



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

Special Attention of:
Tribes, Tribally Designated
Housing Entities, Indian
Housing Authorities,
ONAP Administrators

Notice: PIH-2015-08 (ONAP)
Issued: May 8, 2015

Expires: Effective until Amended,
Superseded or Rescinded
Cross Reference: 24 CFR 1000.58,
PIH 2010-33, PIH 2011-43

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

- 1. PURPOSE:** This Notice establishes the basis upon which the Department will determine if a recipient of Indian Housing Block Grant (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). Previous IHBG investments were limited to a maximum 2-year period. The IHBG regulations were amended December 3, 2012 and effective January 2, 2013 in 2013 to allow for a 5-year investment period. This notice implements these new requirements and replaces PIH Notice 2010-33 (extended by PIH Notice 2011-43).
- 2. BACKGROUND:** Pursuant to 24 CFR 1000.58, a recipient may invest grant funds for the purposes of carrying out affordable housing activities in investment securities and other obligations as approved by the Secretary. Following approval, a recipient may continue to invest NAHASDA funds in accordance with 24 CFR 1000.58, as long as it demonstrates to HUD that it has adequate administrative capacity.
- 3. DEFINITIONS:** For the purposes of this Notice, the following definitions apply.
 - a. *Self-governance tribe* - 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 Findings* - 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 that were subsequently disallowed, and which total 5 percent or more of the total expenditures for HUD programs identified in the audit or final monitoring report.

4. ELIGIBILITY TO INVEST: Pursuant to 24 CFR 1000.58(b), an IHBG recipient must demonstrate, to HUD's satisfaction, that:

- a. Annual audits were completed timely and submitted to the Federal Audit Clearinghouse in accordance with Office of Management and Budget Circular A-133 or 2 CFR 200.512 (the regulations at 2 CFR Part 200, Subpart F apply to audits for fiscal years December 26, 2014 and thereafter);
- b. There are no unresolved significant and/or material monitoring or 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
- c. It is a self-governance Indian tribe or the tribe or TDHE that has demonstrated the administrative capacity and controls to responsibly manage the investment.

5. DOCUMENTATION REQUIRED: The following documentation must be provided to the Area Office of Native American Programs (ONAP).

- a. **Audits:** To document that there are no unresolved significant and material audit findings or exceptions, the recipient must submit its most recent annual audit. Recipients must also provide 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/or 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) or a Housing Department of the tribe and the tribe is without a current audit, an audit will not be required to comply with this provision.
- b. **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.
- c. **Administrative Capacity:** 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 must be submitted. 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, and the TDHE must demonstrate its administrative capacity and controls as outlined below in section 5c.

If the recipient is not a self-governance tribe, a newly created TDHE or a Tribe administering IHBG funds for the first time, the recipient must demonstrate it has the administrative capacity and controls to responsibly manage the investment. The recipient must show that it has carried out eligible affordable housing activities in a timely manner, has continuing technical capacity, and has complied with its Indian Housing Plans.

The recipient's financial management system must also comply with the standards in 24 CFR 85.20(as of April 1, 2014). These standards include the following: 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:

1. 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. Specifically, the financial management policy should 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 eligible 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 investment funds will be held in one or more accounts separate from other funds of the recipient. Each account shall be subject to an 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 system 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); and
 - A requirement to maintain a schedule of maturity dates.
2. A copy of the recipient's written investment policy. 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.
3. The recipient must have no outstanding findings as a result of a HUD audit or monitoring review (including Inspector General Audits) or HUD Monitoring Review that affect the administrative capacity and controls to responsibly manage the investment. The recipient must submit a certification that there are no findings that affect its administrative capacity.
4. There are no other issues documented by the Area ONAP that affect the recipient's administrative capacity and internal controls to responsibly manage the investments.

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, including current LOCCS balances, and approve

- or disapprove the request within 60 calendar days of receipt;
- b. If the request is approved, written notification will provide the effective date that the recipient may drawdown 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 HUD's denial of a request for consideration of investment, the recipient may request reconsideration of the denial in writing. The request must include justification for the reconsideration. Within 30 calendar days of receipt of the recipients request for reconsideration, HUD 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.
- 7. DEPOSITORY AGREEMENT:** Invested IHBG funds must be held in one or more accounts separate from other funds of the recipient. Each of these accounts must be subject to a depository agreement approved by HUD. PIH Notice 2014-21 *Depository Agreements for Investing and Administering Indian Housing Block Grant (IHBG) Funds*, includes the current depository agreement forms to be used when investing IHBG funds (Form HUD-52736A (11/2013) for investments held in bank accounts, and Form HUD-52736B (11/2013) for investments managed by brokers/dealers). The Notice also clarifies investment options available under 24 CFR 1000.58 and special requirements applicable to reserve accounts.
- 8. TERM OF APPROVAL:** Approval to invest IHBG funds is valid as long as the recipient continues to have no delinquent audits, unresolved significant and/or material audit findings or exceptions, or unresolved HUD monitoring review findings that affect the administrative capacity to responsibly manage the investments and still can demonstrate the capacity to draw down and disburse IHBG funds in a timely manner. 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, recipients approved for a two year investment period prior to January 2, 2013 are subsequently approved for a five year investment period.
- 9. MATURITY SCHEDULE:** Investments may be for a period of no longer than 5 years. The 5-year period starts on the date the recipient draws down funds for investment purposes. Investment drawdowns prior to January 2, 2013 and all subsequent investment funds will mature no more than 5 years from the date the funds were withdrawn from LOCCS. A 5-year period is the maximum length of time that any IHBG amount can be invested before being disbursed on an eligible affordable housing activity. 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. The recipient shall report quarterly on the SF 425 all investment activity and maintain a schedule

evidencing that the proposed investments will mature, the approximate dates the funds will be needed, and that investment maturity dates do not exceed the approved investment period.

When an investment instrument matures, the mature investment funds must be expended for an affordable housing activity. Disbursement for this purpose means actual expenditure, not just the obligation of funds. If the funds are not needed for an activity at that time, or not disbursed on eligible affordable housing activities the funds must be returned to LOCCS by the recipient. Any interest earned prior to the expiration of the approved investment period may only be spent on affordable housing activities. Because the regulation at 24 CFR 1000.58(g) restricts the investment period to up to 5 years, any interest earned after the expiration of the approved investment period is interest that is unlawfully earned, and must be returned to HUD to be remitted to the U.S. Treasury. If a recipient returns funds to LOCCS or HUD the recipients must notify their Area ONAP office.

10. ELIGIBLE INVESTMENT INSTRUMENTS: Pursuant to 24 CFR § 1000.58(c), 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 must be insured by 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.

12. INVESTMENTS PRIOR TO JANUARY 3, 2013: Investments drawn from LOCCS before or after January 2, 2013, may be for a period of no longer than 5 years. The 5-year period starts on the date the recipient drew down funds for investment purposes. This 5-year period is the maximum length of time that any IHBG amount may be invested before disbursement on an eligible affordable housing activity.

13. REPORTING INVESTMENTS: The recipient must comply with all applicable reporting requirements and must report investment activity quarterly on the SF 425 Reference Program Guidance for the Federal Financial Report (SF-425), Program Guidance for Calculating Program Income, and Revised Guidance for the Indian Housing Plan/Annual Performance Report for additional direction.

14. CONTACTS: Should you need additional information, please contact your Area ONAP.

/s/

Lourdes Castro Ramirez
Principal Deputy Assistant Secretary