



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

Special Attention of:
Administrators, Offices of Native
American Programs; Tribal Government
Leaders; Tribally Designated Housing
Entities

NOTICE PIH 2005 - 23 (TDHEs)

Issued: July 7, 2005

Expires: July 31, 2006

SUBJECT: Depository Agreements for Recipients of the Indian Housing Block Grant
(IHBG) Program

1. Background

Section 204 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), authorizes a recipient to invest certain IHBG funds for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary. The recipient must invest NAHASDA funds in accordance with 24 CFR §1000.58 which states that "... these accounts shall be subject to an agreement in a form prescribed by HUD sufficient to implement the regulations in this part and permit HUD to exercise its rights under §1000.60." The form prescribed by HUD is the Depository Agreement, form HUD-52736-A (10/2004) for banking accounts and form HUD-52736-B (10/2004) for brokers/dealers.

2. Purpose

This Notice transmits the current depository agreement forms to be used when investing IHBG funds; form HUD-52736A (10/2004) for banking accounts and form HUD-52736B (10/2004) for brokers/dealers. Also, the Notice clarifies when to use depository forms and when tribes or tribally designated housing entities may utilize brokers in the investment of Indian Housing Block Grant (IHBG) funds under 24 CFR 1000.58.

3. Depository Agreements

IHBG. A general depository agreement is not needed for IHBG funds unless the recipient has been approved to invest IHBG funds in accordance with 24 CFR 1000.58. PIH Notices 99-4, as extended by 2004-21, titled "Administrative Requirements for Investing Indian Housing Block Grant Funds" 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. When investing IHBG funds, the recipients shall use form HUD-52736A (10/2004) for banking accounts (such as saving and certificates of deposit accounts) and form HUD-52736B (10/2004) when using brokers/dealers to perform brokerage services to invest funds. These funds can only be invested in obligations of the United States or securities that are guaranteed or insured by the United States.

Housing Act of 1937 (1937 Act). A general depository agreement is needed when an IHBG recipient has 1937 Act funds that are held in reserve accounts. In this case, the procedures outlined in PIH Notice 96-33 as extended in Notice 2002-13, titled "Required HA Cash Management and Investment Policies and Procedures" apply (see Question 46 of the IHBG

Program -- Revised Notice of Transition Requirements, 64 FR 15779 (4/1/1999). Also, the limit on maturity dates outlined in section 6 of Notice 96-33 does not apply. For 1937 Act funds, the General Depository Agreement (Form HUD-51999) shall be executed by the tribe or tribally designated housing entity and the depository.

HUD issued depository agreement forms may not be modified by the depository or the recipient. HUD depository agreements forms may be found on www.hudclips.org.

4. Use of Brokers

Recipients may use brokers to invest IHBG funds so long as the brokers invest grant funds exclusively in approved financial instruments outlined at 24 CFR 1000.58 that are 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.

Each broker/dealer must be a member of the Securities Investor Protection Corporation (SIPC). Selection of a broker must be made in accordance with the procurement requirements at 24 CFR 85.36.

5. Additional Information

If you have any questions or require further information, please contact your Area Office of Native American Programs (ONAP).

/s/

Paula O. Blunt, General Deputy Assistant Secretary
for Public and Indian Housing

Attachments

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

DEPOSITORY AGREEMENT

This **Agreement**, entered into this ____ day of _____, 20____,

between _____ (herein called the “Recipient”), [a [federally recognized or state recognized] Indian tribe; an Indian Housing Authority created under [tribal or state] law; or an entity created under [tribal or state] law providing for housing authorities or housing entities for Indians]

and _____ (herein called the “Depository”) located at

_____.

Witnesseth:

Whereas, the United States Department of Housing and Urban Development (herein called “HUD”) has entered into one or more grant agreements (herein called NAHASDA Grant Agreement”) with the Recipient for the purpose of funding affordable housing activities under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (herein called “NAHASDA”);

Whereas, the Recipient may borrow funds for affordable housing activities which HUD guarantees under the Title VI of NAHASDA pursuant to a guarantee contract (herein called “GuaranteeContract”);

Whereas, the Recipient is required to hold funds for investment in an account subject to an agreement in a form prescribed by HUD;

Whereas, the Recipient may only invest in the following (herein collectively called “Investments prescribed by HUD”): obligations of the United States; obligations issued by United States 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; and

Whereas, the Depository desires to perform certain banking services for the Recipient in accordance with the terms of this Agreement.

Now Therefore, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. The Depository shall ensure that its banking accounts are continuously insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or an insurance organization specifically approved by the Secretary of the U.S. Treasury Department under Title 31, CFR, Part 226 (each, a “Federal Insurance Organization”).
2. All monies deposited by the Recipient with the Depository shall be credited to the Recipient in a separate interest bearing deposit or interest bearing accounts, designated: [**enter account name(s) and/or account number(s)**] _____

(herein called the “Accounts”). Any portion of Recipient funds not insured by a Federal Insurance Organization shall be fully (100%) and continuously collateralized with specific and identifiable Investments prescribed by HUD. The Depository agrees, for the purpose of insuring and guaranteeing any portion of the Recipient’s funds not insured by a Federal Insurance Organization/SIPC, to pledge and, at all times while in custody of such funds, maintain the pledge of collateral security of the classes described, and under the terms and conditions set forth, in paragraph 5 of PIH Notice 96-33, *Required HA Cash Management and Investment Policies and Procedures* issued June 30, 1997, and extended on August 2, 2002, indefinitely.

The Depository agrees that, in the event of its failure to pay, when due, the whole or any part of the funds deposited in the Account(s), or in the event of the failure for any reason of the Recipient or HUD to receive promptly funds to be transmitted or otherwise handled by the Depository in the performance of its duties under this Agreement, or in the event that the Depository shall otherwise violate or fail to perform any of the terms of this agreement, or in the event of the insolvency of the Depository, or the Depository shall be closed for business by law or by proper corporate action, or in the event that a receiver, or conservator, or liquidator, or any other officer shall be appointed for the purpose of terminating the business of the Depository, HUD, without prior notice or demand, through such agents as it may designate for the purpose, may forthwith redeem or sell the pledged collateral, and any addition thereto or substitution therefore, or any part thereof, at either public or private sale or sales, and apply the proceeds of such redemption or sale or sales, after deducting all necessary or proper expense of such redemption or sale or sales, to the payment of funds deposited in the Account(s) or the repayment of funds received by the Depository for transmission or handling, or both, or any other indebtedness of the Depository to HUD by reason of this Agreement, any surplus remaining from the proceeds of the redemption or sale or sales of such investments after payment or repayment in full has been made, to be paid to the Depository.

3. Except as stated in paragraph 5, the Depository shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase Investments prescribed by HUD with monies from the Accounts or to sell the investments, if such order or directive is in writing and signed on behalf of the Recipient by an authorized representative who is designated by resolution of the governing body of Recipient to have such authority. To assist the Depository in its obligation, the Recipient shall furnish the Depository with a certified copy of the resolution.
4. Any investments received for the Recipient or purchased by the Depository with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Depository in safekeeping for the Recipient until sold. Interest or dividends on such investments and the proceeds from the sale thereof shall be deposited in the Accounts upon receipt.
5. If the Depository receives written notice from HUD that no withdrawals by the Recipient from the Accounts are to be permitted, the Depository shall not honor any check or other order to pay from the Accounts or directive to purchase or sell investments, or permit any withdrawals by the Recipient from the Accounts until the Depository is authorized to do so by written notice from HUD. In addition, upon written demand from HUD, the Depository shall pay to HUD funds from the Accounts, which may be the entire amount in the Accounts. HUD may only demand funds from the account in accordance with the requirements of 24 CFR §1000.538 or, in the event of default, pursuant to the Guarantee Agreement.
6. The Depository is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the NAHASDA Grant Agreement and Guarantee Agreement, and shall be under no duty to investigate or determine whether any actions taken by either the Recipient or HUD in respect of the Accounts are consistent with or are authorized by the NAHASDA Grant Agreement or Guarantee Agreement or whether either the Recipient is in default or noncompliance with the NAHASDA Grant Agreement or Guarantee Agreement. The Depository shall be fully justified in accepting and acting on, without investigation, any certificate, notice, or demand furnished to it pursuant to the provisions of this Agreement and which the Depository shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed.
7. The rights and duties of the Depository under this Agreement shall not be transferred or assigned by the Depository without the prior written approval of the Recipient and HUD. This Agreement may be terminated by either party hereto upon thirty days written notice to the other party, and HUD. The rights and duties of the Depository hereunder shall not be transferred or assigned nor shall this Agreement be terminated during any period in which the Depository is required to refuse to permit withdrawals from the Accounts as provided in paragraph 5.
8. HUD is intended to be a third party beneficiary of this Agreement and certain provisions to this Agreement are for the benefit of HUD and HUD may sue to enforce its provisions and to recover damages for any failure to carry out its terms.

9. The Depository shall promptly notify the Recipient of the deposit or credit of any monies to the Accounts.
10. The provisions of this Agreement may not be modified by either party without the prior written approval of HUD.
11. (For use only in those states that have laws prohibiting the Recipient from implementing paragraph 2.)

At no time shall the Recipient's funds in the Accounts be permitted to exceed the amount insured by a Federal Insurance Organization (herein the "Insured Amount"). At any such time as the amount of funds in the Accounts reach the Insured Amount, whether by the accrual of interest or otherwise, the Depository shall promptly, as directed by the Recipient, and in an amount sufficient to limit the funds in the Accounts to the Insured Amount, either: (a) remit payment to the Recipient, or (b) on behalf of the Recipient, purchase Investments prescribed by HUD. Such investments shall not be considered to be a part of the Accounts pursuant to paragraph 5 hereof but shall be held by the Depository as custodian or trustee for the Recipient in a separate account established for that purpose by the Depository (herein the "Investments Account"). The Investments Account shall be designated:

[enter account name and/or account number]

Income or other proceeds from investments held in the Investments Account shall, as directed by the Recipient, upon receipt, be paid to or on behalf of the Recipient; provided, however, that such proceeds shall, to the extent consistent otherwise with the provisions of this section, be deposited in the Account. If the Depository receives written notice from HUD pursuant to paragraph 4 hereof that no withdrawals by the Recipient from the Account are to be permitted, the Depository shall not honor any directive from the Recipient to sell investments, or permit any withdrawals by the Recipient, from the Investments Account until the Depository is authorized to do so by written notice from HUD. During the pendency of such restrictions on the Account and the Investments Account, the Depository, except as directed in writing from HUD, shall not remit any payment to the Recipient for the purpose of limiting the amount of funds in the Account to the insured amount but shall instead purchase Investments prescribed by HUD and hold such investments in the Investments Account.

NOTE: Strike paragraph 11 if not applicable.

In Witness Whereof, the Recipient and the Depository have caused this Agreement to be executed in their respective names and their respective seal to be impressed hereon and attested as of the date and year first above written.

Recipient

By: _____

Title: _____
Authorized representative

[SEAL]
ATTEST:

Depository

By: _____

Title: _____

[SEAL]
ATTEST:

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
DEPOSITORY AGREEMENT (Brokers/Dealers)

This **Agreement**, entered into this ____ day of _____, 20____,
between _____ (herein called
the “Recipient”), [a [federally recognized or state recognized] Indian tribe; an Indian Housing
Authority created under [tribal or state] law; or an entity created under [tribal or state] law
providing for housing authorities or housing entities for Indians]
and _____ (herein called the
“Broker/Dealer”) located at
_____.

Witnesseth:

Whereas, the United States Department of Housing and Urban Development (herein called “HUD”) has entered into one or more grant agreements (herein called NAHASDA Grant Agreement”) with the Recipient for the purpose of funding affordable housing activities under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (herein called “NAHASDA”);

Whereas, the Recipient may borrow funds for affordable housing activities which HUD guarantees under the Title VI of NAHASDA pursuant to a guarantee contract (herein called “Guarantee Contract”);

Whereas, the Recipient is required to hold funds for investment in an account subject to an agreement in a form prescribed by HUD;

Whereas, the Recipient may only invest in the following (herein collectively called “investments prescribed by HUD”): obligations of the United States; obligations issued by United States 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.

Whereas, the Broker/Dealer warrants and represents that it is registered as a broker-dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) with the Securities and Exchange Commission and shall be a member of the Securities Investor Protection Corporation (SIPC); and

Whereas, the Broker-Dealer desires to perform certain brokerage services for the Recipient in accordance with the terms of this Agreement.

Now Therefore, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Investments prescribed by HUD must be purchased through an insured Broker/Dealer who is registered with the Securities and Exchange Commission and is covered by Securities Investor Protection Corporation (SIPC) insurance. The Broker/Dealer shall ensure that its brokerage accounts are continuously insured by the SIPC or an insurance organization specifically approved by the Secretary of the U.S. Treasury Department under Title 31, CFR, Part 226 (each, a Federal Insurance Organization).

2. All monies deposited by the Recipient with the Broker/Dealer shall be credited to the Recipient in a separate interest bearing deposit or interest bearing accounts, designated: **enter account name(s) and/or accounts number(s)**

(herein called the "Accounts"). Any portion of the Recipient's funds not insured by a Federal Insurance Organization shall be fully (100%) and continuously collateralized with specific and identifiable investments prescribed by HUD. The Broker/Dealer agrees, for the purpose of insuring and guaranteeing any portion of the Recipient's funds not insured by a Federal Insurance Organization, to pledge and, at all times while in custody of such funds, maintain the pledge of collateral security of the classes described, and under the terms and conditions set forth, in paragraph 5 of PIH Notice 96-33, *Required HA Cash Management and Investment Policies and Procedures*, issued June 30, 1997, and extended on August 2, 2002, indefinitely.

2a. The Broker/Dealer agrees that, in the event of its failure to pay, when due, the whole or any part of the funds deposited in the Account(s), or in the event of the failure for any reason of the Recipient or HUD to receive promptly funds to be transmitted or otherwise handled by the Broker/Dealer in the performance of its duties under this Agreement, or in the event that the Broker/Dealer shall otherwise violate or fail to perform any of the terms of this agreement, or in the event of the insolvency of the Broker/Dealer, or the Broker/Dealer shall be closed for business by law or by proper corporate action, or in the event that a receiver, or conservator, or liquidator or any other officer shall be appointed for the purpose of terminating the business of the Broker/Dealer, HUD, without prior notice or demand, through such agents as it may designate for the purpose, may forthwith redeem or sell the pledged collateral, and any addition

thereto or substitution therefore, or any part thereof, at either public or private sale or sales, and apply the proceeds of such redemption or sale or sales, after deducting all necessary or proper expense of such redemption or sale or sales, to the payment of funds deposited in the Account(s) or the repayment of funds received by the Broker/Dealer for transmission or handling, or both, or any other indebtedness of the Broker/Dealer to HUD by reason of this Agreement, any surplus remaining from the proceeds of the redemption or sale or sales of such investments after payment or repayment in full has been made, to be paid to the Broker/Dealer.

3. Except as stated in paragraph 5, the Broker/Dealer shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase Investments prescribed by HUD with monies from the Accounts or to sell the investments, if such order or directive is in writing and signed on behalf of the Recipient by an authorized representative who is designated by resolution of the governing body of Recipient to have such authority. To assist the Broker/Dealer in its obligation, the Recipient shall furnish the Broker/Dealer with a certified copy of the resolution.

4. Any investments received for the Recipient or investments purchased with the Recipient's funds by the Broker/Dealer with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Broker/Dealer in safekeeping for the Recipient until sold. Dividends, interest, and distributions on such investments and proceeds from the sale thereof shall be used to purchase additional shares or remitted directly to the Recipient.

5. Notwithstanding any other provision of this Agreement to the contrary, if the Broker/Dealer receives written notice from HUD that no withdrawals by the Recipient from the Accounts are to be permitted, the Broker/Dealer shall not honor any check or other order to pay from the Accounts or directive to purchase or sell investments, or permit any withdrawals by the Recipient until the Broker/Dealer is authorized to do so by written notice from HUD. In addition, upon written demand from HUD, the Broker/Dealer shall pay to HUD funds from the Accounts, which may be the entire amount in the Accounts. HUD may only demand funds in accordance with the requirements of 24 CFR §1000.538 or if timely payment is not made on the note or other obligation in accordance with the Guarantee Contract.

6. The Broker/Dealer is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the NAHASDA Grant Agreement and Guarantee Contract, and shall be under no duty to investigate or determine whether any actions taken by either the Recipient or HUD are consistent with or are authorized by the NAHASDA Grant Agreement or Guarantee Contract or whether either the Recipient is in default or noncompliance with the NAHASDA Grant Agreement or Guarantee Contract. The Broker/Dealer shall be fully justified in accepting and acting on, without investigation, any certificate, notice, or demand furnished to it pursuant to the provisions of this Agreement and which the Broker/Dealer shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed.

7. The rights and duties of the Broker/Dealer under this Agreement shall not be transferred or assigned by the Broker/Dealer without the prior written approval of the Recipient and HUD. This Agreement may be terminated by either party hereto upon thirty days written notice to the other party, and HUD. The rights and duties of the Broker/Dealer hereunder shall not be

transferred or assigned nor shall this Agreement be terminated during any period in which the Broker/Dealer is required to refuse to permit withdrawals from the Accounts as provided in paragraph 5.

8. HUD is intended to be a third party beneficiary of this Agreement and certain provisions of this Agreement are for the benefit of HUD and HUD may sue to enforce its provisions and to recover damages for failure to carry out its terms.

9. The Broker/Dealer shall promptly notify the Recipient of the deposit or credit of any monies to the Accounts.

10. The provisions of this Agreement may not be modified by either party without the prior written approval of HUD.

In Witness Whereof, the Recipient and the Broker/Dealer have caused this Agreement to be executed in their respective names and their respective seal to be impressed hereon and attested as of the date and year first above written.

Recipient

By: _____

Title: _____
Authorized representative

[SEAL]
ATTEST:

Broker/Dealer

By: _____

Title: _____

[SEAL]
ATTEST: