UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE DEPUTY SECRETARY

June 21, 2012

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

Dear Governor Tulafono:

The purpose of this letter is to convey to you the enclosed special conditions, which apply to grants awarded by the U.S. Department of Education (Department) to the American Samoa Government (ASG) agencies, including, but not limited to, the American Samoa Department of Education (ASDOE) and the American Samoa Department of Health (ASDOH) on or after the date of these special conditions.

Because there are still numerous deficiencies that ASG has not satisfactorily addressed, 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, including, but not limited to, ASDOE and ASDOH. These special conditions will be incorporated in the Federal fiscal year (FFY) 2012 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.

ASG continues to address the challenging grant management and fiscal accountability issues facing it regarding the administration of Federal education grants awarded to it by the Department. Specifically, ASG continues to demonstrate deficiencies in the areas of documentation, procurement, property management (inventories), reconciliations and generally, the development and implementation of effective internal controls to ensure accountability for Federal funds. ASG's progress in implementing corrective actions outlined in both the comprehensive High Risk Corrective Action Plan (CAP) and Payroll Corrective Action Plan (PCAP) to correct its systemic control and fiscal deficiencies have been noted, and we encourage your continued efforts to improve your management and administration of the Department's program funds in accordance with applicable Federal requirements.

Please note that the special conditions require ASG to report semiannually to the Department on its efforts and initiatives to implement corrective actions and controls in accordance with 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 is required to also submit a PCAP internal control maintenance report semiannually on its efforts to ensure that the internal controls, policies and procedures it implemented

regarding its payroll and human resources operations are being followed and operating as intended.

ASG needs to ensure that its PCAP internal control maintenance reports and CAP report are submitted timely. All edits and updates to the CAP report from each of ASG's departments must be included in one consolidated CAP report. Reports that are submitted that are not consolidated into one report will not be accepted. The Department also requests that ASG refrain from submitting supporting documentation and materials for the CAP reports more than once. If documentation and materials have been submitted in a previous report, please reference those materials, giving the date of previous submission, and we will locate and review them in connection with the then-current report.

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

Sincerely,

Philip A. Maestri, Director
Risk Management Service

Cc: Faoa A. Sunia, Lt. Governor
Toetasi Fue Tuiteleleapaga, Chief Legal Counsel
Office of the Governor

Enclosure

American Samoa Government – Special Conditions
Federal Fiscal Year (FFY) 2012

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) (including, but not limited to, the American Samoa Department of Education (ASDOE) and the American Samoa Department of Health (ASDOH)) on or after the date of these special conditions. Additionally, the special conditions apply to grant funds previously awarded by the Department to ASG (including, but not limited to, ASDOE and ASDOH) 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 concerned with the significant internal control deficiencies and significant failures in the operation of the internal control structure related to general accounting and grants administration reported in ASG's (FY) 2009 single audit; and material weaknesses identified in ASG's fiscal year (FY) 2008 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 2009 audited financial statements and issued a disclaimed opinion on the FY 2009 report on Federal program compliance. The auditors specifically noted evidence of a failure of identified control in preventing or detecting misstatements of accounting information and a lack of appropriate management oversight, review and approval of transactions. Even though ASG has shown progress in addressing its internal control deficiencies, the fact remains that 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; allowable cost/cost principles; administrative requirements; standards for financial management systems; grant payment requirements; claims for reimbursement; equipment and real property management; retention and access requirement for records; special provisions; procurement and suspension and disbarment; matching, level of effort, and earmarking; and significant failures in the operation of the internal control structure related to general accounting and grants administration.) During FFY 2011, the Department determined that significant delays in the procurement process led to failure to provide services and ensure timely evaluations during FFY 2009 under Part C of the Individuals with Disabilities Education Act (IDEA). All of the foregoing supports the Department's continued 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. ASG appears to

have remedied the problems causing it to submit its single audits late, as evidenced by the timely submission of its FY 2008 and 2009 single audits. However, there is still a problem with the Territory Office of Fiscal Reform providing timely information to the single auditor so that future audits can be submitted timely. This issue may have contributed to the late submission of the FY 2010 single audit to the Federal Audit Clearinghouse on July 29, 2011.

II. SPECIAL CONDITIONS

A. Corrective Action Plan

1. In accordance with section II.C of the FFY 2007 special conditions and section II.B of the FFY 2008 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. ASG must continue its work toward implementing all corrective actions in the CAP. In the event that the Department or ASG determines that additional measures are required in the CAP to address the fiscal administrative deficiencies described in section I.A above, ASG must amend the CAP to include such measures, obtaining the Department's written approval before proceeding with the additional measures. As of the date of these special conditions, the Department has determined that the CAP must still be amended to include measures that require ASG to establish and implement procurement procedures that ensure that service personnel who either work for, or contract with, ASDOH for IDEA services are retained in a timely manner.

   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 include in each semiannual report all edits and updates from each of its departments into **one consolidated CAP report**.

2. 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. ASG must ensure that its CAP reports are submitted timely. 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 CAP 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 issued a final report to the Department that identified significant problems in the manner in which ASG accounts for Federal funds used for payroll costs and indicated 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 was 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. Because ASG demonstrated to the Department that it had addressed the internal control deficiencies and material weaknesses outlined in the PCAP, ASG was no longer required as of the FFY 2011 special conditions to report quarterly to the Department on its efforts and initiatives to implement corrective actions and controls in accordance with the PCAP. However, ASG must continue to submit semiannually a PCAP internal control maintenance report that outlines its efforts to monitor its payroll operations and internal controls to ensure that they are operating as intended. ASG's PCAP internal control maintenance reports must include the following information, at a minimum, in narrative form:

   - the current status of ASG's monitoring efforts of its payroll and human resources operation, including a description of activities it has engaged in during the semiannual period;
   - any internal control weaknesses identified in its policies and procedures related to the operation of its payroll and human resources operations;
   - a narrative explanation of what caused the internal control weakness/failure;
   - a description of the action(s) taken to correct the internal control deficiencies identified during its monitoring operations;
   - copies of all revised policies and procedures and any other documentation (e.g., policies, forms, evidence of training, etc.) that supports ASG's monitoring efforts.

   ASG must submit the PCAP maintenance reports to the Department no later than thirty days after the end of each semiannual period. Therefore, semiannual PCAP reports shall be submitted as follows:

   - For the semiannual reporting period October 1st to March 31st – due April 30th
   - For the semiannual reporting period April 1st to September 30th – due October 31st

   ASG submitted several of its quarterly PCAP reports late. Going forward, ASG must ensure that its PCAP internal control maintenance reports are submitted timely. 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 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 2011 single audit and submit it to the Federal Audit Clearinghouse by June 30, 2012, 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 2012 grant awards made under one or more Department programs, in addition to these special conditions that are contained in this document. Each such program-specific special condition will be contained in a separate attachment to the grant award notification document provided by the Department to ASG.

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. 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 with respect to the CAP and PCAP) that are required to be submitted by ASG to the Department under these special conditions shall be submitted to:

Mark Robinson
Office of the Deputy Secretary
U.S. Department of Education
550 12th Street, S.W.
Room 11053
Washington, D.C. 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 (Same as Program Special Conditions, if any, or date of grant award):

_____