 30th. 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 A.1 and A.2 above have been implemented and deficiencies and material weaknesses addressed, semiannual high-risk reports will continue to be required as stipulated in paragraph A.2 above.

B. 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. R.C. Holsinger Associates, P.C. Certified Public Accountants conducted the Attestation in February/March 2008 and has issued a final report to the Department. The 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.

2. Because of the significant problems identified in the Attestation and their impact on the expenditure of Department grant funds for payroll costs, ASG was required to develop a payroll corrective action plan (PCAP) to address all deficiencies cited in RCHA's Attestation report. The Department approved the PCAP on March 16, 2009. The PCAP 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 is required to report quarterly to the Department on its efforts and initiatives to implement corrective actions and controls in accordance with the PCAP. ASG's PCAP reports must include, at a minimum:
   - the current status of ASG's implementation of the various measures in the PCAP, including a description of activities and progress for each task during the reporting period;
   - if necessary, any changes in the targeted completion dates and/or person(s) responsible for ensuring that a particular corrective action is implemented and the reasons for these changes; and
   - copies of any documentation (e.g., policies, forms, evidence of training, etc.) that supports ASG's description of the status of its implementation of PCAP measures.

   The quarterly reporting periods are January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31. In general, ASG must submit the PCAP reports to the Department no later than thirty days after the end of **each** quarterly period. Therefore, the submission date of ASG's first PCAP report covering the period April 1 to June 30, 2009, will be July 31, 2009. 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. 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 2008 single audit and submit it to the Federal Audit Clearinghouse by June 30, 2009, in accordance 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. 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.

D. Program-Specific Conditions

Special conditions may be imposed on FFY 2009 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.

E. ARRA-Specific Conditions

ARRA-specific special conditions will be contained in attachments to the final ARRA grant notification documents provided by the Department to ASG and will be in addition to the special conditions contained in this document.

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. Failure to Comply with Conditions

In addition to the remedies described in Sections II.A-C 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: _____