

DEPARTMENT OF EDUCATION**Compliance Agreement**

AGENCY: Department of Education.

ACTION: Notice of written findings, compliance agreement with the Commonwealth of Puerto Rico and the Puerto Rico Department of Education, and subsequent actions.

SUMMARY: This notice is being published in the **Federal Register** consistent with sections 457(b)(2) and (d) of the General Education Provisions Act (GEPA). Section 457 of GEPA authorizes the U.S. Department of Education (the Department) to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements and for whom the Department determines that full compliance is not feasible until a future date. Section 457(b)(2) requires the Department to publish written findings leading to a compliance agreement, with a copy of the compliance agreement, in the **Federal Register**. If a recipient fails to comply with the terms and conditions of a compliance agreement, the Secretary may take any action authorized by law with respect to the recipient.

On October 25, 2004, the Department entered into a compliance agreement (Agreement) with the Commonwealth of Puerto Rico (Puerto Rico) and the Puerto Rico Department of Education (PRDE) because PRDE was failing to comply substantially with numerous Federal requirements, and it was clear to the Department from all available information that PRDE would not be able to come into full compliance with applicable Federal requirements for the administration of Department programs until a future date. The Agreement applied to all grant funds awarded to Puerto Rico and PRDE by the Department's Offices of Special Education and Rehabilitative Services; Elementary and Secondary Education; English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students; Vocational and Adult Education; Innovation and Improvement; and Postsecondary Education. Prior to, and during the term of, the Agreement, the Department and PRDE have been working collaboratively to resolve a backlog of PRDE audits dating back to 1994 and, through jointly developed corrective action plans, to address a range of longstanding problems in PRDE's administration of Federal grants in the areas of grants management, payroll, financial

management, property management, and procurement.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Maestri, U.S. Department of Education, Office of the Secretary, 400 Maryland Avenue, SW., Room 7E206, Washington, DC 20202-6132. Telephone: (202) 205-3511.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: PRDE is a State educational agency (SEA) that receives grant funds under a number of programs administered by the Department, including programs authorized under the Elementary and Secondary Education Act of 1965, as amended; the Carl D. Perkins Career and Technical Education Act of 2006 (formerly the Carl D. Perkins Vocational and Technical Education Act); the Adult Education and Family Literacy Act; and the Individuals with Disabilities Education Act. Because of longstanding and recurring audit findings of fiscal and programmatic accountability deficiencies in the administration of Department programs by PRDE and several other agencies in Puerto Rico with management responsibility for Department funds, in 2002 the Department designated PRDE a "high-risk" grantee under the authority of 34 CFR 80.12. At that time, the Department imposed special conditions on all Department grants awarded to PRDE because of its history of unsatisfactory performance, as uncovered by audits dating back to 1994. Audit findings were recurrent over several years and involved such issues as missing or inadequate documentation to support procurements, lack of proper accounting procedures, mismanagement of property, and improper payroll costs.

In September 2003, the Department and PRDE began a collaborative effort, under the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI) to resolve jointly the backlog of unresolved PRDE audits, which contained over six hundred audit findings dating back to 1994. Through this effort, PRDE made some progress in establishing controls to improve its payroll and procurement processes and its grants management system, to enable it to address a number of the recurring audit issues and make systemic changes.

However, it appeared that it would take additional time to address completely the underlying issues and longstanding systemic problems that led to the large number of audit findings that PRDE was attempting to resolve.

Therefore, the Department proposed the possibility of Puerto Rico, PRDE, and the Department entering into a compliance agreement, pursuant to section 454 of GEPA, that would apply to all Department grants awarded to, and administered by, PRDE. The purpose of the compliance agreement would be to bring PRDE "into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements."¹ 20 U.S.C. 1234f(a). Under a compliance agreement, PRDE would have up to three years to continue its efforts to address the audit findings and underlying problems by implementing significant changes and improvements in grant administration, payroll, financial and property management, and procurement in order to come into full compliance with Federal requirements related to the programs under which the Department awards grants to PRDE. In order to enter into a compliance agreement with Puerto Rico and PRDE, the Department had to determine, in written findings, that PRDE would not be able to comply until a future date with the applicable program requirements and that a compliance agreement would be a viable means for bringing about such compliance.

In accordance with the requirements of section 457(b) of GEPA, 20 U.S.C. 1234f(b), Department officials conducted a public hearing in Puerto Rico in October 2004. Witnesses representing PRDE and other concerned individuals testified at this hearing on whether a compliance agreement with Puerto Rico and PRDE would be appropriate. The Department reviewed this testimony and all other relevant materials and concluded that, while the Department had been working closely with Puerto Rico, PRDE, and other Puerto Rico agencies to address the major issues that PRDE had been facing in administering Department grant

¹ Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient "is failing to comply substantially with any requirement of law applicable" to the Federal program funds administered by this agency. Specifically, the Department is authorized to—

- (1) Withhold funds;
- (2) Obtain compliance through a cease and desist order;
- (3) Enter into a compliance agreement with the recipient; or
- (4) Take any other action authorized by law.

programs, it was clear that the problems could not be corrected by PRDE immediately and that PRDE would need more than one year to correct them. Therefore, the Department, Puerto Rico, and PRDE entered into the Agreement, a comprehensive compliance agreement with a three-year term. The Agreement, which incorporated the Department's written findings, gave PRDE time to develop integrated and systemic solutions to problems in managing its Department funds and programs. Under the terms of the Agreement, by the end of the three-year term, PRDE is supposed to be in full compliance with the requirements of all programs funded by the Department. The Agreement became effective on October 25, 2004 and is set to expire on October 25, 2007.

Upon entering into the Agreement, the Department removed PRDE's "high-risk" designation related to the audit findings and underlying problems, based upon PRDE's demonstration of initiative and commitment to resolving the problems that had led to the "high-risk" designation, and upon PRDE's willing and effective collaboration with the Department. Also upon entering into the Agreement, the Department and PRDE worked together to develop corrective action plans covering grants management, payroll, property management, and procurement. These plans contained goals, action steps, and objectives to guide PRDE into full compliance with Federal requirements applicable to the grants that it receives from the Department. The Department has been closely monitoring PRDE's progress in implementing these corrective action plans through site visits, conference calls, meetings, and reviews of PRDE's periodic written reports. In addition, in July 2006, the Department and PRDE collaboratively resolved the backlog of audit findings from audit reports issued for fiscal years 1994 through 2003; in May 2007, they resolved the fiscal year 2004 single audit of PRDE; and in September 2007, they resolved, in large part, the fiscal year 2005 single audit of PRDE. The Department is currently working with PRDE to determine the full extent of PRDE's progress under the compliance agreement and corrective action plans, and the effect of such progress. Based on this assessment, the Department is also determining next steps for PRDE following the expiration of the Agreement.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the Agreement (which incorporates the Department's written findings in the sections entitled "Overview of Issues Addressed by this Compliance

Agreement" and "Removal of 'High-Risk' Designation") is included as appendix A of this notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Authority: 20 U.S.C. 1234c, 1234f).

Dated: October 18, 2007.

Hudson La Force III,
Senior Counselor to the Secretary of Education.

Appendix A—Compliance Agreement Among The Commonwealth of Puerto Rico, The Puerto Rico Department of Education, and The United States Department of Education

October 25, 2004

I. Overview of Issues Addressed by This Compliance Agreement

The Puerto Rico Department of Education (PRDE) has been undertaking a large-scale endeavor to address long-standing, systemic issues faced by PRDE, including the resolution of audit findings issued by auditors dating back to 1994. PRDE has been putting forth great effort to rebuild, to make important changes, to improve education services to students, and to restore the trust and credibility previously lost by PRDE. A number of these activities have been undertaken in accordance with special conditions imposed on PRDE's grants, with technical assistance by the U.S. Department of Education (the Department), and as part of an initiative undertaken between PRDE and the Department, under the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI). Although the Department has been working closely and productively with PRDE in recent months to address these major issues, it appears that it will take more than one year to completely address some of the long-standing, systemic

problems that PRDE is working so hard to correct, and it will also take the continued cooperation of other parts of the Puerto Rico government. Therefore, the Department is entering into this comprehensive, three-year Compliance Agreement (Agreement) with the Commonwealth of Puerto Rico (Puerto Rico) and PRDE.

Through this Agreement, Puerto Rico and PRDE, with assistance from the Department, agree to develop or complete integrated and systemic solutions to problems they have had in the management of Federal education funds and programs. The issues are being carefully examined and addressed from the perspective of PRDE and other Puerto Rico agencies with management responsibility for resources or programs that have an impact on education in Puerto Rico. Solutions involve re-engineering systems and processes and the increased use of technology. In addition, solutions must address communication and cooperation among Puerto Rico agencies, including PRDE (including its Office of Federal Affairs (OFA)), Departamento de Hacienda, Oficina de Gerencia y Presupuesto (OGP), and Banco Gubernamental de Fomento. Whatever the solutions Puerto Rico and PRDE choose to implement, they should seek to ensure the best educational systems possible for the students of Puerto Rico. It is also understood that by the end of the term of this Agreement, Puerto Rico, and PRDE in particular, must be in full compliance with the requirements of all programs funded by the Department.

This Compliance Agreement is also intended to ensure an effective planning and evaluation process throughout PRDE's programs and initiatives. Planning and evaluation processes are the basis for determining program goals, current status, improvement needs, budgets, resources, effectiveness of results, and other important aspects of effective program management. Through this Agreement, Puerto Rico and PRDE will improve program planning and evaluation for education programs and use the plans and evaluation results to drive management and resource decisions.

This Compliance Agreement addresses the following issue areas: Grants Management generally, Grants Management for several specific program areas, Payroll, and Procurement and Property Management. This Agreement lists specific tasks, goals, and measurable objectives for each issue area. Action steps and substeps with corresponding timelines, the persons and offices responsible for carrying out specific tasks, and

underlying problems resolved by Puerto Rico's compliance with each task, goal, and action step, will be contained more fully in the Puerto Rico Action Plans that will be completed within the next thirty days and will be incorporated into the Agreement by reference.

The General Grants Management Task contained in this Agreement (Task 1.0) applies to the administration of all Federal education programs administered by PRDE. In addition to the general section on Grants Management, Tasks 2.0 through 5.0 below contain additional, program-specific tasks, goals, and steps, which will apply to the administration of specific areas or programs, as noted, including the Community Schools, the Vocational Education Program, authorized under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301, *et seq.*), the Adult Education Program, authorized under the Adult Education and Family Literacy Act (20 U.S.C. 9201 *et seq.*), and the Special Education Program, authorized under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1401, *et seq.*).

The Department will review Puerto Rico's and PRDE's progress in meeting the terms of this Agreement by assessing the systemic approaches and degree of integration that Puerto Rico and PRDE bring in designing and implementing solutions to the complex problems in each of the crosscutting areas, by the demonstrated communication, cooperation, and organizational culture change toward "getting the work done right," and by assessing Puerto Rico's and PRDE's completion of corrective action steps. The approaches adopted by Puerto Rico and PRDE should include effective planning and evaluation of resource and management decisions that are designed to produce better educational results.

In making the critical systemic and organizational changes required to meet the terms of this Compliance Agreement, it is important to understand that the Agreement is not only designed to bring about compliance with Federal requirements but toward improving education for the students of Puerto Rico. In the end, the Department and Puerto Rico will judge success by compliance with all requirements and by determining how well Puerto Rico has improved educational programs by meeting applicable requirements and the terms of this Compliance Agreement.

II. Removal of "High-Risk" Designation

In 2002, the Department designated PRDE a "high-risk" grantee, under

authority of § 80.12 of the Education Department General Administrative Regulations (EDGAR) (34 C.F.R. 80.12). At that time, special conditions were placed on all Department grants awarded to PRDE because of its history of unsatisfactory performance, as uncovered by audits dating back to 1994. The Department's special conditions were intended to bring about necessary changes to Federal program administration in Puerto Rico that would ultimately bring it into compliance with all Federal program requirements. The special conditions were intended to result in important improvements to Federal grants administration in Puerto Rico so that the systemic problems uncovered by the auditors would be corrected and would not reoccur. In addressing the special conditions, and in conjunction with CAROI, as outlined below, PRDE has taken numerous steps to address underlying problems.

Since September 2003, the Department and PRDE have been working together in a collaborative effort under the CAROI process, to jointly resolve the backlog of unresolved PRDE audits, which contain over six hundred audit findings dating back to 1994. As a result of this effort, PRDE has already taken steps and established controls to improve its payroll and procurement processes and its management of grants to address numerous recurring audit issues and make systemic changes. It has assigned knowledgeable staff to this task and has employed expert contractors to assist in this effort. PRDE has sought to come into compliance with Federal requirements with the ultimate goal of improving educational services to all students in Puerto Rico.

One of the most significant steps Puerto Rico and PRDE have taken is the creation of both an Internal Audit Office and an Audit Oversight Committee that will provide independent review and oversight of Puerto Rico and PRDE activities and will assure Puerto Rico and PRDE's commitment to maintaining a strong control environment, quality financial reporting, and compliance with program objectives and regulations. The signing of the legislation for the Audit Oversight Committee, on August 5, 2004, was a very positive step that demonstrated the commitment and strides Puerto Rico and PRDE are taking to protect the Federal funds they receive and to help ensure they meet the fiscal and programmatic responsibilities under all Federal programs. PRDE has worked very effectively with the Department and has generally committed itself to

improving its Federal program administration by placing a high priority on addressing and ultimately eliminating what had been found to be serious problems.

Since PRDE has demonstrated great initiative and commitment to resolving the problems that led to the 2002 "high-risk" designation, in recognition of the progress shown by PRDE, upon execution of this Agreement, the Department will remove PRDE's "high-risk" designation. However, all special conditions currently applicable to Federal education grants awarded to PRDE remain in effect. The Department will work with PRDE within thirty days to eliminate possible duplication of effort in the special conditions and in this Agreement including with respect to reporting requirements. In lieu of the "high-risk" designation, during the first six months following execution of this Agreement, *i.e.*, the early implementation phase of this Agreement, PRDE will be on "probationary status." During this period, the Department and PRDE will continue the close, cooperative relationship that has characterized their work under the CAROI initiative, but the Department will scrutinize very carefully the progress that PRDE is making under the Agreement. The Department will remain available to provide PRDE with technical assistance that is needed, and it will also oversee the progress made by PRDE on its Federal program administration, consistent with the terms of this Agreement. PRDE will remain committed to continued and timely movement toward full compliance with Federal requirements.

III. Consequences for Not Meeting the Terms and Conditions of This Agreement

A. Mutual Agreements and Understandings Regarding the Terms, Conditions and Enforcement of This Compliance Agreement

Severability

The parties agree that this Compliance Agreement includes terms and conditions that apply to the various Federal programs included in the Agreement (hereafter "covered Federal programs") and also terms and conditions that are program specific. To that end, the parties agree that each such term and condition for each covered Federal program may constitute a separate agreement among Puerto Rico, PRDE and the Department. For purposes of 20 U.S.C. § 1234f, each such term or condition as to each covered Federal program shall be severable from

each other term or condition for each of the covered Federal programs. Unless set out otherwise, a determination by the Department under 20 U.S.C. § 1234f(d) that Puerto Rico or PRDE is not meeting terms and conditions may be specific to such term, condition, or program without impacting Puerto Rico's or PRDE's continuing obligations under the Agreement. That is, all other terms and conditions for all covered Federal programs or the specific term or condition for other covered Federal programs would remain in place for the duration of the Agreement or until such time as the Department were to determine that Puerto Rico or PRDE had substantially failed to meet those terms and conditions.

Alternatively, the parties understand and agree that a determination by the Department under 20 U.S.C. § 1234f(d) that Puerto Rico or PRDE has substantially failed to meet any of the terms and conditions shall, at the Department's discretion, be grounds for finding the Agreement, as to such terms and conditions, no longer in effect and that the Department may take any and all additional actions authorized by law. At the same time, if Puerto Rico or PRDE substantially fails to meet the terms and conditions of the Agreement, the Department may terminate the entire Agreement, and the Department may take any and all actions authorized by law. Some examples of such actions are set out below.

Judicial Enforcement

1. Cease and Desist Order Under 20 U.S.C. §§ 1234c(a)(2) and 1234e

The Department may seek injunctive relief to compel specific actions or to stop specific actions. Under this process, the Department issues a complaint to Puerto Rico or PRDE, describing the factual and legal basis for the Department's belief that Puerto Rico or PRDE is failing to comply substantially with a requirement of law including this Agreement, and containing a notice of hearing. A hearing before an Administrative Law Judge (ALJ) could then occur. The ALJ's report and order, requiring Puerto Rico or PRDE to stop specific actions or compelling specific actions, becomes the final agency decision. The Department may enforce the final order by withholding any portion of Puerto Rico's or PRDE's grant award or certifying the facts to the Attorney General who may bring an appropriate action for enforcement of the order.

2. Referral to Department of Justice For Appropriate Enforcement—20 U.S.C. § 1416

If the Department finds, after reasonable notice and opportunity for hearing to Puerto Rico or PRDE, that there has been a failure by Puerto Rico or PRDE to comply substantially with any provision of applicable Federal laws (with regard to the programs to which 20 U.S.C. § 1416 applies) (including terms of Compliance Agreement within timelines in the Agreement), the Department may, after notifying Puerto Rico or PRDE, refer the matter for an appropriate enforcement action, which may include referral to the Department of Justice.

Withholding of Grant Funds—20 U.S.C. §§ 1234c(a)(1), 1234d and 1416

If the Department finds, after reasonable notice and opportunity for hearing to Puerto Rico or PRDE, that there has been a failure to comply substantially with a requirement of law, including with this Agreement, the Department may, after notifying Puerto Rico or PRDE or both, withhold, in whole or in part, future payments. The Department may limit withholding to a particular Federal grant or part of the grant.

Escrow Account To Fund Third-Party

If Puerto Rico or PRDE fails substantially to meet a significant term in this Compliance Agreement, the Department may place an appropriate amount of Puerto Rico's or PRDE's grants into an interest bearing escrow account to fund the duties of a third-party fiduciary agent. Puerto Rico or PRDE may request a reconsideration of this action.

Recovery of Funds—20 U.S.C. § 1234a

Any funds improperly expended or not properly accounted for are subject to recovery by the Department according to 20 U.S.C. § 1234a.

B. Criteria for Determining Consequences

Puerto Rico or PRDE will provide the Department with progress reports—as required in Section IV below—for the action steps and measurable objectives set forth in the Agreement. Puerto Rico or PRDE, and the Department agree that substantial failure to: (1) provide all required reports in a timely manner, (2) show substantial progress in completing action steps as required, (3) complete significant action steps within the timeframes designated in the Agreement, or (4) achieve critical measurable objectives as specified in this Agreement, will be considered a failure to meet the terms and conditions of this Agreement.

Reinstatement of "High-Risk" Status Under 34 CFR § 80.12

In the event that PRDE and Puerto Rico fail to continue their efforts toward correcting the systemic problems uncovered by the auditors between 1994 and 2003, and are not making sufficient progress to meet the terms of this Agreement, the Department retains the authority to reinstate the "high-risk" designation being removed under the terms of this Agreement. If the Department determines that such reinstatement becomes necessary, additional special conditions or restrictions may include, but will not necessarily be limited to: (1) payment of Federal funds on a reimbursement basis; (2) withholding authority to proceed to next phase until receipt of evidence of acceptable performance within a given funding period; (3) requiring additional, more detailed financial reports; (4) requiring additional project monitoring; (5) requiring PRDE to obtain technical or management assistance, including the designation of a third-party fiduciary to administer all or part of PRDE's grants from the Department; or (6) establishing additional prior approvals. The use of a condition for one covered Federal program does not require or preclude its use for a different covered Federal program.

In the event that the Department decides to reinstate "high-risk" status, it would notify PRDE as early as possible, in writing, of the: (1) Nature of additional special conditions and restrictions; (2) reason(s) for imposing them; (3) corrective actions which must be taken before they will be removed and time allowed for completing any additional corrective actions; and (4) method of requesting reconsideration of conditions and restrictions imposed.

IV. Reporting Requirements

This Compliance Agreement requires regular progress reporting for all issues. Generally, Puerto Rico and PRDE must provide the Department with progress reports on a quarterly basis.

The submission of each written report will be preceded by a meeting or conference call among representatives of Puerto Rico (which may include representatives of the various Puerto Rico agencies mentioned in Section I above), PRDE, and the Department, within five business days (according to PRDE's business calendar) of the end of the quarter, to discuss Puerto Rico and PRDE's progress and what level of detail the Department wants Puerto Rico and PRDE to cover in its written quarterly report that will be submitted within fifteen business days (according to

PRDE's business calendar) of the call or meeting. The parties may modify the schedule by mutual agreement.

Subject to the meeting or call above, in general, each quarterly report will include information such as: (1) a description of activities and progress for each task and its related sub-tasks during the reporting period, (2) the status of each critical action step required to be taken during the reporting period, (3) documentation of critical action step completion for those steps required to be completed during the reporting period (including explanations of delays for all steps not completed that were scheduled to be completed during the period, and expected completion dates for all unimplemented steps), (4) documentation of measures of performance and results, and (5) other data or documentation as specified within the action steps for each task or related sub-task in this Agreement, and/or discussed in the pre-report meeting among the Department, Puerto Rico, and PRDE.

Puerto Rico and PRDE will consider, if feasible and cost-effective, transmitting reporting information to the Department via an Internet web site. If transmittal of the reporting information is not possible via a website, Puerto Rico and PRDE will continue to be responsible for tracking, monitoring and reporting progress on all requirements and milestones in this Agreement in a manner that is fully accessible to the Department and the public. Reporting information will be updated continuously, but in any event, on a quarterly basis, no later than within fifteen business days (according to PRDE's business calendar) from the day of the call or meeting among the Department, Puerto Rico, and PRDE, specifying the specific reporting required for that quarterly period. These reports also will fulfill the reporting requirements required under PRDE's special conditions that are currently in effect or as modified in accordance with the process to eliminate duplication in Section II above. The first quarterly period will encompass the time from which all parties sign this Agreement through December 31, 2004. Within the first thirty days of this Agreement, the Department will work with PRDE to agree on a more rigorous reporting schedule for reporting progress during the first six months following execution of this Agreement, (the early implementation phase of this Agreement).

V. Updated Action Plans, Action Steps, and Timelines

Action steps and timelines that PRDE has developed are included in the task descriptions throughout this Agreement as well as in PRDE's Action Plans that will be completed and incorporated into this Agreement within thirty days of the execution of this Agreement. PRDE, Puerto Rico, and the Department will continuously reassess the action steps and timelines to determine if: (1) the action steps fully meet the requirements of this Agreement, (2) the action steps will move Puerto Rico and PRDE toward achieving required measurable objectives, and ultimately, full compliance within three years, and (3) the timelines need to be modified within the time boundaries set forth in this Agreement. In addition to the areas currently covered in this Agreement, the Action Plans will also include a section covering continuing progress to be made in implementing the oversight systems for the Internal Audit and Audit Oversight Committee, and the internal audit function within PRDE.

Updating the action steps and interim timelines into Action Plans for which Puerto Rico and PRDE will be accountable is a critical step for each task and sub-task. Once Puerto Rico and PRDE complete the development of Action Plans that address each task or sub-task, as specified in this Agreement, and the Department agrees to the revised Action Plans, the action steps and timelines in the Action Plans will become additional requirements of this Agreement and be subject to the reporting requirements and consequences for not meeting terms and conditions as set forth in this Agreement. The Department will assist by consulting with Puerto Rico and PRDE to develop reports or reporting formats that shall satisfy the reporting requirements as set forth in this Agreement. The Department will also assist Puerto Rico and PRDE, to the extent that resources are available, with the orientation and training of personnel and the provision of meaningful technical assistance.

VI. Resolution of Outstanding Audit Findings

As noted above, the Department designated PRDE a "high-risk grantee" under 34 CFR § 80.12 due to numerous serious recurring audit findings which uncovered deficiencies in PRDE's administration of Federally funded programs. This Compliance Agreement does not absolve PRDE's liability under any of these audit findings. The Department has been working closely

with PRDE to address all of the issues uncovered in single audits and audits by the Department's Office of the Inspector General (ED OIG) conducted over the years 1994 through 2003. While steady progress is being made, resolution of all findings has not been completed. Thus, in addition to undertaking corrective action in response to these many monetary and non-monetary audit findings, under this Agreement, PRDE also agrees to continue working with the Department toward resolution of all audit findings issued under the single and ED OIG audits covering 1994 through 2003, under the Department's CAROI process. The Department and PRDE anticipate continuing to work cooperatively through a CAROI process so that these audit findings can be resolved no later than six months from the date of the execution of this Agreement. PRDE's continued work with the Department on resolving remaining audit issues is a critical element of compliance with this Agreement. However, in the event that the CAROI process does not appear to be progressing, in addition to other remedies the Department has including those under this Agreement, the Department retains the discretion to issue one or more program determination letters (PDLs) to resolve one or more of these audit findings at any time. In the event that one or more PDLs are issued, PRDE may exercise its appeal rights, and such exercise would not be considered a breach of this agreement, and would not be inconsistent with the resolution of other findings through CAROI.

VII. General Additional Measurable Objectives

Puerto Rico, PRDE, and the Department agree that the following measurable objectives apply for each task and sub-task contained in this Agreement and in the Action Plans that are to be incorporated into this Agreement within thirty days, in addition to other measurable objectives specified throughout this Agreement.

1. Plans, other documents, and reports are timely, complete, accurate, and address the requirements set forth in this Agreement.

2. Action steps are implemented within the timeframes set forth in this Agreement.

3. Implementation of sub-tasks and action steps demonstrates progress towards achieving the outcomes or measurable objectives set forth in this Agreement.

The remainder of this document provides task descriptions, action steps, and measurable objectives for: (1)

General Grants Management, (2) Specific Program Management, (3) Payroll, and (4) Procurement and Property Management. By signing this Agreement and by the end of the three-year period covered by this Agreement, Puerto Rico and PRDE commit to taking the necessary actions to be in full compliance with the program requirements applicable to all Department grants for which Puerto Rico and PRDE expend funds and any other requirements set forth in this Agreement. Puerto Rico and PRDE commit to full implementation of improved grants management, payroll, and procurement and equipment inventory processes laid out in this Agreement and in greater detail in the PRDE Action Plans that will be incorporated by reference into this Agreement.

VIII. Tasks

This section on Tasks represents what the parties have generally agreed to at the time of execution of this Agreement. Some of the subtasks and steps set forth below may be modified as the parties agree to the Action Plans in their final form within thirty days. Appropriate modifications to this section will be made by mutual consent of the parties once the Action Plans are finally agreed to.

Task 1.0: Improving PRDE General Grants Management

Overall Task Description

Because the stated purpose of this Agreement is to improve education for the students of Puerto Rico, it is critical to successfully meeting the terms of this Agreement that Puerto Rico and PRDE use the first year of the next three-year period to develop and refine long-term goals, assess the current status of each program receiving Federal assistance, and design coherent plans to bridge the gap between the current status of education in Puerto Rico and its goals of improving education and fully complying with all Federal program requirements. As set forth in Section I above, this General Grants Management Task applies to the administration of all Federal education programs administered by PRDE.

Effective grants management includes the development of effective: (1) Pre-award planning processes, (2) grant application, evaluation, and approval processes, (3) baseline assessments of current PRDE practices as compared with applicable Federal requirements, (4) plans for interagency coordination among relevant Puerto Rico agencies, such as PRDE, Hacienda, the Office of

Federal Affairs (OFA), and the Puerto Rico Department of Health (PRDH), (5) restructured budget processes ensuring that all agencies and programs receiving Federal awards will meet stated goals, (6) measurable objectives to determine if the planned grants management improvements are having the intended effect, and (7) options for further modification if implementing the plan is not having the intended effect. The new grants management process implemented by Puerto Rico and PRDE will take into account and adhere to Federal requirements for each program, as well as other applicable accounting and professional standards. In addition, the planning process should include citizen and/or customer input and feedback; input is a vital part of the process to set goals, and feedback is equally significant in assessing results. A critically important aspect of the planning and design process is that it is fully integrated as the foundation for other program-related decisions about budgets, financial management, personnel requirements, and other resource needs.

The Department will continue to provide technical assistance, as appropriate, including referrals to successful jurisdictions for guidance. Puerto Rico and PRDE will seek the assistance of expert consultants and other grantees to provide hands-on guidance in improving its grants management process. Reasonable and necessary expenses for this assistance will be considered allowable costs chargeable to a Department grant provided an approvable application is received in a timely manner.

Sub-Task 1.1: Pre-Award Planning Process

Goal: To ensure that PRDE application, evaluation and approval processes allow for the timely approval of work plans so that implementation of Federally funded programs can commence upon receipt of grant award notifications, i.e., in July or August of each year.

The following step will help achieve the goal:

Create process to ensure that budget planning for all appropriate Federal programs is nearly complete by receipt of grant award notification by September 30, 2005.

Measurable Objectives for Sub-Task 1.1:

Short term: 80% of all applications for Federal funds in the OFA pilot program will have completed the planning process timely so that the approval process is completed by the time grant

award notification is received (October 31, 2005).

Mid term: 50% of all applications will have completed the planning process timely so that the approval process is completed by the time the grant award notification is received (October 31, 2006).

Long term: 100% of all applications for Federal funds will have completed the planning process timely so that the approval process is completed by the time grant award notification is received (October 1, 2007). In addition, all applications for Federal funds will comply with all applicable requirements (October 25, 2007).

Sub-Task 1.2: Application, Evaluation, and Approval Process

External Application Goals: To submit applications to the Department for formula and discretionary grant funds in a timely manner in substantially approvable form.

Internal Application Goals: To have an internal application process that is streamlined, is oriented to the needs of PRDE's internal applicants for funds, and provides useful information about the allowable uses of Federal funds.

Evaluation and Approval Process Goals: To have an evaluation and approval process that is streamlined and rapid, and provides useful and timely feedback to PRDE internal applicants.

The following steps will help achieve the goals:

- A. Review all applicable Federal requirements,
- B. Streamline and strengthen external application process,
- C. Streamline and strengthen internal application process for formula grant funds,
- D. Streamline and strengthen application process for discretionary grant programs (that require subgrants to be allocated by competition),
- E. Streamline and strengthen competitive proposal process for external contractors (refer to procurement plan),
- F. Ensure staff has necessary knowledge and expertise to implement revised application process,
- G. Create process to ensure proper documentation is maintained throughout the application process,
- H. Create streamlined evaluation and approval processes that support the proper use of Federal funds, and
- I. Ensure staff has necessary knowledge and expertise to implement revised evaluation and approval processes that are consistent with Federal requirements.

Measurable Objectives for Sub-Task 1.2:

External Application Process: By July 2006, improve and strengthen all applications that are submitted to the Department, utilizing a revised procedure consistent with the milestones contained in the grants management action plan.

Internal Application, Evaluation, and Approval Processes: By January 2007, all applications for Federal funds are going through the new application, evaluation, and approval process, consistent with the planning process.

Sub-Task 1.3: Interagency Process

Goal: Ensure productive coordination between PRDE and other Puerto Rico agencies, such as Hacienda, OGP, PRDH, and OFA, to ensure that budget processes operate efficiently, in accordance with PRDE procedures, and in accordance with all applicable Federal requirements.

Measurable Objective for Sub-Task 1.3:

In accordance with current PRDE Special Conditions, to prepare an Action Plan to address this initiative and will submit it to the Department by February 15, 2005.

Sub-Task 1.4: Budget Process

Goal: Restructure the PRDE budget process so that all programs that receive Federal funds will have prepared a preliminary budget and received preliminary approval from PRDE's budget office prior to their receipt of a grant award notification.

The following steps will help achieve the goal:

A. Review all applicable Federal requirements,

B. Create detailed map of the current budget process, including all forms and approvals necessary for Federal funds to be awarded and flow from PRDE to programs/entities,

C. Streamline PRDE budget process, consistent with applicable Federal requirements,

D. After budget process has been streamlined, prepare a written document describing uniform procedures that PRDE and subrecipients must follow in submission of budgets for approval by PRDE, and

E. Ensure the obligation of Federal funds in a timely manner.

Measurable Objective for Sub-Task 1.4:

By July 2006, 100% of all programs that have received Federal funds will have prepared a preliminary budget according to all program requirements for 2005–2006 and received preliminary approval from the budget office prior to the receipt of a grant award notification.

Sub-Task 1.5: Program Implementation Process

Goal: To ensure that all PRDE staff responsible for program implementation and administration have the necessary knowledge, tools, and resources necessary for implementing and administering Federal programs consistent with all applicable Federal programmatic and fiscal requirements.

The following steps will help achieve the goal:

A. Identify specific technical assistance available from OFA to academic staff and other recipients of Federal funds, to ensure that Federal programs are implemented and Federal program funds are expended in a manner consistent with Federal requirements,

B. Ensure that all staff responsible for the implementation of Federal programs at all levels is aware of and familiar with all applicable Federal programmatic requirements,

C. Ensure that all staff responsible for the implementation of Federal programs at all levels is aware of and familiar with all applicable Federal requirements related to procurement with Federal funds, such as RFP requirements for contracts, competitive bidding requirements (which is discussed in greater detail below under Task 7.0,

D. Create uniform documentation requirement/template for all staff responsible for implementing Federal programs, and

E. Ensure that all staff responsible for implementing Federal programs fully understands Federal requirements on retention of documentation

Measurable Objectives for Sub-Task 1.5:

- By July 2005, there has been formalized and regularly scheduled staff training for non-OFA, PRDE staff for relevant central level employees who administer Federal funds, and

- By July 2006, program specific and Federal grants management training will have been completed for 100% of Central Office PRDE staff responsible for implementing Federal programs.

- Each year, there is a significant reduction in the number of sustainable audit findings contained in single audit reports.

Sub-Task 1.6: Monitoring and Technical Assistance Process

Goal: To ensure that weaknesses in Federal program administration are identified and remedied in a timely manner to significantly reduce audit findings.

Goal: To ensure that all PRDE personnel who administer Federal funds

have access to high-quality technical assistance and training that responds to the needs of PRDE.

The following steps will help achieve the goals:

A. Establish a formal, unified monitoring process for all Federal programs administered by OFA,

B. Create consistent monitoring tools that identify specific programmatic requirements and align programmatic and fiscal monitoring, and

C. Analyze and identify audit findings that are repetitive across programs and ensure that additional monitoring is performed for these programs.

1. Based on recent findings, conduct additional monitoring and intensive technical assistance for Migrant Education Program (MEP):

—Formalize process for maintaining required documentation to support the eligibility of students participating in the program. Ensure that formalized process includes all documents required under the statute,

—Train program directors, regional directors, and other appropriate migrant staff on revised documentation maintenance requirements,

—Conduct additional staff training for all relevant MEP personnel on specific eligibility requirements of migrant program, such as the definition of a qualifying move, agricultural or fishing activity, Principal Means of Livelihood (PMOL), etc. to ensure the accuracy of the Certificates of Eligibility (COE), and

—Conduct additional staff training on specific provision of services requirements, including, but not limited to:

- Priority for services,
- How MEP students should be served in schoolwide programs,
- Service to private school students, and
- Fiscal requirements.

—Consistent with monitoring plan, monitor revised documentation process and other migrant program requirements, deliver immediate technical assistance if needed, and

—Review manual clarifying eligibility requirements of the migrant program. If necessary, revise manual.

2. Based on recent findings, conduct additional monitoring and intensive technical assistance for the Even Start Program:

—Formalize process for maintaining required documentation to support the eligibility of families participating in the program. Ensure that the formalized process includes all documents required under the statute,

- Train program directors, Even Start partners and other appropriate staff on revised documentation maintenance requirements,
- Develop formal procedure to ensure matching requirements are met or appropriately waived by PRDE consistent with the statutory requirements, and
- Develop formal monitoring process, consistent with statutory requirements, to measure whether there is sufficient progress and indicators of program quality by Even Start subrecipients.
 - D. Schedule integrated monitoring visits according to identified needs,
 - E. Train employees who will be conducting monitoring visits,
 - F. Improve access to information about monitoring process for PRDE programs/offices that will be monitored,
 - G. Develop a Master Technical Assistance Plan for PRDE programs in accordance with results from monitoring process,
 - H. Create links between the Department's website, other educational websites and PRDE's website,
 - I. Develop a plan to properly document PRDE technical assistance,
 - J. Train employees who will be giving technical assistance, and
 - K. Ensure that any weaknesses or instances of non-compliance are identified and corrected in a timely manner.

Measurable Objectives for Sub-Task 1.6:

- By April 2005—A master monitoring plan will be created, based on past findings, targeting high need programs first, including MEP and Even Start,
- By August 2005—Uniform monitoring instruments will be created for each Federal program and program/fiscal monitors will use these instruments for their monitoring activities,
- By July 2006—Regular monitoring by appropriate staff will be fully implemented,
- By July 2006—Regular, high-quality technical assistance will be provided by PRDE to PRDE staff regarding Federal requirements. Technical assistance will be provided prior to the delivery of Federal program services by PRDE personnel and will promptly respond to any weaknesses discovered in the monitoring process, and

Each year, there is a significant reduction in the number of sustainable audit findings contained in single audit reports, particularly in the number of recurring audit findings.

Sub-Task 1.7: Reporting

Goal: By July 2005, PRDE will ensure that all reports submitted to the Department are timely and accurate.

The following steps will help achieve the goal:

- A. Compose Master List of all performance and financial reports due to the Department under applicable requirements, and

- B. Identify PRDE staff responsible for completing and filing all required reports.

Measurable Objective for Sub-Task 1.7:

By July 2005, PRDE will ensure that all reports submitted to the Department are timely and accurate.

Sub-Task 1.8: Private Schools and Equitable Services

Goal: PRDE is in compliance with all Federal requirements applicable to private schools, including the requirements for providing equitable services to private school students.

The following step will help achieve the goal:

Compose a Master List of all Federal programs that contain requirements regarding participation by private school students, including equitable services requirements, and provide appropriate training on these requirements to appropriate PRDE personnel.

Measurable Objectives for Sub-Task 1.8:

- By July 2005, PRDE has trained all relevant employees on the equitable services requirements in the Federal programs administered or monitored by those employees, and
- By July 2006, uniform processes regarding equitable services requirements will be fully implemented.

Sub-Task 1.9: Schoolwide Programs

Goal: PRDE complies with all Schoolwide program requirements

The following steps will help achieve the goal:

- A. Create a work group to review the schoolwide program process and make recommendations for, and implement, improvements in the process.

- B. Improvements will include identifying Master List of all schools eligible for schoolwide program status and ensuring that all schools deemed eligible and included in the Master List have the required elements in their schoolwide plan, and ensuring that fiscal and programmatic requirements of schoolwide schools are understood by relevant staff.

Measurable Objectives for Sub-Task 1.9:

- By July 2005, PRDE has trained all relevant employees on requirements pertaining to schoolwide programs, and

- By December 2006, uniform processes regarding schoolwide programs will be fully implemented.

Sub-Task 1.10: Implementation of Reorganization Plan

Goal: PRDE's OFA will implement new processes and a new organizational structure to ensure the efficient and effective administration of all the Federal funds it administers and to ensure the administration of those funds in compliance with all applicable Federal requirements.

Measurable Objectives for Sub-Task 1.10:

- By December 2004, a new human resource plan will be implemented, and
- By July 2006, most new processes contained in this grants management plan will be operational, leading to a substantial reduction in audit findings.

Sub-Task 1.11: Implementation of Puerto Rico's Integrated Financial Administration System (PRIFAS) Grants Management and Project Modules

Goal: PRDE's OFA will implement the PRIFAS grants management and project module to improve PRDE's control over the timely obligation of Federal funds and bring PRDE into compliance with Federal requirements applicable to the period of availability of funds, cash management, and proper liquidation of obligations.

Measurable Objective for Sub-Task 1.11:

By January 2005, the new PRIFAS grants management and project module will be operational.

Sub-Task 1.12: Puerto Rico as an SEA/LEA

Goal: PRDE will work with the Department to identify PRDE's needs for technical assistance on the issue of best practices in grants administration by a single SEA and LEA by February 15, 2005.

Task 2.0: Improving PRDE Grants Management—Community Schools Administration

Sub-Task 2.1: Improving Accounting Records at the Community Schools Administration:

Goal: Develop comprehensive plan to resolve accounting issues described in Single Audit findings.

The following steps will help achieve the goal:

- A. Map out community school administration responsibilities, and

B. Streamline the application/approval/distribution process to schools.

Measurable Objective for Sub-Task 2.1:

By February 15, 2005, in accordance with the special conditions, PRDE will complete a comprehensive plan to strengthen the accounting records of the Community Schools Administration and submit it to the Department.

Sub-Task 2.2: Improving Cash Management at the Community Schools Administration

Goal: Develop a comprehensive plan to resolve cash management issues at the public school level identified and described in Single Audit findings.

Measurable Objective for Sub-Task 2.2:

By February 15, 2005, in accordance with the special conditions, PRDE will complete a comprehensive plan to strengthen cash management at the public school level and submit it to the Department.

Sub-Task 2.3: Implementation of PRIFAS Grants Management and Project Modules

Goal: PRDE's Community Schools Administration will implement the PRIFAS grants management module and project module to improve control over the timely obligation of funds, comply with period of availability requirements, cash management, and proper liquidation of obligations.

Measurable Objective for Sub-Task 2.3:

By July 2005, the new PRIFAS grants management and project modules will be in operation.

Task 3.0: Improving PRDE Grants Management—Vocational Education Program

Sub-Task 3.1: Improving the Application Process

Goal: Compliance with the Federal vocational education requirement for a State Board to serve as the eligible agency, and related conditions in PRDE's Perkins III grant.

The following steps will help achieve the goal:

A. Establish the new State Board for Vocational and Technical Education within PRDE (completed—EO 2004-29),

B. Nominate members of the new State Board (completed),

C. Create a draft of the new State Board Rule,

D. Create a chart of the new governance structure of the State Board,

E. Adopt the State Plan for Vocational Education submitted by PRDE,

including the request to extend and revise the plan, the budget for year six, and the agreed-upon adjusted performance levels for year six,

F. Ratify past actions of the Puerto Rico Secretary of Education and the PRDE,

G. Adopt any necessary revision to ensure conformity with the State Plan,

H. Submit certifications required to be included in the State Plan,

I. Complete the document that delegates to PRDE the authority to receive, hold, and disburse funds awarded under the State Plan, and

J. Create a detailed map of the current application process both for PRDE applications to the Department and PRDE application requirements for Department funds within PRDE.

Measurable Objective for Sub-Task 3.1:

Short Term—30% of all internal applications work plans for Federal funds will be almost operational by the time Grant Award Notification is received in July 2005.

Task 4.0: Improving PRDE Grants Management—Adult Education Program

Sub-Task 4.1: Monitoring and Technical Assistance Process

Goal: Monitor and administer the Adult Education program effectively and in compliance with all applicable requirements.

The following steps will help achieve the goal:

A. Create detailed map of current monitoring process,

B. Identify criteria to be used in identifying monitoring needs,

C. Align programmatic monitoring activities with fiscal monitoring activities

D. Rank program projects by monitoring needs,

E. Develop a master monitoring schedule that coordinates the monitoring of adult education projects,

F. Train employees who will be conducting monitoring visits,

G. Improve communication between adult education and all programs,

H. Create a detailed map of the current technical assistance process,

I. Identify technical assistance resources for developing and completing applications available from the Department, and

J. Develop a master technical assistance plan for the Adult Education Program.

Task 5.0: PRDE Grants Management—Special Education Program

Sub-Task 5.1: Monitoring and Corrective Action Process

Goal: Ensure non-compliance identified through monitoring is corrected within one year of its identification.

The following steps will help achieve the goal:

A. Ensure personnel responsible for the implementation of IDEA requirements fully understand those requirements and, where non-compliance is identified, understand and implement the corrective actions needed to ensure correction of all non-compliance within a reasonable period of time not to exceed one year from identification,

B. Provide training and technical assistance in a comprehensive and systematic manner to staff in districts or sites where non-compliance is identified to ensure the correction of all non-compliance within a reasonable period of time not to exceed one year from identification,

C. Provide technical assistance on the development and implementation of corrective action plans to ensure that they are developed and implemented in a manner that addresses all areas of identified non-compliance,

D. Provide technical assistance and feedback to district and other personnel to ensure that the corrective action plans submitted to PRDE are designed to correct all areas of non-compliance within a reasonable amount of time, not to exceed one year from the identification of the non-compliance,

E. Request and review progress reports from regions, districts and other sites that are implementing corrective action plans,

F. Ensure follow-up activities in regions, districts and other sites that have corrective action plans to ensure that the identified non-compliance has been addressed and is not recurring,

G. All monitoring findings will be corrected within one year of identification,

H. List any sanctions imposed on a district or school for failure to come into compliance with the IDEA requirements as agreed upon in the corrective action plan, and

I. If PRDE, or any district or school failed to achieve compliance and no additional actions, including sanctions were identified, required, or imposed, PRDE must explain the basis for not taking additional actions.

Measurable Objective for Sub-Task 5.1:

- All monitoring findings are corrected under the new monitoring system within a reasonable period of time, not to exceed one year from identification of the monitoring finding,

• Correction of findings from 2002–2003 and 2003–2004 school years is reported to the Department's Office of Special Education (OSEP) no later than July 1, 2005. Thereafter, each quarterly report, as part of this Compliance Agreement, includes documentation of correction of monitoring findings within a reasonable period of time, not to exceed one year from identification,

- Develop and implement an effective set of procedures for sanctioning persistent long-standing non-compliance,

- Analyze existing procedures,
- Amend existing procedures, as necessary, and

• Apply new sanction procedures where required to ensure correction, by January 1, 2006.

Sub-Task 5.2: Ensuring Accurate Child Count Reports

Goal: Ensure Child Count Reports submitted to the Department are accurate.

The following steps will help achieve the goal:

A. Ensure that the staff responsible for the child count reports understand the requirements, processes and timelines to collect the information and report the data,

B. Provide training and technical assistance regarding the collection of the Child Count data,

C. Provide training and technical assistance regarding Child Count data entry,

D. Ensure that the Child Count data collected and reported is valid, accurate and timely,

E. Develop validation process through sample comparison and analysis at school, school district and regional level that ensures that all students receiving special education and related services are identified and included in the child count data reports,

F. PRDE will continue to run side-by-side comparisons of the paper and electronic process to determine and verify the accuracy of the data, and

G. By December 1, 2005, PRDE will ensure that the child count report reflects a complete and accurate count of all children served.

Measurable Objective for Sub-Task 5.2:

By 2005, PRDE will ensure that the Child Count report reflects an accurate count of all children served.

Sub-Task 5.3: Implementation of PRIFAS Grants Management and Project Modules

Goal: PRDE's Office of Special Education will implement the PRIFAS grants management and project module to improve control over the timely obligation of funds, and comply with requirements concerning period of availability, cash management, and proper liquidation of obligations.

The following steps will help achieve the goal:

A. Define new processes and procedures for use of PRIFAS module by program managers,

B. Train users on use of PRIFAS,

C. Train users on proper fiscal grants management issues (liquidations of obligations, timely obligation, etc.) to ensure effective use of PRIFAS, and

D. Implement use of PRIFAS grants management and project modules.

Measurable Objective for Sub-Task 5.3:

By January 2005, the new PRIFAS grants management and project modules will be operational as to PRDE's Office of Special Education.

Task 6.0: Improving Payroll System

Overall Task Description

It is critical to successfully meeting the terms of this Agreement that Puerto Rico and PRDE use the next three years to develop adequate controls over a payroll system capable of ensuring that all employees on the payroll system are authorized and that all payroll charges made to a Federal account are allocable to that Federal account. The system developed under this Agreement must include a formal process for certifying all employees' work and must reflect actual time and effort by each employee whose salary is charged directly to a Federal account. The payroll system must be updated in a timely fashion so as to reflect any changes in funding source and must provide for the maintenance of appropriate accounting records that can be made available in the event of an audit. PRDE must be able to account for salary payments to employees who split their time between Federal and other programs, or among more than one Federal program. Any indirect payroll charges to Federal accounts must be allocable to that program and must otherwise be appropriate and consistent with Federal requirements. Additionally, the salaries of employees who work under more than one Federal program must be properly allocated among those programs, in accordance with accurate time distribution records and in

compliance with Federal time distribution requirements.

The Department will assess progress in meeting the terms of this Agreement under the "Payroll" task by the systemic approaches and degree of integration that Puerto Rico and PRDE bring to designing and implementing solutions to longstanding problems in the payroll area.

Sub-Task 6.1: Improving Employee Hiring and Transfer Processes

Goal: To ensure that employees newly hired and employees transferred (*i.e.*, due to demotion, assignment changes, etc.) are properly captured in the PRIFAS system.

The following steps will help achieve the goal:

A. Electronic register for special recruitment—To accelerate document flow and to avoid loss of documents by eliminating or reducing physical document flow from users (regions and central office) to Payroll Office (changing from a paper to an electronic process will increase efficiency and eliminate loss or misplaced records), and

B. Letters and reports for transitory and probation position expiration—To improve reporting to employees the expiration of transitory and probation periods so as to avoid having to keep them as regular employees.

Measurable Objective for Sub-Task 6.1:

By January 2005, all human resources "events," such as new employees hired, transferred, etc., will be accurately reflected in the STAFF system (the payroll system used by PRDE).

Sub-Task 6.2: Time Distribution

Goal: Ensure proper allocation of Federal funds by PRDE, based on employees' time and effort, consistent with applicable Federal requirements.

The following steps will help achieve the goal:

A. Data entry without GL-200—to allow Time Distribution office to enter effort reported through time sheets without having received the corresponding payroll data from Hacienda, so as to accelerate the entry of effort allocation data,

B. Data entry productivity report (by user)—To report on the amount of data entry performed by users so as to allow Time Distribution management to review the productivity of each employee regarding data entry tasks,

C. Time sheet/STAFF discrepancy report—to report on data changes made by Time Distribution office based on Time sheets, so that these corrections can be submitted to Human Resources

for entry into the Human Resources system,

D. Missing localization code report—To modify several reports to include the description of the location of the employees,

E. Effort allocation report—To provide an analysis report that shows the employee efforts that were applied to federally funded projects by those employees that were paid from state funds, and vice versa, and

F. Massive allocation of effort data (school-wide)—To facilitate the data entry of employee effort by allowing this effort to be entered at different levels, *i.e.*, for a specific employee, for all employees in a school, for all employees in a group of schools, etc.

Measurable Objective for Sub-Task 6.2:

By December 2005, PRDE will properly record time distribution on a quarterly basis for all employees that distribute their time among Federal programs or among State and Federal programs.

Sub-Task 6.3: Semimonthly Payroll Process

Goal: Ensure that PRDE pays employees from the appropriate Federal account(s) each time salary payments are made.

The following steps will help achieve the goal:

A. Electronic DE-15/409 (pipeline)—To accelerate document flow and to avoid loss of documents by eliminating or reducing physical document flow from users (regions and central office) to Payroll Office.

B. Position management—To allow users to make changes to positions with minimal human intervention and following a controlled process. For example, to activate, deactivate, and change locations for a given group of positions.

C. Additional pay management—To improve controls on additional pay by ensuring that additional pay to positions, instead of employees. When an employee record is entered, its corresponding additional pay (if any) will be taken from its position record. When an employee moves into a different position, its additional pay will not move with the employee. A history will be maintained of all changes to the differential amount associated with each position.

D. Automatic generation of retroactive payments (pipeline)—To reduce human intervention by automatically calculating the corresponding retroactive payment when an employee already hired is entered into Payroll. Usually the employee is entered into the

Payroll system sometime after he/she has started to work, therefore a retroactive payment has to be made.

E. New module for massive payments deductions—To facilitate generating payroll transactions by creating a module to allow users to manage all of the steps involved in handling special generic payroll transactions. An example of where this module might be used would be in the creation of fixed amount or fixed percentage salary increases for certain types of personnel.

F. Code table maintenance—To facilitate table maintenance in the Human Resources system through a more friendly interface.

G. Account number/position number validation—To make sure only federal account numbers are assigned to federally funded positions and local account numbers are assigned to locally funded positions.

H. History of account number changes—To keep track of changes made by Time Distribution Office to correct account numbers in Time Distribution data. A report will be produced to inform Positions Department of these changes, so that they can make them in STAFF.

I. Report on payroll payments with accounts that have expired, or are about to expire (0/30/60/90 aging report)—To provide the Positions Department with information on accounts already, or soon to be, expired, so that actions are taken about the employees being paid by these accounts.

J. Global payment financial impact report (all global payments [for example, vacation excess] with an effective date older than the last account number change are to be reported so as to allow the finance department to make any necessary adjustments)—To report on all global payments [for example, vacation excess] with an effective date older than the last account number changes, so as to allow the Finance Department to make any necessary adjustments.

K. Position authorization code control—To establish a standard set of rules so that when certain Human Resources actions occur (terminations, suspensions, reassignments to another position, etc.) the system can evaluate that position and determine its proper authorization code authorized for hiring, frozen, etc.

L. Automatic generation of transactions by STAFF (pipeline)—To avoid manual entry of Payroll transactions, by generating them automatically when the Human Resources transactions are entered.

M. Automatic generation of entries to payment card —To avoid manual entry

of these transactions into the Payroll payment card, by generating them automatically when Payroll transactions are generated.

N. Automatic production of RHUM transaction files (partially belonging to pipeline)—To integrate all Payroll transactions into a single file and to produce it through a completely automated process.

O. Error correction—To provide users with a report on rejected transactions, together with the reason for the rejection, so that these transactions can be corrected. Most errors should be corrected in the same payroll run.

P. Transaction resubmission—To give users the opportunity to resubmit for processing in the same payroll the rejected transactions, after they have been corrected. Most corrections should be submitted by the same payroll run.

Q. Inclusion of rejections in item balancing and reconciliation—To provide users with control totals regarding the rejected transactions so that they can account for all transactions submitted to payroll. Transactions accepted plus transactions rejected must equal total transactions.

R. Consolidation of error files—To facilitate the correction of rejected transactions by consolidating all error messages in the same transaction file sent to Hacienda.

S. Readable error messages—To facilitate the correction of rejected transactions by rephrasing all error messages to make them more understandable to users.

T. RHUM/STAFF discrepancy reports (account numbers, gross salary, employee location)—To identify data discrepancies between Hacienda Payroll system and PRDE Human Resources system. For example, discrepancies in account number, employee location, employee salary, etc.

U. Discrepancy management module—To support users in the process of correcting discrepancies. For example, to keep track of all discrepancies pending correction, all discrepancies already corrected, etc. Discrepancies must be corrected on a periodic basis, as supported by the resources available.

V. Missing employee reports (STAFF not RHUM, RHUM not STAFF)—To identify employees in Hacienda's Payroll system that are not in PRDE's Human Resources system, and vice-versa.

W. Item reconciliation (Payroll/RHUM)—To make sure all transactions are properly accounted for by calculating and balancing control totals. For example, transactions sent to Hacienda must be equal to transactions

accepted plus transactions rejected. This balancing must be done for each payroll run.

X. Limit test for salary (by category)—To reduce data entry errors by establishing a limit test for salaries, both when entering salaries for positions and for employees.

Y. Limit test for global payments—To reduce data entry errors by establishing a limit test for global payments made to employees, and

Z. Pay period control.

Measurable Objective for Sub-Task 6.3:

By June 2005, to reduce the number of payroll errors, assure prompt correction of any payroll errors, and bring the payroll system into full compliance with Federal payroll accountability requirements.

Sub-Task 6.4: Interagency Process

Goal: Ensure productive coordination with other PR agencies, such as Hacienda, to ensure PRDE procurement process runs smoothly and according to established PRDE procedures that conform to applicable Federal procurement law and standards.

PRDE will prepare an Action Plan addressing this initiative and will submit it to the Department by February 15, 2005, in accordance with PRDE Special Conditions currently in effect.

Measurable Objective for Sub-Task 6.4:

PRDE will develop an Action Plan to address issues of improved interagency coordination in Puerto Rico, and will submit it to the Department by February 15, 2005, the due date established in the PRDE Special Conditions currently in effect.

Sub-Task 6.5: Draw Downs of Federal Funds

Goal: Ensure Federal funds are properly drawn down by PRDE from the appropriate Federal account and ensure that Federal funds are properly obligated and liquidated in accordance with Federal cash management regulations.

Measurable Objective for Sub-Task 6.5:

In accordance with PRDE Special Conditions currently in effect, PRDE will prepare an Action Plan addressing this sub-task and submit it to the Department by February 15, 2005.

Task 7.0: Procurement and Equipment Inventory

Overall Task Description

It is critical to successfully meeting the terms of this Agreement that Puerto Rico and PRDE use the next three years

to develop adequate controls over its procurement and equipment inventory systems. PRDE must finalize its revised contracting and procurement procedures ensuring compliance with all applicable Federal requirements. Once PRDE has developed contracting and procurement procedures that comply with all applicable Federal requirements, PRDE must adopt and begin implementing those procedures so that all contracts are awarded, and all equipment and supplies are procured, through PRDE's revised procedures, with the exception of those cases that meet specific limited exceptions. To fully comply with this Agreement, PRDE must also ensure that any non-competitive procurement transactions it undertakes comply with all applicable Federal requirements and cost principles, that any sole source contracts awarded by PRDE are only awarded in accordance with Federal requirements pertaining to sole source contracts, that procurement is undertaken and contracts awarded without conflict of interest, and that all required documentation as to every transaction and contract is properly maintained by PRDE.

Through this Compliance Agreement, Puerto Rico and PRDE's manner of managing equipment inventory will be such that items purchased with Federal program funds can be tracked, distributed in a timely manner, allocable to the Federal program to which they were charged, and used for the benefit of Puerto Rico's students. The equipment inventory system will comply with Federal regulations, to include tagging and tracking of inventory and prompt delivery of property purchased with Federal funds to the appropriate location, so that items may be used for the purposes of the program under which they were purchased. Puerto Rico and PRDE's inventory policy will include an established procedure for replacement or payback of any items in the inventory that cannot be located, consistent with Federal regulations. Ultimately, PRDE's inventory management system will reflect when items are ordered, when ordered items arrive, when items are logged into the system, and when they are delivered to the intended location. In addition, Puerto Rico and PRDE will ensure that inappropriate use of equipment (for example, vehicles or computers) is penalized and that the Department programs are reimbursed, when appropriate.

Sub-Task 7.1: Vendor and Selection Process

Goal: Ensure contracts supported with Federal funds are awarded competitively in a manner consistent with applicable Federal requirements and Puerto Rico law.

The following steps will help achieve the goal:

A. Contracts for Goods and Nonprofessional Services:

1. Complete revision of Puerto Rico and PRDE's procedures for procurement of goods and nonprofessional services, ensuring that such procedures are consistent with Federal law and procurement standards including 34 CFR 80.36, and with Puerto Rico law,

2. Provide the Department with an English version of PRDE's final procurement procedures (English translation of draft procedures has already been provided),

3. Complete training of appropriate staff on revised approved procedures, applicable Federal requirements, and internal controls,

4. Monitor procurement process, to ensure that all contracts are awarded in accordance with PRDE's approved revised procedures, and

5. Ensure staffing is at appropriate levels to manage the procurement process, in accordance with revised approved procedures.

B. Contracts for Professional Services:

1. Complete new guidance for the procurement of professional services with Federal program funds, based on models such as "best practices" from other States, the Federal Acquisition Regulations (FAR),

2. Ensure compliance with applicable Federal law, including the standards contained in 34 CFR 80.36, and Puerto Rico law,

3. Ensure that its procurement procedures conform to the new guidance, as required by Federal regulations and Puerto Rico law,

4. Complete training of appropriate staff on new guidance, Federal requirements and internal controls,

5. Monitor procurement process to ensure all Federally-funded contracts are awarded in a manner consistent with PRDE's new final procedures, and

6. Ensure staffing is at appropriate levels to manage the procurement process.

C. Implement plan for increasing the number of vendors available to do business with PRDE:

1. Develop a "How To Do Business with PRDE" section of the PRDE Web site. The instructions will be posted in English and Spanish and will explain how vendors can register with Puerto

Rico or PRDE, what documents they need to provide, and how the procurement process works, and

2. Complete revision of the existing PRDE vendor registry to determine areas where too few vendors are registered. Complete development of an outreach to vendors to encourage vendors in those areas to register.

Measurable Objectives for Sub-Task 7.1:

- By February 2005, PRDE will have final revised procurement procedures that are in compliance with applicable Federal law and standards, including those in 34 CFR 80.36, and with Puerto Rico law,
- By February 2005, PRDE will provide the Department with an official English translation of its final revised procurement procedures, and
- By February 2006, 100% of all contracts supported with Federal funds will be awarded in accordance with final revised procedures developed by PRDE to ensure compliance with Federal procurement law and standards.

Sub-Task 7.2: The Contracting Process

Goal: Ensure the process of selecting a vendor, entering into a contract and issuing a purchase order permits: (1) the timely obligation of Federal funds, (2) the timely delivery of goods and services purchased with Federal funds, and (3) the timely payment of a vendor with Federal funds.

The following steps will help achieve the goal:

A. Short-Term Improvements:

1. Streamline the current contracting process,

2. Ensure that staff has the necessary expertise to process requisitions, confirm budget resources, select a vendor and issue a purchase order, and

3. Develop a process to ensure retention and safeguarding of all documentation supporting each transaction with Federal funds in a specific location, and ensure that such documentation can be made available for review.

B. Long-Term Improvements:

1. Ensure that staff has the necessary capacity to process requisitions, confirm budget resources, select a vendor and issue a purchase order, and

2. Further streamline the contracting process.

Measurable Objectives for Sub-Task 7.2:

- Short-term—By July 2005, 50% of all contracts are processed through the streamlined process whereby goods and services are timely delivered once a need is identified, and

- Long-term—By January 2006, 100% of all contracts are processed through the streamlined process.

Sub-Task 7.3: Contract Execution and Management Process

Goal: To ensure the timely and appropriate delivery of goods and services.

The following steps will help achieve the goal:

A. Short-Term Improvements:

1. Streamline the current contracting process,

2. Ensure that staff has the necessary expertise to track payments, determine if goods and services have been delivered, and follow up with vendors, and

3. Develop a process to ensure retention and safeguarding of all documentation relating to each contract supported with Federal funds in a central location, and ensure that such documentation can be made available for review.

B. Mid-Term Improvements:

1. Ensure staff has all necessary capacity to track payments, determine if goods or services have been delivered and follow-up with vendors, and

2. Further streamline the contracting process.

C. Long-Term Improvements:

Implement technological improvements and capabilities to automate the contract management process (which relates to the inventory management initiative below).

Measurable Objectives for Sub-Task 7.3:

- For offices using PRIFAS:

Short-Term—Identify 50% of goods and services not delivered and take appropriate action within 10 days of the agreed-upon delivery date, and

Long-Term—Identify 100% of failed delivery and take appropriate action within 10 days of agreed-upon delivery date.

- For office not using PRIFAS:

Short-Term—Identify 30% of goods and services not delivered and take appropriate action within 10 days of the agreed-upon delivery date, and

Long-Term—Identify 100% of failed delivery and take appropriate action within a reasonable period of agreed-upon delivery date.

Sub-Task 7.4: Inventory Management

Goal: Ensure that all property acquired with Federal funds is tracked, accounted for, and maintained in accordance with Federal and Puerto Rico law.

The following steps will help achieve the goal:

A. Develop a system for tracking property that records the following with regard to the property purchased: a description; a serial or identification

number; the source; the holder of title; the acquisition date; the cost; the percentage of Federal participation in the cost; the current location; the use and condition; and any information regarding its disposal, including the disposal date or date of sale,

B. Develop a plan for incorporating historical assets into the asset management system, and

C. Develop an interim plan for accounting for assets.

Measurable Objectives for Sub-Task 7.4:

- Short-Term—Record 60% of newly acquired property using manual logs and 40% with asset management system.

- Long-Term—Record 100% of newly acquired property using an asset management system.

Sub-Task 7.5: Payment Process—Verifying invoices by matching purchase orders, liquidating obligations, and recording payments

Goal: Ensure the process of paying a vendor permits: (1) the timely liquidation of obligations; and (2) the timely delivery of goods and services.

In accordance with PRDE Special Conditions currently in effect, PRDE may expand this initiative to address additional areas of concern and resubmit to the Department by February 15, 2005.

The following steps will help achieve the goal:

A. Short-Term Improvements to Payment Process:

1. Streamline the current process,
2. Ensure staff has the necessary expertise to process invoices and issue checks, and

3. Develop a process to retain and safeguard all necessary documentation in a specific location and make documentation accessible for review.

B. Mid-Term Improvements:

1. Ensure staff has necessary capacity to process invoices and issue checks, and

2. Further streamline the payment process.

C. Long-Term Improvements:

1. Implement technological improvements to automate the payment process, and

2. Redesign the payment process by creating a cohesive “work unit” to make more efficient use of PRDE resources.

D. Payment of currently due invoices:

1. Identify any invoices currently due, and

2. Complete processing of payments using pilot streamlined procedures.

Measurable Objectives for Sub-Task 7.5:

- Short-Term—By January 2005, 50% of all invoices are paid through the streamlined process, and
- Long-Term—By December 2006, 100% of all contracts are paid through the streamlined process.

Sub-Task 7.6: Interagency Process

Goal: Ensure productive coordination with other Puerto Rico agencies, such as Hacienda, to make certain procurement process runs appropriately and according to established PRDE procedures.

The following step will help achieve the goal:

In accordance with the PRDE Special Conditions currently in effect, PRDE will prepare an Action Plan addressing this initiative and will submit that Action Plan to the Department by February 15, 2005.

Measurable Objective for Sub-Task 7.6:

Development and submission to the Department of comprehensive plan to address the interagency process by February 15, 2005.

Sub-Task 7.7: Proper Draw Downs of Federal Funds

Goal: Ensure that Federal funds are properly drawn down from the appropriate account to make certain that expenditures are properly obligated, liquidated, and charged in accordance with applicable Federal cash management statutes and regulations.

In accordance with the PRDE Special Conditions currently in effect, PRDE will prepare an Action Plan addressing this initiative and will submit that action plan to the Department by February 15, 2005.

Measurable Objectives for Sub-Task 7.7:

Development and submission to the Department of an Action Plan to address the interagency process by February 15, 2005.

The parties to this Compliance Agreement, the U.S. Department of Education, the Puerto Rico Department of Education, and the Commonwealth of Puerto Rico, agree to faithfully carry out the terms of this Agreement, as set forth above.

Effective Date and Modification of Agreement:

This Compliance Agreement will take effect upon execution by all the parties and may be modified or amended only by mutual written agreement of all the parties hereto.

For the Commonwealth of Puerto Rico:

Dated: October 25, 2004.

/s/
Sila María Calderón
Governor

For the Puerto Rico Department of Education:

Dated: October 25, 2004.

/s/
César Rey Hernández
Puerto Rico Secretary of Education

For the U.S. Department of Education:

Dated: October 25, 2004.

/s/
Rod Paige
U.S. Secretary of Education

[FR Doc. E7-20842 Filed 10-22-07; 8:45 am]

BILLING CODE 4000-01-P