



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

July 1, 2021

Honorable Jon J.P. Fernandez
Superintendent of Education
Guam Department of Education
500 Mariner Avenue
Barrigada, Guam 96913

Dear Superintendent Fernandez:

We have approved the Guam's grant application for Federal fiscal year (FFY) 2021 funds, under Part C of the Individuals with Disabilities Education Act (IDEA Part C). Our approval is based on our review of the IDEA Part C application, submitted by the Guam Department of Education (GDOE) to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 5, 2021.

Our approval of Guam's FFY 2021 IDEA Part C grant application includes approval of policies, procedures, methods, descriptions, assurances, and certifications identified in Section II.A, II.B, and II.C, which is incorporated by reference to this grant award letter as Enclosure A. Our approval is also based on Guam's certification in Section II.D of its FFY 2021 grant application, signed by you on May 5, 2021 that Guam's provisions meet the requirements of IDEA Part C as found in 20 U.S.C. §§ 1431 through 1443 and the regulations in 34 C.F.R. Part 303, and that the Name-Entity will operate its Part C program in accordance with all of the IDEA Part C requirements including required policies, procedures, methods, descriptions, assurances and certifications. See 34 C.F.R. § 76.104.

Guam's FFY 2021 IDEA Part C grant award is being released subject to Specific Conditions that are identified in the Department's June 29, 2021 letter to GDOE, included as Enclosure C to this grant letter and which letter is hereby expressly incorporated into the terms of Guam's FFY 2021 IDEA Part C grant. These Specific Conditions are being imposed by OSEP pursuant to the Department's authority in IDEA sections 616(g) and 642 and 2 C.F.R. §§ 200.208 and 3474.10. By accepting this grant award, Guam expressly agrees to comply with the Specific Conditions identified in Enclosure C throughout the period that Guam uses its IDEA Part C FFY 2021 funds. The FFY 2021 specific conditions and GDOE's designation as a high-risk grantee pursuant to the Department's authority in 2 C.F.R. §§ 200.208 and 3474.10 are continued in response to the need for GDOE to take actions that fully address the significant issues in its management of, and accountability for, Department grant funds.

Enclosed is Guam's FFY 2021 IDEA Part C grant award for funds currently available under the Consolidated Appropriations Act of 2021 (Public Law 116-94) (CAA). This grant award is subject to all the terms and conditions of Guam's FFY 2021 IDEA Part C grant application. These funds are available for obligation by IDEA grant recipients from July 1, 2021, through September 30, 2023, in accordance with 34 C.F.R. § 76.709.

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The Department of Education's mission is to promote student achievement and preparedness for global competitiveness by fostering educational excellence and ensuring equal access.

Guam submitted its Section III-Use of Funds as part of its FFY 2021 IDEA Part C grant application to reflect the allotment for this award. Once the enclosed CAA award is made, Guam may need to amend its Section III document under 2 C.F.R. § 200.308. The requirements for Section III amendments are discussed in Section 4 of the OSEP Memo 21-02 IDEA Part C FFY 2021 Grant Application Procedures.

Under IDEA Section 605, and 2 C.F.R. Part 200, and 34 C.F.R. § 303.104, States must obtain prior approval to charge certain expenses as direct costs. On October 29, 2019, the Office of Special Education and Rehabilitative Services (OSERS) released a Frequently Asked Questions (2019 FAQs) document on prior approval.¹ In the event the Guam identified such costs in Section III of its application for costs not covered by the 2019 FAQs, OSEP will respond to any prior approval requests under separate cover. OSEP’s approval of the FFY 2021 IDEA Part C grant application does not constitute approval for such costs. Please contact your OSEP State Lead for further assistance.

Section IV.B of the IDEA Part C FFY 2021 application requested updated information about how your lead agency implements the restricted indirect cost rate requirements in 34 CFR §303.225(c). Guam indicated in Section IV.B that GDOE is a State Educational Agency (SEA) and works directly with the Department’s Indirect Cost Division to ensure that indirect costs are only charged on a restricted basis to Guam’s IDEA Part C grant. Under 2 CFR §200.210(a)(15), by accepting this IDEA Part C grant award, GDOE is agreeing to charge indirect costs on a restricted basis for the period that the State uses any funds awarded under its FFY 2021 CAA IDEA Part C grant award and will submit any changes affecting indirect costs charged to either of these awards to its restricted indirect cost rate agreement to the Department’s Indirect Cost Division. Under 2 C.F.R. § 200.403(d), GDOE must ensure that any costs charged to the IDEA Part C grant award as a direct cost are not also allocated and charged to the IDEA Part C grant as an indirect cost.

Section 604 of the IDEA provides that “[a] State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this [Act].” Section 606 provides that each recipient of assistance under IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant, the Guam is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

The enclosed grant award of FFY 2021 IDEA Part C funds is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries may be necessary to allow us to appropriately carry out our administrative responsibilities related to IDEA Part C.

¹Prior approval must be obtained under IDEA for the following direct costs: (1) equipment (2 C.F.R. § 200.1 and 34 C.F.R. § 303.104); (2) participant support costs (2 C.F.R. § 200.1); (3) rent (2 C.F.R. § 200.465 and 34 C.F.R. § 303.225(d)); and capital improvements (IDEA Section 605 and 34 C.F.R. § 303.104). Under the 2019 FAQs, OSERS granted prior approval for participant support costs under IDEA that: are associated with State Interagency Coordinating Councils; incurred during the provision of services under IDEA; do not exceed \$5000 per individual participant per training/conference. In addition, the 2019 FAQs provide prior approval for equipment that is identified on or directly related to the implementation of the IFSP.

If the Guam revises those IDEA Part C policies or procedures that are required under Part C of the IDEA or the regulations in 34 C.F.R. Part 303, the Guam must subject those policies and procedures to the public participation requirements in 34 C.F.R. § 303.208 and receive OSEP approval for those policies and procedures referenced in 34 C.F.R. § 303.101(c) prior to their implementation.

As a reminder, all prime recipients of IDEA (Part B or Part C) funds, must report subaward information as required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended in 2008. First-tier subaward information must be reported by the end of the following month from when the award was made or obligated. FFATA guidance is found at <https://www.fsrs.gov/>. Please contact your Fiscal Accountability Facilitator if you have further questions.

We appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,



David Cantrell, Ph.D.
Delegated the authority to perform the
functions and duties of the Assistant
Secretary for the Office of Special
Education and Rehabilitative Services

Enclosures

- Enclosure A (Sections II.A-C of Guam's application)
- Enclosure B (Section II.D of Guam's application)
- Enclosure C- (Department-wide Specific Conditions)

cc: Part C Coordinator

State Name: Guam

Enclosure A

Section II

A. State Policies, Procedures, Methods, and Descriptions

As checked below, the State hereby declares that it has or has not filed the following policies, procedures, methods, and descriptions with the U.S. Department of Education, and, as of the date of the signature below, affirms and incorporates by reference those policies, procedures, methods, and descriptions with respect to Part C of the Individuals with Disabilities Education Act (IDEA or Act) in 20 U.S.C. 1431–1443 and the Part C regulations in 34 CFR Part 303 (Part C). By submission of this Section II, the State assures that throughout the period of this FFY 2021 grant award, the State will operate consistently with all requirements of Part C of the IDEA in 20 U.S.C. 1431 through 1443 and the Part C regulations in 34 CFR Part 303. The State will develop and/or make such changes to existing policies, procedures, methods, descriptions, and assurances as are necessary to bring the policies, procedures, methods, descriptions, and assurances into compliance with the requirements of the IDEA Part C Act and regulations by the date indicated below and not later than June 30, 2022.

- Check and enter date(s) as applicable.
- Enclose relevant documents.

Yes (If New or Revised is checked, the State is submitting policies, procedures, methods, and descriptions with this application. If already 'On File with OSEP', check OF.)

N = 'New' Policy and/or Procedure

R = 'Revised' Policy and/or Procedure

OF = Policy and/or Procedure is already 'On File' with the USDE

No (Policies, procedures, methods, and descriptions have not been provided. Provide date by which State will submit to OSEP required documentation, which date shall be no later than June 30, 2022.)

Yes: N	Yes: R	Yes: OF	No	State Policies, Procedures, Methods, and Descriptions
—	—	—		Subpart C—State Policies and Procedures
		X	—	1. Each application must include the name of the State lead agency, as designated under §303.120, that will be responsible for the administration of funds provided under this part. (34 CFR §303.201)
		X		2. Each application must include a description of services to be provided under Part C to infants and toddlers with disabilities and their families through the State’s system. (34 CFR §303.203(a))
—	—	—	—	3. Each application must include the State’s policies and procedures regarding the identification and coordination of all available resources within the State from Federal, State, local, and private sources as required under subpart F of 34 CFR Part 303.

				<p><i>The State must have policies and procedures that meet the requirements listed in 3(a) and the methods identified in 3(b), and must provide responses to those entries. If the State has not adopted a system of payments, it may respond "NA" to 3(a).</i></p>
		X		<p>(a) If the State has adopted a system of payments, each application must include any policies or procedures adopted by the State as its system of payments and those policies and procedures must meet the requirements in §§303.510, 303.520 and 303.521 (regarding the use of public insurance or benefits, private insurance, or family costs or fees).</p> <p>(34 CFR §303.203(b)(1))</p> <p><i>The policies and procedures listed in 3(a) are optional. Enter 'NA' in the cells to the left if the State has elected not to adopt a system of payments (which includes a system to use public insurance or benefits or private insurance or family fees to pay for Part C services); otherwise check the appropriate response under the 'Yes' column and, if checking 'N' or 'R', attach policies and procedures. The State's response under 3(a) of Section II.A must match the State's response under Section IV.A.</i></p>
		X		<p>(b) Each application must include the methods (State law, regulation, signed interagency or intra-agency agreements or other appropriate written method(s) approved by the Secretary) used by the State to implement the payor of last resort and fiscal responsibility requirements in §303.511(b)(2) and (3).</p> <p>(34 CFR §303.203(b)(2))</p> <p><i>If the State uses signed interagency agreements or "other appropriate written method(s)" to meet the requirements in 3(b), please check 'N' or 'R' and submit with the application. If the State's method is a State statute or regulation, the State does not need to submit that method (the statute or regulation) with its application.</i></p>
		X		<p>4. Each application must include the State's rigorous definition of developmental delay as required under §§303.10 and 303.111. Each Statewide system must include the State's rigorous definition of <u>developmental delay</u>, consistent with §§303.10 and 303.203(c), that will be used by the State in carrying out programs under Part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of the Act. The definition must—</p> <p>(a) Describe, for each of the areas listed in §303.21(a)(1), the evaluation and assessment</p>

				<p>procedures, consistent with §303.321, that will be used to measure a child's development; and</p> <p>(b) Specify the level of developmental delay in functioning or other comparable criteria that constitute a developmental delay in one or more of the developmental areas identified in §303.21(a)(1). (34 CFR §§303.203(c) & 303.111)</p>
		X		<p>5. If the State provides services under Part C to at-risk infants and toddlers through the statewide system, the application must include—</p> <p>(a) The State's definition of at-risk infants and toddlers with disabilities who are eligible in the State for services under Part C (consistent with §§303.5 and 303.21(b)); and</p> <p>(b) A description of the early intervention services provided under Part C to at-risk infants and toddlers with disabilities who meet the State's definition described in §303.204(a). (34 CFR §303.204).</p> <p><i>The policies and procedures listed in 5 are optional (i.e., they only apply if the State opts to serve at-risk children). Enter 'NA' in the cells to the left if the State has elected not to provide services under Part C to at-risk infants and toddlers; otherwise check the appropriate response under the 'Yes' column and, if checking 'N' or 'R', attach the definition and description.</i></p>
—	—	—	—	<p>6. Each State application must include a description of the State's use of funds under Part C for the fiscal year or years covered by the application. (34 CFR §303.205)</p> <p><i>The State must complete Section III of this application.</i></p>
		X		<p>7. Each application must include the State's policies and procedures that require the referral for early intervention services under Part C of specific children under the age of three, as described in §303.303(b) (which includes children who are the subject of a substantiated case of abuse or neglect, or directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure). (34 CFR §303.206)</p>
		X		<p>8. Each application must include a description of the procedure used by the State to ensure that resources are made available under Part C for all geographic areas within the State. (34 CFR §303.207)</p>
		X		<p>9. Each application must include a description of the policies and procedures used by the State to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure)</p>

			<p>needed to comply with Part C of the Act and 34 CFR Part 303, the lead agency—</p> <ul style="list-style-type: none"> (1) Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure); (2) Provides notice of the hearings held in accordance with §303.208(b)(1) at least 30 days before the hearings are conducted to enable public participation; and (3) Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the Council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and 34 CFR Part 303. <p>(34 CFR §303.208(b))</p>
		X	<p>10. (a) <u>Application Requirements</u>: Each State must include the following in its application:</p> <ul style="list-style-type: none"> (1) A description of the policies and procedures it will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under Part C to preschool or other appropriate services (for toddlers with disabilities) or exiting the program for infants and toddlers with disabilities. (2) A description of how the State will meet each requirement in §303.209(b) through (f). (3) (i) (A) If the lead agency is not the SEA, an interagency agreement between the lead agency and the SEA; or (B) If the lead agency is the SEA, an intra-agency agreement between the program within that agency that administers Part C of the Act and the program within the agency that administers section 619 of the Act (ii) To ensure a seamless transition between services under Part C and under Part B of the Act, an interagency agreement under paragraph (a)(3)(i)(A) of this section or an intra-agency agreement under paragraph (a)(3)(i)(B) of this section must address how the lead agency and the SEA will meet the requirements of paragraphs (b) through (f) of this section (including any policies adopted by the lead agency under §303.401(d) and (e)), §303.344(h), and 34 CFR 300.101(b), 300.124, 300.321(f) and 300.323(b).

				<p>(4) Any policy the lead agency has adopted under §303.401(d) and (e).</p> <p>(b) <u>Notification to the SEA and appropriate LEA.</u> The State must ensure that—</p> <p>(1) Subject to paragraph (b)(4) of this section, not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law; or</p> <p>(2) Subject to paragraph (b)(4) of this section, if the lead agency determines that the toddler is eligible for early intervention services under Part C of the Act more than 45 but less than 90 days before that toddler’s third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the lead agency, as soon as possible after determining the child’s eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with State law; or</p> <p>(3) Subject to paragraph (b)(4) of this section, if a toddler is referred to the lead agency fewer than 45 days before that toddler’s third birthday and that toddler may be eligible for preschool services under Part B of the Act, the lead agency, with parental consent required under §303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but, the lead agency is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances;</p> <p>(4) The notification required under paragraphs (b)(1), (2), and (3) of this section is consistent with any policy that the State has adopted, under §303.401(e), permitting a parent to object to disclosure of personally identifiable information.</p> <p>(c) <u>Conference to discuss services.</u> The State must ensure that—</p> <p>(1) If a toddler with a disability may be eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of the toddler, convenes a conference, among the lead agency, the family, and the LEA not fewer than 90 days—and, at the discretion of all of the parties, not more than 9 months—before the toddler’s third birthday to discuss</p>
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				<p>any services the toddler may receive under Part B of the Act.</p> <p>(2) If a toddler with a disability is determined to not be potentially eligible for preschool services under Part B of the Act, the lead agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.</p> <p>(d) <u>Transition plan</u>. The State must ensure that for all toddlers with disabilities –</p> <p>(1)(i) It reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year; and</p> <p>(ii) Each family of a toddler with a disability who is served under Part C is included in the development of the transition plan required under this section and §303.344(h);</p> <p>(2) It establishes a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all of the parties, not more than 9 months—before the toddler's third birthday; and</p> <p>(3) The transition plan in the IFSP includes, consistent with §303.344(h), as appropriate—</p> <p>(i) Steps for the toddler with a disability and his or her family to exit from the Part C program; and</p> <p>(ii) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.</p> <p>(e) <u>Transition conference and plan meeting requirements</u>. Any conference conducted under paragraph (c) of this section or meeting to develop the transition plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the requirements in §§303.342(d) and (e) and 303.343(a).</p> <p>(f) <u>Applicability of transition requirements</u>.</p> <p>(1) The transition requirements in paragraphs (b)(1) and (2), (c)(1), and (d) of this section apply to all toddlers with disabilities receiving services under this part before those toddlers turn age three, including any toddler with a disability under the age of three who is served by a State that offers services under §303.211.</p> <p>(2) In a State that offers services under §303.211, for toddlers with disabilities identified in paragraph (b)(1) of this section, the parent must be provided at the transition conference conducted under paragraph (c)(1) of this section: (i) An explanation, consistent with §303.211(b)(1)(ii), of the toddler's</p>
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				<p>options to continue to receive early intervention services under this part or preschool services under section 619 of the Act; (ii) The initial annual notice referenced in §303.211(b)(1). (3) For children with disabilities age three and older who receive services pursuant to §303.211, the State must ensure that it satisfies the separate transition requirements in §303.211(b)(6)(ii).</p> <p>(34 CFR §303.209)</p>
		X		<p>11. Each application must contain a description of State efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801, <u>et seq.</u>, as amended), early education and child care programs, and services under Part C.</p> <p>(34 CFR §303.210)</p>
		X		<p>12. Each application must include, as required by Section 427 of the General Education Provisions Act (GEPA), a description of how the State has identified barriers and developed strategies to address the barriers and has provided a description of the steps the State is taking to ensure equitable access to, and participation in, Part C.</p> <p>(34 CFR §303.212(a))</p>
			NA	<p>13. (a) General. (1) Subject to paragraphs (a)(2) and (b) of this section, a State may elect to include in its application for a grant under Part C a State policy, developed and implemented jointly by the lead agency and the SEA, under which a parent of a child with a disability who is eligible for preschool services under section 619 of the Act and who previously received early intervention services under Part C, may choose the continuation of early intervention services under Part C for his or her child after the child turns three until the child enters, or is eligible under State law to enter, kindergarten or elementary school.</p> <p>(2) A State that adopts the policy described in paragraph (a)(1) of this section may determine whether it applies to children with disabilities—</p> <ul style="list-style-type: none"> (i) From age three until the beginning of the school year following the child's third birthday; (ii) From age three until the beginning of the school year following the child's fourth birthday; or (iii) From age three until the beginning of the school year following the child's fifth birthday. <p>(3) However, in no case may a State provide services under this section beyond the age at which the child actually enrolls in, or is eligible under State law to enter, kindergarten or elementary school in the State.</p> <p>(b) <u>Requirements</u>. If a State's application for a grant under Part C includes the State policy described in</p>

				<p>paragraph (a) of this section, the system must ensure the following:</p> <ol style="list-style-type: none"> (1) Parents of children with disabilities who are eligible for services under section 619 of the Act and who previously received early intervention services under Part C will be provided annual notice (the initial annual notice must be provided as set forth in §303.209(f)(2)(ii)) that contains— <ol style="list-style-type: none"> (i) A description of the rights of the parents to elect to receive services pursuant to §303.211 or under Part B of the Act; and (ii) An explanation of the differences between services provided pursuant to §303.211 and services provided under Part B of the Act, including— <ol style="list-style-type: none"> (A) The types of services and the locations at which the services are provided; (B) The procedural safeguards that apply; and (C) Possible costs (including the costs or fees to be charged to families as described in §§303.520 and 303.521), if any, to parents; and (2) Consistent with §303.344(d), services provided pursuant to §303.211 will include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills. (3) The State policy ensures that any child served pursuant to this section has the right, at any time, to receive FAPE (as that term is defined at §303.15) under Part B of the Act instead of early intervention services under Part C of the Act under §303.211. (4) The lead agency must continue to provide all early intervention services identified in the toddler with a disability's IFSP under §303.344 (and consented to by the parent under §303.342(e)) beyond age three until that toddler's initial eligibility determination under Part B of the Act is made under 34 CFR §300.306. This provision does not apply if the LEA has requested parental consent for the initial evaluation under §300.300(a) and the parent has not provided that consent. (5) The lead agency must obtain informed consent from the parent of any child with a disability for the continuation of early intervention services pursuant to this section for that child. Consent must be obtained before the child reaches three years of age, where practicable. (6)(i) For toddlers with disabilities under the age of three in a State that offers services under this section, the lead agency ensures that the transition
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			<p>requirements in §303.209(b)(1) and (2), (c)(1) and (d) are met.</p> <p>(ii) For toddlers with disabilities age three and older in a State that offers services under this section, the lead agency ensures a smooth transition from services under this section to preschool, kindergarten or elementary school by: (A) Providing the SEA and LEA where the child resides, consistent with any State policy adopted under §303.401(e), the information listed in §303.401(d)(1) not fewer than 90 days before the child will no longer be eligible under subsection (a)(2) of this section to receive early intervention services under this section; (B) With the approval of the parents of the child, convening a transition conference, among the lead agency, the parents, and the LEA, not fewer than 90 days—and, at the discretion of all parties, not more than 9 months—before the child will no longer be eligible under subsection (a)(2) of this section to receive, or will no longer receive, early intervention services under this section, to discuss any services that the child may receive under Part B of the Act; and (C) Establishing a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than 9 months—before the child will no longer be eligible under subsection (a)(2) of this section to receive, or no longer receives, early intervention services under this section.</p> <p>(7) In States that adopt the option to make services under Part C available to children ages three and older pursuant to §303.211, there will be a referral to the Part C system, dependent upon parental consent, of a child under the age of three who directly experiences a substantiated case of trauma due to exposure to family violence, as defined in section 320 of the Family Violence Prevention and Services Act, 42 U.S.C. 10401, et seq.</p> <p>(c) <u>Reporting requirement.</u> If a State includes in its application a State policy described in §303.211(a), the State must submit to the Secretary, in the State's report under §303.124, the number and percentage of children with disabilities who are eligible for services under section 619 of the Act but whose parents choose for their children to continue to receive early intervention services under §303.211.</p> <p>(d) <u>Available funds.</u> The State policy described in §303.211(a) must describe the funds—including an identification as Federal, State, or local funds—that will be used to ensure that the option described in §303.211(a) is available to eligible children and families who provide the consent described in §303.211(b)(5), including fees, if any, to be charged to families as described in §§303.520 and 303.521.</p> <p>(e) <u>Rules of construction.</u></p>
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				<p>(1) If a statewide system includes a State policy described in §303.211(a), a State that provides services in accordance with this section to a child with a disability who is eligible for services under section 619 of the Act will not be required to provide the child FAPE under Part B of the Act for the period of time in which the child is receiving services under §303.211.</p> <p>(2) Nothing in this section may be construed to require a provider of services under Part C to provide a child served under Part C with FAPE.</p> <p>(34 CFR §303.211)</p> <p><i>The policies and procedures listed in 13 are optional. Enter 'NA' in the cells to the left if the State has elected not to develop and implement a policy under 34 CFR §303.211 to make Part C services to children beyond age three; otherwise check the appropriate response under the 'Yes' column and, if checking 'N' or 'R', attach policies and procedures.</i></p>
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B. Assurances and Optional Assurance

The State makes the following assurances and provisions as required by Part C of the Individuals with Disabilities Education Act. (20 U.S.C. 1431 et. seq.; 34 CFR §§303.101-126; 303.220; 303.227)

<p>Yes</p> <p><i>(Assurance is hereby provided.)</i></p>	<p>No</p> <p><i>(Assurance cannot be ensured. Provide date on which State will complete changes in order to provide assurance.)</i></p> <p><i>Check and enter date(s) as applicable</i></p>	<p>Subpart B—Assurances</p> <p>(20 U.S.C. 1434; 1435; and 1437(b); 34 CFR §§303.101-126; 303.220; 303.227)</p>
X		<p>1. The State has adopted a policy that appropriate early intervention services, as defined in 34 CFR §303.13, are available to all infants and toddlers with disabilities in the State and their families, including—</p> <ul style="list-style-type: none"> (a) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; (b) Infants and toddlers with disabilities who are homeless children and their families; and (c) Infants and toddlers with disabilities who are wards of the State. <p>(34 CFR §303.101(a))</p>
X		<p>2. The State has in effect a statewide system of early intervention services that meets the requirements of section 635 of the Act, including policies and procedures that address, at a minimum, the components required in 34 CFR §§303.111 through 303.126. (34 CFR §303.101(a))</p>
X		<p>3. The State ensures that any State rules, regulations, policies, and procedures relating to 34 CFR Part 303 conform to the purposes and requirements of 34 CFR Part 303. (34 CFR §303.102)</p>
	—	<p>4. Each statewide system (system) must include, at a minimum, the components described in §§303.111 through 303.126. (34 CFR §303.110)</p>
X		<p>5. The State has a policy in effect that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including—</p> <ul style="list-style-type: none"> (a) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State; and (b) Infants and toddlers with disabilities who are homeless children and their families. (34 CFR §303.112)

X	—	<p>6. (a) The Statewide system ensures the performance of—</p> <ul style="list-style-type: none"> (1) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State; and (2) A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler. <p>(b) The evaluation and family-directed identification required in paragraph (a) of this section must meet the requirements of 34 CFR §303.321.</p> <p>(34 CFR §303.113)</p>
X	—	<p>7. The Statewide system ensures that, for each infant or toddler with a disability and his or her family in the State, an IFSP, as defined in 34 CFR §303.20, is developed and implemented that meets the requirements of 34 CFR §§303.340 through 303.345 and that includes service coordination services, as defined in 34 CFR §303.34. (34 CFR §303.114)</p>
X	—	<p>8. The Statewide system includes a comprehensive child find system that meets the requirements in 34 CFR §§303.302 and 303.303. (34 CFR §303.115)</p>
X	—	<p>9. The Statewide system includes a public awareness program that—</p> <ul style="list-style-type: none"> (a) Focuses on the early identification of infants and toddlers with disabilities; and (b) Provides information to parents of infants and toddlers through primary referral sources in accordance with 34 CFR §303.301. <p>(34 CFR §303.116)</p>
X	—	<p>10. The Statewide system includes a central directory that is accessible to the general public (i.e., through the lead agency's Web site and other appropriate means) and includes accurate, up-to-date information about:</p> <ul style="list-style-type: none"> (a) Public and private early intervention services, resources, and experts available in the State; (b) Professional and other groups (including parent support and training and information centers, such as those funded under the Act) that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families; and (c) Research and demonstration projects being conducted in the State relating to infants and toddlers with disabilities. <p>(34 CFR §303.117)</p>
X	—	<p>11. The Statewide system includes a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State. The State's comprehensive system of personnel development—</p>

		<p>(a) Includes—</p> <ol style="list-style-type: none"> (1) Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers; (2) Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under Part C; and (3) Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention services program under Part C of the Act to a preschool program under section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program. <p>(b) May include—</p> <ol style="list-style-type: none"> (1) Training personnel to work in rural and inner-city areas; (2) Training personnel in the emotional and social development of young children; (3) Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and (4) Training personnel who provide services under this part using standards that are consistent with early learning personnel development standards funded under the State Advisory Council on Early Childhood Education and Care established under the Head Start Act, if applicable. (34 CFR §303.118)
X		<p>12. The Statewide system includes policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of Part C are appropriately and adequately prepared and trained. These policies and procedures provide for the establishment and maintenance of qualification standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services. Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities. (34 CFR §303.119(a)–(c))</p>
X	—	<p>13. The Statewide system includes a single line of responsibility in a lead agency designated or established by the Governor that is responsible for the following—</p> <p>(a) (1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act; and</p> <p>(2) The monitoring of programs and activities used by the State to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions,</p>

		<p>organizations, and EIS providers that are receiving assistance under Part C of the Act), to ensure that the State complies with Part C of the Act, including—</p> <ul style="list-style-type: none"> (i) Monitoring agencies, institutions, organizations, and EIS providers used by the State to carry out Part C of the Act; (ii) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and 34 CFR Part 303; (iii) Providing technical assistance, if necessary, to those agencies, institutions, organizations and EIS providers; (iv) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency’s identification of the noncompliance; and (v) Conducting the activities in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, consistent with 34 CFR §§303.700 through 303.707, and any other activities required by the State under those sections. <p>(b) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources, consistent with subpart F of 34 CFR Part 303.</p> <p>(c) The assignment of financial responsibility in accordance with subpart F of 34 CFR Part 303.</p> <p>(d) The development of procedures in accordance with subpart F of 34 CFR Part 303 to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.</p> <p>(e) The resolution of intra- and interagency disputes in accordance with subpart F of 34 CFR Part 303.</p> <p>(f) The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with 34 CFR §303.511, that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in subpart F of 34 CFR Part 303.</p> <p>(34 CFR §303.120)</p>
X		<p>14. The Statewide system includes a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the State, consistent with the provisions of Part C of the Act and 34 CFR Part 303, including the contents of the application, and the conditions of the contract or other arrangements. The policy —</p> <ul style="list-style-type: none"> (a) Includes a requirement that all early intervention services must meet State standards and be consistent with the provisions of Part C; and

		(b) Is consistent with the Education Department General Administrative Regulations in 34 CFR Part 80. (34 CFR §303.121)
X		15. The Statewide system includes procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with subpart F of 34 CFR Part 303. (34 CFR §303.122)
X		16. The Statewide system includes procedural safeguards that meet the requirements of subpart E of 34 CFR Part 303. (34 CFR §303.123)
X	—	17. The Statewide system includes a system for compiling and reporting timely and accurate data that meets the requirements of 34 CFR §§303.700 through 303.702 and 303.720 through 303.724 and the following requirements. The data system includes a description of the process that the State uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under Part C, including a description of the State’s sampling methods, if sampling is used, for reporting the data required by the Secretary under sections 616 and 618 of the IDEA and 34 CFR §§303.700 through 303.707 and 303.720 through 303.724. (34 CFR §303.124)
X	—	18. The Statewide system includes a State Interagency Coordinating Council (Council) that meets the requirements of subpart G of 34 CFR Part 303. (34 CFR §303.125)
X		19. The Statewide system includes policies and procedures to ensure, consistent with 34 CFR §§303.13(a)(8) (early intervention services), 303.26 (natural environments), and 303.344(d)(1)(ii) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided— (a) To the maximum extent appropriate, in natural environments; and (b) In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP Team, only when early intervention services cannot be achieved satisfactorily in a natural environment. (34 CFR §303.126)
X		20. The Statewide system ensures that Federal funds made available to the State under section 643 of the Act will be expended in accordance with the provisions of 34 CFR Part 303, including §§303.500 and 303.501. (34 CFR §303.221)
X		21. The Statewide system will comply with the requirements in §§303.510 and 303.511 in subpart F of this part. (34 CFR §303.222)
X	—	22. The Statewide system ensures that— (a) The control of funds provided under 34 CFR Part 303, and title to property acquired with those funds, will be in a public

		<p>agency for the uses and purposes provided in 34 CFR Part 303; and</p> <p>(b) A public agency will administer the funds and property.</p> <p>(34 CFR §303.223)</p>
X	—	<p>23. The Statewide system ensures that it will—</p> <p>(a) Make reports in the form and containing the information that the Secretary may require; and</p> <p>(b) Keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of 34 CFR Part 303, the correctness and verification of reports, and the proper disbursement of funds provided under 34 CFR Part 303.</p> <p>(34 CFR §303.224)</p>
X	—	<p>24. The Statewide system ensures that –</p> <p>(a) Federal funds made available under section 643 of the Act to the State –</p> <p>(1) Will not be commingled with State funds; and</p> <p>(2) Will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds.</p> <p>(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—</p> <p>(1) A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this part; and</p> <p>(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.</p> <p>(c) Requirement regarding indirect costs.</p> <p>(1) Except as provided in paragraph (c)(2) of this section, a lead agency under this part may not charge indirect costs to its Part C grant.</p> <p>(2) If approved by the lead agency’s cognizant Federal agency or by the Secretary, the lead agency must charge indirect costs through either—</p> <p>(i) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or</p> <p>(ii) A cost allocation plan that meets the non-supplanting requirements in paragraph (b) of this section and 34 CFR Part 76 of EDGAR.</p> <p><u>(3) In charging indirect costs under paragraph (c)(2)(i) and (c)(2)(ii) of this section, the lead agency may not charge rent, occupancy, or space maintenance costs directly to</u></p>

		<p><u>the Part C grant, unless those costs are specifically approved in advance by the Secretary.</u></p> <p>(34 CFR §303.225)</p>
X	—	<p>25. The Statewide system ensures that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, Federal funds paid under 34 CFR Part 303.</p> <p>(34 CFR §303.226)</p>
X		<p>26. The State ensures that policies and practices have been adopted to ensure that—</p> <p>(a) Traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, are meaningfully involved in the planning and implementation of all the requirements of Part C; and</p> <p>(b) These families have access to culturally competent services within their local geographical areas.</p> <p>(34 CFR §303.227)</p>
—	—	Assurance Regarding Optional Policy
X		<p><i>Enter 'NA' in the cell to the left if this assurance is not applicable to your State.</i></p> <p>27. A State may adopt and has adopted a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in paragraphs (a) and (b) of this section. (34 CFR §303.119(d))</p>

C. Certifications

The State Lead Agency is providing the following certifications:

Yes	Certification
X	<p>1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i>, is on file with the Secretary of Education.</p> <p>With respect to the <i>Certification Regarding Lobbying</i> the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.</p>
X	<p>2. The State certifies that it has met the certifications in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §80.11 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.</p>
X	<p>3. The State certifies that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under §303.511 and the lead agency's contracts with EIS providers regarding financial responsibility for the provision of Part C services meet the requirements in §§303.500 through 303.521 and are current as of the date of submission of the certification. (34 CFR §303.202)</p>



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF FINANCE AND OPERATIONS
OFFICE OF ACQUISITION AND GRANTS ADMINISTRATION

June 29, 2021

Superintendent Jon Fernandez
Guam Department of Education
500 Mariner Avenue
Barrigada, Guam 96913

Dear Superintendent Fernandez:

Enclosed are Federal Fiscal Year (FFY) 2021 specific conditions for U.S. Department of Education (Department) grants awarded to the Guam Department of Education (GDOE). The Department acknowledges and appreciates GDOE's efforts to strengthen the administration of Federal funds. The Department will continue to partner with GDOE to determine the type of needed actions and support that would be most helpful moving forward to administer and manage Federal education funds with fidelity to meet the social, emotional, mental health, and academic needs of students.

These specific conditions will apply to all grants awarded by the Department to GDOE on or after the date of these specific conditions, including any funds awarded by the Department to GDOE under the American Recovery Plan (ARP), the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and any CARES Act or CRRSA Act funds that the Guam Governor awards to GDOE. Additionally, these specific conditions apply to all grant funds previously awarded by the Department to GDOE that are still available for obligation or liquidation on the date of these specific conditions, including any funds awarded by the Department to GDOE under the ARP, CRRSA Act, CARES Act and any CARES Act or CRRSA funds that the Guam Governor awarded to GDOE.

The Department is continuing for FFY 2021 the FFY 2020 specific conditions and GDOE's designation as a high-risk grantee pursuant to the Department's authority in 2 CFR §§200.207 and 3474.10 in response to the need for GDOE to take actions that fully address the significant issues in its management of, and accountability for, Department grant funds. These issues led to the FFY 2003 designation of GDOE as a "high-risk" grantee under former 34 CFR § 80.12, the FFY 2007 requirement that GDOE develop and implement a Comprehensive Corrective Action Plan (CCAP) to address these issues, and the FFY 2009 requirement that GDOE must have the assistance of a third-party fiduciary agent (TPFA) to oversee the financial management of Department funds, to assist GDOE in implementing its CCAP, and to assist GDOE in implementing a new Financial Management Improvement System (FMIS).

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

On May 29, 2018, GDOE submitted to the Department a formal request for reconsideration of the specific conditions applicable to its Department grant funds. For the past 18 months, the Department has worked with GDOE to: (1) develop a process for reconsideration, resulting in a Reconsideration Evaluation Plan (REP); and (2) complete the implementation of the REP as a prerequisite for the Department to make a determination to modify future specific conditions. The REP is designed to: 1) provide clear guidance to GDOE on actions that it must take and complete during the reconsideration process; 2) inform the Department as it determines the extent to which specific conditions may be removed and the extent to which financial management responsibilities may be returned incrementally (or otherwise) to GDOE; and 3) inform the Department as it determines whether GDOE has taken all necessary actions to render it capable of performing the financial management responsibilities currently performed by the TPFA, ultimately resulting in the removal of the requirement for the TPFA. The REP replaced the CCAP as the document against which GDOE's progress will be measured during the process of reconsidering the specific conditions.

GDOE will also continue working with the third-party fiduciary agent to adopt processes that will lead to GDOE demonstrating its ability to take control of key Department grant management responsibilities. Meanwhile, the TPFA will continue to perform fiscal management responsibilities for GDOE's Department funds. The Department understands that GDOE proposes to submit its restructuring plan to the Department for approval prior to implementation.

The Department conducted a virtual REP validation review the week of July 13, 2020 in lieu of an onsite validation, which was used to inform the Department's determination of GDOE progress toward addressing the completion of the REP requirements and the specific conditions placed on its Department grant funds. During the review, the Department assessed GDOE's capacity to perform financial management responsibilities relative to the Department's grant funds. Additionally, in accordance with section III.C of the specific conditions, the Department used this review to identify any specific conditions that it determined to have been addressed. At the conclusion of the virtual monitoring process, the Department removed the requirement for TPFA oversight of the physical inventory process on a 6-month probationary basis beginning August 31, 2020 and concluding January 31, 2021. **NOTE: The Department acknowledges the need to extend this probationary/trial period to September 30, 2021, which will allow GDOE time to complete a full physical inventory.** During this period, the Department is relying on the TPFA to closely monitor the process and confirm GDOE staff's ability to sustain the improvements and ultimately their readiness to assume the responsibilities of the TPFA on a permanent basis. Additionally, after discussions with several GDOE staff regarding the time certification process, the Department agreed to a reduction in the number of required GDOE signatures as part of the bi-weekly employee time certification and reimbursement processes.

The attached FFY 2021 specific conditions describe the ongoing responsibility of GDOE to work with the TPFA, as well as the role and responsibilities of the TPFA in administering Department grant funds. The FFY 2021 specific conditions also require GDOE to finalize the implementation of the remaining areas of its REP, upon which the Department may make additional modifications to the specific conditions, including the removal of the requirement for oversight of Department funds by a TPFA. As noted under section III.E, the REP must be

incorporated as an addendum to the contract between GDOE and the TPFA, inclusive of the responsibilities for GDOE and the TPFA described in Attachments A and B of these conditions. The Office of Acquisition and Grants Administration, Risk Management Services Division is committed to engage with GDOE leadership to verify the status of GDOE's progress under the REP, and toward transitioning responsibilities currently performed by the TPFA back to GDOE staff. In the interim, RMSD has committed to scheduling an informal virtual REP monitoring session with the GDOE Internal Auditor to discuss the parameters and timeframe for the next virtual REP validation monitoring.

The Department also continues its commitment to provide technical assistance to GDOE during the reconsideration evaluation process. If you have any questions or require further assistance, please contact Christine Jackson at (202) 615-3663 or via e-mail at christine.jackson@ed.gov.

Sincerely,

Phillip Juengst
Deputy Assistant Secretary
Office of Acquisition and Grants Administration

Enclosure

cc: Governor Lou Leon Guerrero
Mary Guterrez, Chairman, Guam Education Board
Congressman Michael San Nicolas

Guam Department of Education
Federal Fiscal Year 2021 Specific Conditions

PREAMBLE: These specific conditions are imposed on all program grants issued by the U.S. Department of Education (Department) to the Guam Department of Education (GDOE) on or after the date of these specific conditions, including any funds awarded by the Department to GDOE under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and any CARES Act funds that the Guam Governor awards to GDOE. Additionally, as described herein, these specific conditions apply to grant funds previously awarded by the Department to GDOE that are still available for obligation or liquidation on the date of these specific conditions, including any funds awarded by the Department to GDOE under the CARES Act and any CARES Act funds that the Guam Governor awarded to GDOE. These specific conditions are applied to these program grant funds in accordance with regulations governing “high-risk” grantees and specific conditions in 2 CFR §§ 200.207 and 3474.10 in the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Pending GDOE’s completion and implementation of measures that are in progress and designed to address deficiencies in its financial management and administration of Department funds, these specific conditions are imposed on GDOE’s Department grants to ensure that GDOE implements Department grant awards in accordance with applicable legal requirements and with appropriate fiscal accountability measures, management practices and controls.

I. BACKGROUND

In September 2003, the Department designated GDOE a “high-risk” grantee under the authority of former 34 CFR § 80.12. This was based on the Department’s determination that GDOE lacked fiscal and programmatic accountability in the administration of Federal education programs as evidenced by its failure to provide the Department with timely and complete single audits, as required by the Single Audit Act, and by the auditors’ declaration that GDOE’s records for FFYs 1998-2000 were unauditible.

In the special conditions imposed on GDOE’s FFY 2007 grant awards, the Department required GDOE to develop a Comprehensive Corrective Action Plan (CCAP) to address the underlying problems associated with its high-risk designation. The CCAP was meant to address persistent problems related to GDOE’s internal controls, including accounting and reconciling its financial records for Department grant funds in accordance with Federal requirements; implementing monitoring to ensure that grant and subgrant-supported activities are carried out in accordance with Federal program statutes, regulations, and other requirements; instituting procurement and property management processes that comply with Federal requirements; and implementing appropriate cash management procedures. GDOE developed a CCAP but failed to make significant progress in implementing the CCAP measures. In particular, GDOE did not make substantial progress in implementing its Financial Management Improvement Plan (FMIP), a core feature of the CCAP that involves instituting a Financial Management Improvement System

(FMIS) to enable GDOE to significantly improve its financial management of Department grant awards.

In November 2009, based on GDOE's lack of progress over two years under the CCAP, and in accordance with section II.H of the FFY 2008 and 2009 special conditions applicable to GDOE's Department grant awards, the Department issued amended specific conditions to GDOE dated November 25, 2009, which notified GDOE that it would require GDOE to procure the services of a third-party fiduciary agent, acceptable to the Department, to perform the financial management duties required under Federal regulations for all Department grant awards made to GDOE. The requirement for a third-party fiduciary agent is maintained in these FFY 2021 special conditions, as set forth in further detail below. In addition, because GDOE has not, to date, met the requirements regarding the management of Department funds by States (formerly in Part 80 of the Education Department General Administrative Regulations (EDGAR), replaced by the Uniform Guidance, 2 CFR Part 200), these specific conditions explicitly require GDOE to comply with the provisions of the Uniform Guidance that apply to grantees other than States.

II. SPECIFIC CONDITIONS

A. Requirement for Third-Party Fiduciary Agent

On September 13, 2010, GDOE entered into a contract with a third-party fiduciary agent, Alvarez & Marsal, LLC (A&M), approved by the Department, as required by section II.A of the FFY 2009 Amended Special Conditions imposed on Department grants awarded to GDOE. GDOE has maintained this contract with A&M since then, and it is currently in place through October 31, 2021, with the understanding that GDOE will take steps necessary to extend the contract past that date, should the requirement for a third-party fiduciary agent continue through and past October 31, 2021. The Department will not authorize the obligation, liquidation or expenditure of Department funds unless a third-party fiduciary agent is in place for the full period of these specific conditions, or until the Department notifies GDOE in writing that the services of a third-party fiduciary agent are no longer required.

B. Responsibilities of GDOE and the Third-Party Fiduciary Agent (Agent) Concerning Administration of Grant Funds

The responsibilities and requirements of GDOE in working with the Agent are set forth in Attachment A to these specific conditions. The responsibilities and requirements of the Agent in carrying out the financial management duties for GDOE's Department grants are set forth in Attachment B to these specific conditions.

C. Reconsideration Evaluation Plan (REP)

1. On May 29, 2018, GDOE submitted to the Department a formal request for reconsideration of the FFY 2018 specific conditions applicable to its Department grant funds. Subsequently, the Department and GDOE worked together to develop a

process for reconsideration, resulting in a Reconsideration Evaluation Plan (REP). The REP is based on the FFY 2018 specific conditions, the 2005 Office of Inspector General (OIG) audit report, and the Department's review and assessment of the status of GDOE quarterly reports under its Comprehensive Correction Action Plan (CCAP). The CCAP, originally developed in 2007 and since revised, was designed to address the fiscal deficiencies in administering Department grant awards that led to GDOE's designation as a "high-risk" grantee. It contained tasks with measurable objectives and completion dates to correct a number of recurring findings, including the development and implementation of the FMIS, the strengthening of internal controls over financial management and procurement, and the strengthening and improvement of GDOE's Business Office operations. Until now, the CCAP, and the CCAP quarterly reports, had served as the vehicle for measuring GDOE's progress in addressing the identified fiscal deficiencies. Pursuant to these specific conditions, the REP now serves as the sole plan against which GDOE's progress will be evaluated during the reconsideration process.

2. The REP was developed in a manner to: 1) provide clear guidance to GDOE on actions that it must take and complete during the reconsideration process; 2) inform the Department as it determines the extent to which specific conditions may be removed and the extent to which financial management responsibilities may be returned to GDOE without continuing third-party fiduciary agent oversight for those responsibilities, including on an incremental basis, as appropriate; and 3) inform the Department as it determines whether GDOE has taken all necessary actions to render it capable of performing the financial management responsibilities currently performed by the Agent, ultimately resulting in the removal of the requirement for the Agent.
3. The REP contains benchmarks, identifies the documentation that GDOE must submit for evaluation to the Department and submission deadlines, and describes the manner of evaluation by the Department, either onsite or virtual. As described in the REP, the GDOE Internal Audit Office (IAO) has responsibility for reviewing documentation of completion and validating its sufficiency. Department staff have deemed 72 of the total 137 REP requirements (53%) as complete. Specifically, the following documentation submissions have been reviewed and determined as complete by Department staff in each of the following REP sections: Employee Time Tracking (2%); Financial Management Improvement System (53%); Internal Controls (74%); Procurement (69%); and Property Management (68%).

D. Single Audits

GDOE must continue to ensure that its single audits are conducted, and audit reports submitted, annually and in a timely and complete manner. All single audits must be completed and reports published within nine months after the end of each fiscal year, as required by the Single Audit Act, as amended. If GDOE expects an audit or report to be submitted late, it must promptly notify the Department's contact person of the reason and extent of the delay.

The Department acknowledges that both GDOE and the Agent, acting on behalf of GDOE, are maintaining records related to the management of GDOE's Department grant funds and that the Agent is maintaining the financial management system for GDOE's Department grant funds. Accordingly, both GDOE and the Agent are required to provide the auditors with access to all records necessary to facilitate an effective audit of the Department grant and matching funds made available to GDOE.

III. ADDITIONAL PROVISIONS

A. Failure to Comply with Conditions

Failure to comply with any of these specific conditions will negatively impact GDOE's ability to continue to receive grant funds from the Department. These terms and conditions do not preclude the Department from taking any authorized enforcement or other actions at any time, including, but not limited to, withholding of Department funds.

B. Submission of Reports

All reports or other submissions that GDOE or the Agent are required to submit to the Department under these specific conditions must be submitted electronically to:

Christine Jackson
christine.jackson@ed.gov

C. Reconsideration and Modifications

4. At any time, GDOE may request reconsideration of the above specific conditions by contacting the Department staff named above in paragraph III.B of these conditions, and stating in writing the reasons why GDOE believes any particular condition should be amended or removed. The Department may impose additional specific conditions or modify these specific conditions, as appropriate. The Department will remove the specific conditions in total at such time as GDOE fully demonstrates, to the Department's satisfaction, the ability to manage Department funds, and property acquired with Department funds, in a manner that complies with applicable Federal requirements concerning accountability and grants management. In the interim, as appropriate, certain specific conditions may be removed incrementally, and the specific financial and management responsibilities corresponding to those conditions returned to GDOE without requirement for third-party fiduciary agent oversight, as GDOE completes, and the GDOE IAO and the Department review and validate completion of, benchmarks identified in the REP. To date, the Department has deemed 72 of the 137 REP requirements as complete, representing documentation submissions in each of the following REP sections: Employee Time Tracking (2%); Financial Management Improvement System (53%); Internal Controls (74%); Procurement (69%); and Property Management (68%).

D. Notification and Approval of Amendments to Contract Between GDOE and Agent

GDOE must notify the Department of any proposed amendment to the contract between GDOE and the Agent and must submit the proposed amendment to the Department for approval prior to execution of the amendment by the parties.

Dated: June 29, 2021

Attachment A to the GDOE FFY 2021 Specific Conditions

Responsibilities and Requirements of GDOE

(to be incorporated into any contract for services with the Agent)

The responsibilities and requirements of GDOE in working with the Agent under these GDOE FFY 2021 specific conditions are as follows:

1. GDOE must work cooperatively and in a timely manner with the Agent to implement the activities and responsibilities described in these specific conditions.
2. GDOE must permit the Agent's personnel to have access to all financial books, records, and reports related to funds made available to GDOE by the Department, or used for matching, and access to GDOE personnel for discussion regarding the services the Agent must perform under these specific conditions, as provided for in the contract between GDOE and the Agent.
3. GDOE must notify the Department when any dispute arises and remains unresolved between the Agent and GDOE concerning the implementation or continuation of the contract with the Agent, or the implementation of activities supported by Department grants, including the financial management of grant funds. GDOE agrees that the Department may assist in the resolution of any such unresolved dispute and agrees to cooperate with any requests from the Department for additional information related to the dispute and to participate in conference calls with the Agent and the Department. This does not preclude GDOE and the Agent from including formal dispute resolution mechanisms in their contract.
4. GDOE must comply with all Federal laws and regulations that apply to the receipt and use of funds awarded under Department grants, including those under EDGAR, and applicable Federal program statutes and regulations.
5. GDOE remains responsible for the provision of programmatic services under Department grants.
6. Prior to any drawdowns or disbursements, GDOE must provide the Agent with a line-item budget for the total amount of each grant and subgrant, if applicable, that has been approved and verified by the Department. The line-item budget must include amounts for State administration, State-level program activities, and local-level program activities. For purposes of the Consolidated Grant to Insular Areas (Consolidated Grant), GDOE must provide the Agent with line-item budgets for each program under which GDOE will use Consolidated Grant funds. The line-item budget for each of these programs must be based on the total amount of Consolidated Grant funds to be used for each program and include amounts for State administration, State-level program activities, and local-level program activities.
7. GDOE is responsible for: (i) executing drawdowns of funds under the grants from the Department's Grants Management System (G5) so that funds are deposited into a

- separate bank account established and maintained by the Agent; and (ii) providing to the Agent, for deposit into the separate bank account established by the Agent, any matching funds required for the grants. GDOE understands and agrees that it must draw down funds and provide any applicable matching funds to the Agent within 24 hours of receipt of a written request from the Agent. Consideration may be given for reasonable delays due to any time differences that may exist between GDOE and its vendors. However, failure by GDOE to comply with this condition may result in the transfer of drawdown authority to the Agent, at the Department's discretion. Upon receiving notice of GDOE's failure to draw down funds in accordance with this condition, the Department will decide whether to transfer drawdown authority to the Agent. Upon receiving written notice of a decision by the Department to transfer drawdown authority to the Agent, GDOE must take all steps necessary to provide the Agent with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the Agent as the entity with drawdown authority.
8. GDOE must use fiscal control and accounting procedures that meet the requirements imposed on non-Federal entity grantees in 2 CFR §§ 200.302, 200.303, and 200.305(b).
 9. GDOE must expend Federal and matching funds only for costs that are allowable under the respective grant programs, in accordance with the regulations and cost principles in 2 CFR Part 200, Subpart E. Additionally, for purposes of the Consolidated Grant, GDOE must expend Federal and matching funds only for allowable costs under, and included in, each Department-approved Consolidated Grant plan applicable to the fiscal year in which the costs were obligated. GDOE acknowledges that the Agent has the responsibility to ensure that Department funds are used only for allowable costs, including costs that are necessary, reasonable, and allocable to the respective grants as required by 2 CFR Part 200, Subpart E, and that are procured in accordance with applicable procurement requirements in 2 CFR §§ 200.318-200.326. Where there is a question as to whether a cost is allowable, the Agent must raise this question with GDOE and, if the Agent deems it necessary, may also request assistance from the Department in determining the allowability of any expenditure.
 10. GDOE must coordinate the timing of drawdowns and disbursements with the Agent to ensure that payments to staff, vendors and providers are prompt and timely. To the extent feasible, GDOE must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account on the same day that funds are drawn from the account to liquidate obligations under the grants. GDOE, as appropriate and at the Agent's direction, must draw down sufficient funds under a grant to cover each approved request for payment.
 11. GDOE must charge its grants only for costs resulting from obligations that were properly made during the period of availability for the funds, including any carryover period. To ensure against the lapsing of Department funds, GDOE must provide the

Agent with the amount and nature of all obligations in a timely manner to ensure that obligations are liquidated no later than 90 days after the end of the funding period, or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.343(b).

12. GDOE must establish and maintain an effective process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including, but not limited to, maintaining accurate and up-to-date employee staffing lists and notices of personnel actions, distributing time among different funding sources for split-time employees, making timely and accurate adjustments to time and effort information entered into the payroll system, and properly allocating salary costs among Department grants based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. GDOE must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.
13. GDOE must work with the Agent to ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Interior (GDOE's cognizant Federal agency), and that copies of any indirect cost rate proposals or agreements are provided to the Agent and comply with the applicable requirements of 2 CFR Part 200, Subpart E, and 34 CFR §§ 75.560-564 (discretionary grants) and 34 CFR §§ 76.560-569 (formula grants).
14. GDOE must grant the Agent authority to enter into contracts with vendors on behalf of GDOE, and in doing so, GDOE must cooperate with the Agent to ensure compliance with the provisions for procurement set forth in 2 CFR §§ 200.318-200.326.
15. GDOE must provide effective oversight of proposed procurements, including, but not limited to, training all staff on, and reviewing all requisitions against, local and Department requirements for procuring goods and services, to facilitate the timely review and approval of purchase orders by the Agent, and to reduce the number of requisitions that are disallowed by the Agent for not meeting these requirements.
16. GDOE must ensure that within 24 hours of receipt of a vendor's invoice from the Agent, GDOE staff must (i) accept or reject the goods or services, and, if accepted, (ii) draw down funds for the vendor payment for deposit into the separate bank account maintained by the Agent.
17. GDOE must work with the Agent to ensure that all tangible personal property procured under Department grants is managed in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-(e) to ensure that such property is properly inventoried, maintained, and stored to prevent loss, damage, or theft of such property.

18. All transactions under the contract between GDOE and the Agent must be consistent with all applicable Federal requirements, including those in the Uniform Guidance at 2 CFR Part 200 and EDGAR at 34 CFR Parts 75 or 76, as appropriate.
19. In transferring to a new Financial Management Improvement System (FMIS), GDOE must work with the Agent as the Agent assists in (i) training the appropriate GDOE employees, (ii) providing transition assistance (including, but not limited to, transferring all necessary data from the Agent to the new FMIS), and (iii) communicating information from the Agent to any other contractor involved in implementing the new FMIS.
20. Except as noted herein, GDOE shall comply with all applicable provisions of EDGAR.
21. GDOE may include any other terms in the contract with the Agent, consistent with those above, as are necessary to ensure timely liquidation of all Department funds; timely payment to staff, providers and vendors; and general financial management consistent with applicable Federal regulations and Department grant awards.

Attachment B to the GDOE FFY 2021 Specific Conditions

Responsibilities and Requirements of the Third-Party Fiduciary Agent
(to be incorporated into any contract for services with the Agent)

The responsibilities and requirements of the Agent under these GDOE FFY 2021 specific conditions are as follows:

1. The Agent must work cooperatively and in a timely manner with GDOE to implement the activities and responsibilities described in these specific conditions.
2. The Agent's role encompasses financial management responsibilities concerning Department grants, including, but not limited to, processing payments and disbursements, maintaining financial records, financial reporting, instituting and applying procurement, inventory, and payroll procedures that comply with applicable Federal requirements, and other duties as more fully described below.
3. The Agent must use the line-item budgets submitted by GDOE, as described in Attachment A, section 6, to track projected and actual expenditures for the programs under Department grants. The Agent must ensure that the expenditures proposed are only for allowable costs under each grant.
4. The Agent must establish, maintain, and manage a separate bank account for all Department grant funds, including funds awarded by the Department to GDOE under the CARES Act and any CARES Act funds that the Guam Governor awards to GDOE. GDOE and the Agent must work with the Guam Governor to ensure that any CARES Act funds that the Guam Governor awards to GDOE are properly deposited in the separate bank account maintained by the Agent. The Agent must provide GDOE, as appropriate, with written notice (e.g., copy of invoice) of when funds are needed for a disbursement under a particular grant.
5. The Agent must acknowledge that GDOE has drawdown authority and that it understands and agrees that it must draw down funds and provide any applicable matching funds to the Agent within 24 hours of receipt of the written notice from the Agent. Consideration may be given for reasonable delays due to any time differences that may exist between GDOE and its vendors. Failure by GDOE to reasonably comply with this condition concerning the time within which it must draw down funds may result in the Department requiring the transfer of drawdown authority to the Agent. In the event of GDOE's failure to draw down funds in accordance with this condition, the Agent must notify the Department, and the Department will determine whether drawdown authority must be transferred to the Agent. If so, then immediately upon written notice of this decision from the Department, GDOE, as appropriate, must take all steps necessary to provide the Agent with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the Agent as the entity with drawdown authority.

6. The Agent must use fiscal control and accounting procedures that meet the requirements imposed on non-Federal entity grantees in accordance with 2 CFR §§ 200.302, 200.303, and 200.305(b).
7. The Agent must expend funds only for costs that are allowable under the respective grant programs, in accordance with 2 CFR Part 200, Subpart E. Additionally, for purposes of the Consolidated Grant, the Agent must expend funds only for allowable costs under, and included in, each Department-approved Consolidated Grant plan applicable to the fiscal year in which the costs were obligated. If the Agent questions whether an expenditure is allowable, the Agent must raise this question with GDOE. If the Agent deems it necessary, the Agent may also request assistance from the Department in determining the allowability of any expenditure.
8. The Agent must determine the value of any in-kind property or services donated to or provided by GDOE that are used to meet cost sharing or matching requirements as required by 2 CFR § 200.306, and must maintain records sufficient to document the basis for those valuations.
9. The Agent must take steps to prevent the lapsing of funds available under the grants, including ensuring timely disbursement of funds through the use of methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement as specified in GDOE's Treasury-State agreement, as required under the Cash Management Improvement Act and Treasury regulations at 31 CFR Part 205. For grant programs not included in GDOE's Treasury-State agreement, the Agent must meet the requirements in 2 CFR § 200.305(b). GDOE and the Agent must coordinate the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. Should the Agent assume drawdown responsibility, it must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account on the same day that funds are drawn from the account to liquidate obligations under the grants, to the extent feasible. The Agent must ensure that any interest earned on advances of grant funds is repaid annually, as required by 2 CFR § 200.305(b)(9).
10. The Agent must charge Department grants only for costs resulting from obligations that were properly made during the period of availability for the funds, including any carryover period. To ensure against the lapsing of Department funds, the Agent must liquidate obligations no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.343(b).
11. The Agent may seek approval from the Department to charge allowable pre-award costs incurred by GDOE against grant awards to which these special conditions apply. The Agent must submit any request for pre-award costs to the Department in writing and may not reimburse any pre-award costs unless it receives written approval from the Department.

12. The Agent must establish and maintain a process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including distribution of time among different funding sources for split-time employees, timely and accurate adjustments to time and effort information in the payroll system, and proper allocation of salary costs among Department grants based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. To carry out the responsibilities under this paragraph, the Agent must conduct an assessment of GDOE's internal controls over payroll operations to ensure that the payroll process is functioning as intended and calculations of gross earnings from all work performed during the pay period are correct; an assessment to determine that there are proper controls and procedures for identifying employees who are paid in whole or in part from Department grant awards; an assessment to determine whether employees are being compensated at their approved salaries/pay rates and from appropriate funding sources; and other tests to ensure that payroll earnings, deductions, and withholdings are made in accordance with the law and correspond to information contained in the employee master file. The Agent must carry out the responsibilities under this paragraph consistent with Federal requirements in 2 CFR Part 200, Subpart E.
13. The Agent must work with GDOE to ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Interior (GDOE's cognizant Federal agency), and that any indirect cost rate proposals or agreements comply with the applicable requirements of 2 CFR Part 200, Subpart E, and 34 CFR §§ 75.560-564 (discretionary grants) and 34 CFR §§ 76.560-569 (formula grants). In disbursing funds for allowable costs under the grants, the Agent must distinguish between direct and indirect costs and use accurate methods to allocate funds correctly between these two cost categories.
14. The Agent must establish contacts and working relationships with prospective vendors that can provide goods and services that GDOE needs under the grants. The Agent must have authority to enter into contracts with vendors on behalf of GDOE, and, in doing so, must comply with the provisions for procurement set forth in 2 CFR §§ 200.318-200.326.
15. Within 24 hours of the Agent's receipt of a vendor invoice, the Agent must provide a copy of the invoice to GDOE and ensure that the goods or services delivered are available for inspection and acceptance or rejection by GDOE staff requesting the goods or services. Consideration may be given for reasonable delays due to any time differences that may exist between GDOE and its vendors. The Agent must pay vendors for the delivered goods or services and must, to the extent possible, disburse funds to the vendors on the same day that funds are deposited into the separate bank account maintained by the Agent. The Agent must make payments by electronic funds transfer (EFT) or by paper draft if EFT is not available or possible for a particular vendor.

16. The Agent must manage all tangible personal property procured under the grants in accordance with the requirements of 34 CFR §§ 200.313(a) and (c)-(e).
17. The Agent must maintain records that fully show the amount of funds under each grant, how GDOE uses the funds, the total cost of each project, the share of that cost provided from other sources, and other records to facilitate an effective audit, in accordance with 34 CFR § 75.730 (discretionary grants) and § 76.730 (formula grants). The Agent, acting on behalf of GDOE, must retain records in accordance with the provisions of 2 CFR § 200.333.
18. In general, the Agent must use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, Federal funds, in accordance with 34 CFR § 75.702 (discretionary grants) and § 76.702 (formula grants), and 2 CFR §§ 200.302, 200.303, and 200.305(b).
19. The Agent must maintain insurance as required under the terms of the contract. All transactions under the contract between GDOE and the Agent must be consistent with all applicable Federal requirements, including the Uniform Guidance at 2 CFR Part 200 and EDGAR at 34 CFR Part 75 or 76, as appropriate.
20. The Agent must comply generally with the requirements of 2 CFR § 200.327. Specifically, the Agent must produce quarterly reports concerning financial transactions of GDOE for submission to the Department, detailing for each grant award, including for each individual program for which GDOE is using Consolidated Grant funds: a) the date of receipt, and the amount, of each approved payment request; b) the date and amount of each draw down deposit; c) the date and amount of each payment or disbursement by the Agent; and d) any interest or other funds remaining in the account at the end of the quarter. These amounts must also be grouped by and comparable with the projections in the line-item budgets described above in Attachment A, section 6, and must be reconciled with the Department's G5. This reconciliation must include drawdown dates, drawdown amounts and available balances, by award. These reports shall be due within 10 working days after the end of each quarter.
21. As GDOE implements and transfers to a new FMIS, the Agent must work with GDOE to assist in the training of employees and to provide transition assistance, including, but not limited to, transferring all necessary data from the Agent to the new FMIS, communicating information from the Agent to the contractor implementing the new FMIS, and providing feedback to GDOE and the Department on GDOE's implementation of the new FMIS.
22. Except as noted herein, the Agent must comply with all provisions of EDGAR and the Uniform Guidance applicable to the Department grants awarded to GDOE.