



U.S. Department of Housing and Urban Development
Public and Indian Housing

Special Attention of:

Notice: PIH 99-4 (TDHEs)

Tribes, Tribally Designated
Housing Entities, Indian
Housing Authorities, ONAP
Administrators

Issued: February 3, 1999
Expires: February 28, 2000
Cross Reference:

SUBJECT: Administrative Requirements for Investing Indian
Housing Block Grant Funds

1. **PURPOSE:** This Notice establishes the basis upon which the Department will determine if a recipient of Indian Housing Block Grant (IHBG) funds, as authorized by the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996 (Pub. L. 104-330, approved October 26, 1996), has the administrative capacity to draw down IHBG funds for investment purposes.
2. **BACKGROUND:** NAHASDA is implemented through HUD regulations at 24 CFR Part 1000. These regulations were developed by a Negotiated Rulemaking Committee comprised of 48 tribal members and 10 HUD representatives. One provision of the regulation, 24 CFR §1000.58, authorizes a recipient to invest certain grant amounts for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary. The recipient may continue to invest NAHASDA funds in accordance with 24 CFR §1000.58 as long as it demonstrates to HUD that it has administrative capacity.
3. **DEFINITIONS:**
 - a. Self governance tribe - For purposes of this notice, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93-638, as amended (25 U.S.C. 450 et seq).

- b. Recipient - An Indian tribe or the entity for one or more Indian tribes that is authorized to receive grant amounts under this Act on behalf of the tribe or tribes.
- c. Significant and Material Audit Findings - For purposes of this notice, a significant or material finding is one that (1) identifies a material weakness in financial or accounting controls; or (2) a finding of substantial financial mismanagement or misapplication of funds that has not been resolved; or (3) has any questioned costs for HUD Programs which were subsequently disallowed which total 5 percent or more of the total expenditures for HUD Programs identified in the audit.

4. PROCEDURE:

Pursuant to 24 CFR §1000.58 (b), an IHBG **recipient** must demonstrate, to HUD's satisfaction, that:

- a. There are no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under the Single Audit Act or in an independent financial audit prepared in accordance with generally accepted auditing principles; and
- b. it is a self-governance Indian tribe or that it has the administrative capacity and controls to responsibly manage the investment.

5. DOCUMENTATION REQUIRED:

- a. In order to document that there are no unresolved significant and material audit finding or exceptions, the recipient must submit to the Area ONAP the most recent audit of the recipient together with evidence that the cognizant audit agency (if other than HUD) reviewed and accepted the Single Audit Act report. ONAP must also be provided with a status of the Single Audit Act findings controlled by the cognizant agency (if other than HUD). This audit must be current in

accordance with the Single Audit Act requirements. If an independent financial audit was conducted in place of an annual audit or in addition to an annual audit, a copy of this financial audit must be submitted. Based on the information provided, the Area ONAP will determine if there are any unresolved significant and material audit findings. If the recipient is not required to submit an audit report under the Single Audit Act, an audit will not be required to comply with this provision. If the recipient is a newly created tribally designated housing entity (TDHE) without a current audit, an audit will not be required to comply with this provision.

- b. To document that the recipient is a self-governance tribe as defined above, a certification from the tribe that it is a self-governance tribe or a copy of the designation from the Bureau of Indian Affairs. This provision applies only if the tribe is the recipient. If the tribe has designated a TDHE, the recipient is the TDHE, not the tribe.
- c. If the recipient is not a self-governance tribe, the recipient must demonstrate it has the administrative capacity and controls to responsibly manage the investment.
 - 1. The recipient's financial management system must comply with 24 CFR §85.20. This includes accurate, current and complete financial reporting, adequate accounting records, effective internal controls, budget control and reasonable procedures for cash management. In order to document to ONAP that a system is in place, the recipient shall submit the following:
 - a. A copy of the internal control policy. The policy must provide for adequate safeguard of all grant and subgrant cash, real and personal property and other assets. Additional provisions of the policy must be as follows:
 - authorization by the appropriate oversight body (e.g., the Board of Commissioners) for the

transaction, documented in the official records of that body;

- safekeeping procedures covering security of investment documents;
- separation of responsibilities for custody of securities from maintenance of accounting records;
- maintenance of investments in a custodian or trust account;
- investments made only in the name of the IHBG recipient;
- investments recorded in detail in an investment ledger;
- use of a system to insure that all interest earned is collected, recorded and credited to appropriate accounts;
- periodic reconciliation to the investment ledger; and
- requirement to maintain a maturity schedule (See Paragraph 7.b.)

b. The recipient must also adopt and use a written investment policy. The policy must be submitted to ONAP. The policy must include a statement of purpose, list the eligible investment instruments, contain an assignment of authority to staff, and outline each staff member's responsibilities.

2. The recipient shall have no outstanding findings as a result of a HUD audit or review (including Inspector General Audits) that affects the administrative capacity and controls to responsibly manage the investment. The recipient shall submit a certification that there are no findings which affect the administrative capacity.

6. PROCESSING REQUESTS:

- a. A recipient requesting approval to invest IHBG funds in accordance with 24 CFR §1000.58 must submit the documentation outlined above to the Area ONAP. The Area ONAP will review the documentation and approve or disapprove the request within 60 calendar days of receipt of the request.
- b. If the request is approved, the recipient will receive written notification with the effective date that the investment draw down will be available in LOCCS and the amount available for investment purposes based on the calculation in 24 CFR §1000.58(f).
- c. If the request is not approved by the Area ONAP, the recipient will be notified in writing with the specific reasons for the denial. Within thirty calendar days of receiving HUD's denial of a request for investment, the recipient may request reconsideration of the denial in writing. The request shall set forth justification for the reconsideration. Within 30 calendar days of receiving the request, HUD shall reconsider the recipient's request and either affirm or reverse its initial decision in writing, setting forth its reason for the decision. If the decision was made by the Assistant Secretary, the decision will constitute final agency action.
- d. If the request is denied and an appeal is not successful, the tribe or TDHE may request another determination when the conditions for denial have been corrected. This resubmittal will be processed in accordance with the procedures in 6.a. above.

7. ADDITIONAL INFORMATION

- a. **Depository Agreement:** IHBG funds shall be held in one or more accounts separate from other funds of the recipient. Each of these accounts shall be subject to a general depository agreement.
- b. **Maturity Schedule:** Investments may be for a period no longer than two years. The recipient shall maintain a schedule evidencing that the proposed investments will

mature on the approximate dates the funds will be needed and that investment maturity dates do not exceed two years.

8. **ELIGIBLE INVESTMENT INSTRUMENTS:** 24 CFR §1000.58(c) states that recipients shall invest IHBG funds only in:
- a. Obligations of the United States; obligations issued by Government sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States; or
 - b. accounts that are insured by an agency or instrumentality of the United States or accounts that ensure the continuous and full collateralization of deposits that are in excess of FDIC insurance amounts to ensure protection of the funds, even in the event of bank failure. Collateralization shall consist of identifiable U.S. Government securities as prescribed by HUD and specific authority contained in the agreement permitting HUD to exercise its rights pursuant to 24 CFR §1000.60.
9. **CONTACTS:** Should you need additional information, please contact your Area Office of Native American Programs.

/s/ Harold Lucas
Assistant Secretary for Public
and Indian Housing