

Local Imposed Restrictions and Fees for Water/Sewer Connections

June 15, 1998

MEMORANDUM FOR: Virginia E. Peck, Director, Office of Community Planning and Development, 4JD

FROM: Richard J. Kennedy, Director, Office of Block Grant Assistance, DGB \s\

SUBJECT: Community Development Block Grant (CDBG) Program
Local Imposed Restrictions and Fees for Water/Sewer Connections

This is in response to your memorandum of March 20, 1998, to Deirdre Maguire-Zinni, Director of the Entitlement Communities Division, requesting clarification on restrictions and fees local communities may impose related to CDBG assistance provided to connect residential properties with water and sewer lines. In some instances, such water/sewer lines have been constructed with CDBG funds. You request guidance on whether grantees may impose liens on the properties of low-and -moderate income homeowners when CDBG funds are used to pay for the water/sewer connections.

This issue is raised in light of the limitations on charging "special assessments" for CDBG-assisted public improvements and a citizen complaint your office has received. For purposes of the CDBG program, the term special assessment is defined at 24 CFR 570.200(c)(1) to mean the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement. Special assessments to recover the capital costs of public improvements assisted with CDBG funds may be made only under certain conditions as delineated at 24 CFR 570.200(c)(2). The connection of individual private residences to water and sewer lines, however, is considered rehabilitation, eligible for CDBG assistance under 24 CFR 570.202(b)(6), and not public improvements. The connector lines run across private property and are routinely the responsibility of the individual property owner. As a rehabilitation activity, CDBG assistance for water/sewer connections is not covered by the special assessment provisions. Thus, the grantee has greater flexibility in carrying out such an activity.

HUD cannot intervene in a community's program design decisions unless there is some aspect that violates CDBG program requirements. Questions could be raised in this regard if a community's policy for providing assistance with water/sewer connections was so restrictive that it would challenge the community's claim of who actually was benefiting from any associated CDBG-assisted public improvement. The introductory paragraph of 24 CFR 570.208(a) states that a low-and moderate-income benefit national objective claim that may appear to meet the criteria delineated in the regulations can generally still be challenged if "there is substantial evidence to the contrary." The regulation goes on to state that "in assessing any such evidence, the full range of direct effects of the assisted activity will be considered." If a community used CDBG funds to assist the construction of a water or sewer line under the national objective claim of low- and moderate-income area benefit and a significant number of low-

and moderate-income households were unable to connect to that water or sewer line because of the community's failure to provide reasonable assistance for the construction of private lateral connector lines, then HUD could question the low- and moderate-income area benefit claim for the public improvement. However, in the case described in your memorandum, the grantees are imposing liens of approximately five years for assistance provided for the connector lines. Such a lien requires repayment of a pro rata share of such assistance provided if the home is sold during that time frame; if the property is not sold during that period, the lien is removed. HUD does not view this as unreasonable or as overly restrictive, but rather as commensurate with the benefits derived from the improved sanitary facilities. Thus, HUD has no basis upon which to consider such liens as providing "substantial evidence to the contrary" with respect to any questioning of the grantees' national objective claims.

Your memorandum also raised a question about a "sewer/water improvement fee" that may be assessed at a later date. Discussions with your staff indicate that the referenced fee is a monthly charge of \$1.80, imposed by the State of Tennessee, for maintaining the sewer system. Based on this information, it appears the fee is a periodic charge that is not designed to recover of capital cost of the public improvement. Thus, this fee is not considered a special assessment under the CDBG program pursuant to 24 CFR 570.200(c)(1).

If you have any further questions or need additional information regarding this matter, please contact the Entitlement Communities Division at (202) 708-1577.