

Legal Opinion: GCH-0013

Index: 2.250

Subject: Approved PHA/Investment Instrument

November 27, 1991

MEMORANDUM FOR: Roger Braner, Acting Director,
Office of Management Operations, PH

FROM: Michael H. Reardon, Assistant General Counsel,
Office of Assisted Housing, GCH

SUBJECT: Approved PHA/Investment Instrument

Your memorandum dated October 17, 1991, requested our views as to "whether investment of PHA funds in the Mutual Fund described in the attached materials meets the Department's criteria." The particular mutual fund as to which inquiry is made is stated to comply with State statutes authorizing investment of trust funds in a money market mutual fund if "(A) the portfolio of the investment company or investment trust is limited to obligations of the United States government and repurchase agreements fully collateralized by the obligations; and (B) the investment company or investment trust takes delivery of the collateral directly or through an authorized custodian." (Alaska Statutes sec. 06.05.180)

Neither the United States Housing Act, other statutes, nor OMB Circulars contain requirements as to investment of grant funds received under the Public Housing Program. Section 401(E) of the Annual Contributions Contract (ACC) requires PHAs to invest moneys in their General Fund in excess of needs for the next 90 days in investment securities selected by the PHA and approved by HUD. Such securities are required to be "purchased, held, and disposed of from time to time by the Depositary of the General Fund under the terms of the General Depositary Agreement." In the event of Substantial Default or Substantial Breach, HUD has the right to require the depositary to refuse to permit withdrawal of monies or securities.

Paragraph 4-8 of Handbook 7475.1 Rev. lists HUD-approved securities for PHA investment which may be utilized without further HUD approval. Mutual funds are not presently included on this list, so that such investments by PHAs would require either a change in the Handbook criteria or specific approvals under the ACC. There would not be any legal prohibition against making such a change which, we understand, you believe could afford greater investment liquidity to some PHAs.

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However, you would need to prescribe criteria for acceptable mutual funds, taking into consideration that a PHA would not have a direct interest in specific securities, but would have a shared interest with other investors in the mutual fund. The fact that the portfolio is limited to obligations of the United States

Government would not confer a right to specific securities on an investing PHA. Since Section 401(E) of the ACC requires investment securities to be "purchased, held, and disposed of" by the depository, we assume that the mutual fund investments would be handled in the same manner. You would need to determine whether the authority granted under Section 401(E) of the ACC to HUD to direct a depository to refuse to permit withdrawal of funds or securities from a PHA's General Fund in the event of Substantial Default of Substantial Breach, would cover investments in mutual funds.