



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

SPECIAL ATTENTION TO:

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

Notice: PIH-2019-16

Issued: July 10, 2019

Expires: This notice remains in effect until amended, superseded or rescinded.

Cross References: 2 CFR Part
200, 24 CFR Part 1000, PIH
Notice 2002-13 (HAs), PIH
Notice 2015-08 (ONAP), PIH
Notice 2014-21 (ONAP)

SUBJECT: Administrative Requirements for Investing Indian Housing Block Grant (IHBG) Funds

- PURPOSE:** This notice describes the requirements for investing Indian Housing Block Grant (IHBG) funds and establishes the basis upon which the Department will determine if a recipient of IHBG funds has the administrative capacity to draw down IHBG funds for investment purposes as authorized under Section 204(b) of the Native American Housing Assistance and Self-Determination Act (NAHASDA). This notice replaces PIH Notices 2014-21 (ONAP) and 2015-08 (ONAP).
- BACKGROUND:** Section 204 of NAHASDA authorizes a recipient to invest IHBG funds in securities and other obligations as approved by the Secretary of Housing and Urban Development. The regulations at 24 CFR § 1000.58(g) stipulate that the investment period be no longer than five years. These investments must be made for the purposes of carrying out affordable housing activities. Grant monies invested are to be expended on eligible affordable housing activities, per a grantee's approved Indian Housing Plan (IHP). Any interest earned within the five-year timeframe is considered program income earned by the investment(s) and therefore must only be spent on eligible affordable housing activities. However, the regulations at 24 CFR § 1000.62(b) state that "if the amount of income received in a single year by a recipient and all its subrecipients, which would otherwise be considered program income, does not exceed \$25,000, such funds may be retained but will not be considered to be or treated as program income."

Expenditures of invested funds are to be reconciled with quarterly reporting (Federal Financial Report (SF-425)) and annual reporting (Annual Performance Report (Form HUD-52737)) to document compliance and are subject to compliance monitoring. The recipient must invest NAHASDA funds in accordance with 24 CFR § 1000.58 which states that "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 an agreement [Depository

Agreement] in a form prescribed by HUD sufficient to implement the regulations in this part and permit HUD to exercise its rights under 24 CFR § 1000.60.”

3. DEFINITIONS: For the purposes of this Notice, the following definitions apply.

- A. **Self-governance tribe:** As provided at 24 CFR § 1000.58(b)(2), 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 Tribally Designated Housing Entity (TDHE) for one or more Indian tribes that is authorized to receive grant amounts under NAHASDA on behalf of the tribe or tribes.
- C. **Significant and Material Audit Finding:** As described at 2 CFR § 200.516, a significant and material audit finding is one that: (1) identifies a material weakness in financial or accounting controls; (2) is of substantial financial mismanagement or misapplication of funds that has not been resolved; or (3) has any questioned costs for HUD programs, and which total five percent or more of the total expenditures for HUD programs identified in the audit or final monitoring report.
- D. **Administrative Capacity:** As provided at 24 CFR § 1000.6, administrative capacity means the ability to undertake the affordable housing activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.
- E. **Non-Active:** Non-Active refers to an IHBG recipient that is approved to invest IHBG funds but chooses not to invest during a specific period of time.
- F. **Voluntary Termination of Investment Authority:** Voluntary Termination of Investment Authority refers to situations where an IHBG recipient decides to no longer invest and advises the Area Office of Native American Programs (Area ONAP) it is voluntarily relinquishing its authority to invest.
- G. **Suspension of Investment Authority:** Suspension of Investment Authority refers to situations where ONAP determines that a recipient no longer meets the terms of its investment approval, issues a Notice of Suspension of and Intention to Revoke Investment Authority, and temporarily suspends investment authority pending the recipient’s request for and decision on reconsideration of ONAP’s determination.
- H. **Revocation of Investment Authority:** Revocation of Investment Authority refers to situations where the IHBG recipient’s authority to invest is revoked by ONAP if after ONAP’s issuance of a Notice of Suspension of and Intention to Revoke Investment Authority, the IHBG investor fails to

request reconsideration within thirty (30) days or, upon reconsideration, ONAP's determination is upheld.

4. ELIGIBILITY TO INVEST: Consistent with 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 related to financial management, accounting, and internal controls 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 related to financial management.
- B. If the recipient is a tribe, it is a self-governance Indian tribe or a tribe that has demonstrated the administrative capacity and controls to responsibly manage the investment.

In addition, the Area ONAP will review the documents below when determining eligibility.

- A. Annual audits were completed timely and submitted to the Federal Audit Clearinghouse in accordance with the Single Audit Act and 2 CFR Part 200, Subpart F.
- B. The latest annual audit contains an unmodified/unqualified opinion with no disclaimers related to financial management systems or records.
- C. There are no outstanding findings as a result of a HUD monitoring review (including Inspector General Audits) that affect the administrative capacity and controls to responsibly manage the investment.

5. ELIGIBLE INVESTMENTS: 24 CFR § 1000.58(c), states that recipients shall invest IHBG funds only in the following:

- 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,
- Accounts that are insured by an agency or instrumentality of the United States or fully collateralized 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.

Recipients may use brokers or dealers to invest IHBG funds if the brokers or dealers invest grant funds exclusively in approved financial instruments outlined at 24 CFR § 1000.58. Each broker/dealer must be a member of the Securities Investor Protection Corporation. Selection of a broker or dealer must be made in accordance with the

procurement and Indian Preference requirements at 2 CFR § 200.318 and 24 CFR § 1000.52.

6. ELIGIBILITY DETERMINATION DOCUMENTATION: To receive HUD approval to invest IHBG funds, a tribe or TDHE must submit the following documents to the Area ONAP with a cover letter requesting approval.

A. Self-Governance Tribe: 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 Federal designation as a self-governance tribe must be submitted. This provision applies only if the tribe is the recipient. If the tribe has designated a TDHE as the recipient, the TDHE must demonstrate its administrative capacity and controls as outlined below in Section 6.E.

B. Financial Management Capacity: The recipient's financial management system must comply with the standards in 2 CFR § 200.302. These standards include accurate, current and complete financial reporting, adequate accounting records, effective internal controls, adequate budget control, and reasonable procedures for cash management. In order to document that such a system is in place, the recipient must submit the following:

- A copy of its financial management policy. The policy must provide for the adequate safeguarding of all grant and sub-grant cash, real and personal property, and other assets.
- A copy of the recipient's written investment policy. The policy must include:
 - An authorization by the appropriate oversight body (e.g., the Board of Commissioners) for all investment transactions as documented in the official records of that body;
 - A listing of potential investment instruments;
 - Procedures for the safekeeping and security of investment documents;
 - A requirement for the separation of responsibilities for the custody of securities/investment documents from the maintenance of accounting records;
 - A requirement to maintain investments in a custodian or trust account;
 - A requirement that funds held in one or more accounts shall be separate from other funds of the recipient. Each account (banking or broker) shall be subject to a depository agreement in a form prescribed by HUD;
 - A requirement that investments only be made in the name of the IHBG recipient;
 - A requirement that detailed investment ledgers be maintained;
 - A formal process to ensure that all interest earned is collected, recorded, and credited to appropriate accounts;
 - A requirement that periodic reconciliations be conducted of the investment ledger(s);

- A requirement to maintain a schedule of maturity dates; and
- A requirement that investment funds be reported quarterly on the Federal Financial Report (SF-425) to identify the balance of each investment instrument, its maturation date, and the last four digits of the account number for identification.

The Area ONAP also will review the documentation described below when making an eligibility determination.

- C. **Audits:** To document that there are no unresolved significant and material audit findings or exceptions, the recipient must have submitted its most recent annual audit to the Federal Audit Clearinghouse by the due date. Recipients must provide a status of the Single Audit Act findings controlled by the oversight 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 to the Area ONAP. Based on the information provided, the Area ONAP will determine if there are any unresolved significant and/or material audit findings or whether there is a modified/qualified opinion or disclaimer(s).

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.

- D. **ONAP Monitoring Reports:** To document that there are no significant and/or material unresolved findings, the Area ONAP will review the status of any open findings included in Final Monitoring Reports. Based on the information provided, the Area ONAP will determine if there are any unresolved significant and/or material monitoring findings.
- E. **Administrative Capacity:** If the recipient is not a self-governance tribe, the recipient must have the administrative capacity and internal controls to responsibly manage the investment. The Area ONAP will rely on the requirements at 24 CFR § 1000.6 when evaluating the recipient's administrative capacity and internal controls.

7. INVESTMENT AUTHORITY:

- A. The Area ONAP will evaluate recipient requests for approval to invest IHBG funds in accordance with 24 CFR § 1000.58 by reviewing the documentation outlined in Section 6 and approve or disapprove the request within 60 calendar days of receipt of all documents listed under Section 6.
- B. If the request is approved, written notification will provide the effective date that the recipient may draw down funds for investment.
- 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 30 calendar days of receiving the

Area ONAP's denial of a request for consideration of investment, the recipient may request reconsideration of the denial in writing to Headquarters ONAP. The request must include justification for the reconsideration. Within 30 calendar days of receipt of the recipient's request for reconsideration, Headquarters ONAP will affirm or reverse its initial decision in writing, setting forth its reason for the decision.

- D. If the request is denied and a request for reconsideration 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 above procedures.
8. **TERM OF APPROVAL:** The approval to invest IHBG funds remains valid as long as the recipient continues to have no delinquent audits, no applicable modified/qualified audit opinions or disclaimers, no applicable unresolved significant and/or material audit findings or exceptions, and no unresolved HUD monitoring review findings that affect the administrative capacity to responsibly manage the investments as well as demonstrate the capacity to draw down and disburse IHBG funds in a timely manner. See Section 13: Suspension and Revocation of Investment Authority.

The approval to invest remains valid even if the IHBG recipient is "Non-Active;" that is, the recipient chooses not to draw down funds for investment for a period of time. However, nothing prohibits an IHBG recipient from voluntarily terminating its investment authority by providing the Area ONAP with a letter signed by the authorized tribal representative requesting termination of investment authority.

In addition, investment approval is only valid for the recipient that requested it (i.e., the tribe or TDHE). If the recipient changes, for example, from a TDHE to a tribe, the tribe must be approved to invest IHBG funds pursuant to this notice.

9. **DEPOSITORY AGREEMENT:** Each investment account must be subject to a depository agreement approved by HUD, in its capacity as a third-party beneficiary of the depository agreement. The recipient shall submit to the Area ONAP a copy of the depository agreement(s) within 30 business days of execution. The HUD-approved depository agreements are available on the HUD website or by clicking on the form link below. Always use the forms available at this location as they are the most current. **NOTE:** the forms may not be altered by the depository or the recipient.

Form HUD-52736-A	Depository Agreement (.pdf) (.doc) - Banking Accounts https://www.hud.gov/sites/documents/52736-A.PDF
Form HUD-52736-B	Depository Agreement (.pdf) (.doc)- Brokers/Dealers https://www.hud.gov/sites/documents/52736-B.PDF

Recipients currently approved for investing are reminded to have a current depository agreement for each account in which IHBG funding is invested and

should be prepared to provide a copy of each depository agreement when the Area ONAP conducts onsite or remote monitoring.

- 10. MATURITY SCHEDULE:** Investments may be held for a period of no longer than five years. The five-year period starts on the date the recipient draws down funds from HUD's Line of Credit Control System (LOCCS) for investment purposes.

Before the end of the five-year investment period, invested funds must either be expended on eligible affordable housing activities or returned to LOCCS. Expended means the funds are disbursed for payment of costs of the eligible activity, not just the obligation of funds. Any interest earned prior to the expiration of the approved investment period is considered program income earned on investments and must be used for eligible affordable housing activities pursuant to 24 CFR § 1000.58(a), subject to the exceptions in 24 CFR § 1000.62(b). Because the regulation at 24 CFR § 1000.58(g) restricts the investment period to no longer than five years, any interest earned after the expiration of the approved investment period is interest that is not eligible to be retained and amounts in excess of \$500 must be remitted to the U.S. Department of Health and Human Services Payment Management System, as provided in 2 CFR § 200.305(b)(9).

- 11. INVESTMENT DRAWS:** Prior to drawing down funds for investment purposes, the recipient should do an analysis of anticipated cash needs for this investment period and identify those acceptable investment options or instruments with varying dates of maturity (shorter and longer term) within the projected investment period. This analysis should be maintained as investment supporting documentation for accounting reconciliation and compliance monitoring purposes.
- 12. INVESTMENT REPORTING:** The recipient must comply with all applicable reporting requirements. Failure to comply may result in the Area ONAP initiating the enforcement process to bring the recipient into compliance with reporting requirements. Investment activity must be reported quarterly on Line 12 of the SF-425 or on a page attached to the form. Interest earned on investments is considered program income and must be reported as such on the SF-425, Lines 10 (l-o).

The recipient may use the *Investment Reporting Worksheet* to detail its investment activity for the reporting quarter. The use of the worksheet is optional and voluntary; however, the recipient is encouraged to submit the completed worksheet when it submits the SF-425 to the Area ONAP. Click [Investment Reporting Worksheet](https://www.hud.gov/sites/dfiles/PIH/documents/Investment_Reporting_Worksheet.xlsx) for a fillable copy or visit: https://www.hud.gov/sites/dfiles/PIH/documents/Investment_Reporting_Worksheet.xlsx

- 13. SUSPENSION AND REVOCATION OF INVESTMENT AUTHORITY:** If the Area ONAP determines that a recipient no longer meets the terms of its investment approval as described in Section 8., above, it may suspend that approval and provide the recipient with a written Notice of Suspension of and Intention to Revoke Investment Authority. Such notification will describe the observed instances of failure to comply with the terms of investment approval, the corrective actions needed to comply with those terms. The notification will also advise the recipient that the Area ONAP has suspended its investment authority and intends to revoke that authority and provide instructions for requesting reconsideration.

Upon receipt of the Notice of Suspension of and Intention to Revoke Investment Authority, the recipient shall immediately stop making deposits to or withdrawals from its investments pending the recipient's request for and decision on reconsideration of the Area ONAP's determination. Should the recipient require withdrawals for any purpose, the recipient shall request, in writing, approval from the Area ONAP by providing the amount the recipient intends to withdraw and an explanation of the basis for the need to withdraw investment funds. If the Area ONAP approves the withdrawal and the recipient withdraws funds, the recipient shall immediately provide ONAP with documentation of the withdrawal, such as a bank statement, and any other supporting documentation to allow ONAP to ensure that the withdrawal was made in accordance with ONAP's approval.

Within 30 calendar days of receiving the Area ONAP's Notice of Suspension of and Intention to Revoke Investment Authority, the recipient may request reconsideration in writing to Headquarters ONAP. The request must include justification for the reconsideration. Within 30 calendar days of receipt of the recipient's request for reconsideration, Headquarters ONAP will affirm or reverse the Area ONAP's determination in writing, setting forth its reason for the decision. If Headquarters ONAP affirms the Area ONAP's determination, it will provide the recipient with a written Notice of Decision on Investment Authority Revocation that instructs the recipient to immediately return all invested funds and earned interest to its LOCCS account for use on affordable housing activities.

If the recipient fails to request reconsideration within 30 calendar days of receiving the Area ONAP's Notice of Suspension of and Intention to Revoke Investment Authority, the Area ONAP will provide a written Notice of Revocation of Investment Authority with instructions to immediately return all invested funds and earned interest to its LOCCS account for use on affordable housing activities.

Until the funds and interest are returned to LOCCS or the matter is resolved in favor of the recipient requesting reconsideration, any edit placed on the recipient's LOCCS account requiring the submission of expense documentation before funds can be disbursed to the recipient will remain in effect.

Failure to comply with a Notice of Suspension of and Intention to Revoke Investment Authority or a Notice of Decision on Investment Authority Revocation may result in HUD pursuing enforcement and seeking remedies for non-compliance.

- 14. PAPERWORK REDUCTION ACT:** The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-35200) and assigned OMB control number 2577-0218. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

15. CONTACTS: Should you need additional information, please contact the Area ONAP.

/s/

R. Hunter Kurtz,
Assistant Secretary
for Public and Indian Housing