Hook-up Fees

January 12, 1989

MEMORANDUM FOR: G. William Thomas, Jr., Manager
Richmond Field Office, 3.4S

FROM: Jack R. Stokvis, Assistant Secretary for Community Planning and Development, C

SUBJECT: Hook-up Fees Charged by Suffolk, Virginia

This is in response to your memorandum of August 13, 1987, regarding an eligibility determination in the Community Development Block Grant (CDBG) program. The determination involves (1) whether the City of Suffolk, Virginia's policy of charging hook-up fees as a condition of residents' obtaining access to water and sewer systems built in whole or in part with CDBG funds is allowable under the statute and regulations and (2) whether their paying the hook-up fees for very low income persons with CDBG funds is an eligible CDBG activity.

The hook-up fees are used only for maintenance and operating costs of the systems. They are not used to recover any of the capital costs (CDBG or other) of the systems being accessed or to pay for the work involved in physically connecting residences to the system.

With regard to the first question, thorough consideration by legal counsel determined that the hook-up fees charged by the City of Suffolk are allowable. The basis for the determination is section 104(b)(5) of the Housing and Community Development Act and the use to which the fees are put.

Section 104(b)(5) of the Housing and Community Development Act of 1974, as amended, requires the grantee to certify that it will not attempt "to recover any capital costs of public improvements assisted in whole or in part [with CDBG funds] by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements." (Emphasis added.)

The issue in this situation is whether fees which are not used to recover any capital costs of public improvements being accessed are covered by the certification. Our legal counsel concluded that, taking the language of section 104(b)(5) itself and its legislative history, the inclusions of access fees unrelated to the payment of the capital cost of the improvement as part of the grantee's certification would not be a reasonable interpretation of the statute. Since the access charges in this case are not to recover the capital costs, the certification is inapplicable and the charges are neither prohibited nor subject to any CDBG requirements.

However, there is an additional point for the grantee to consider concerning the size of the fees and benefit to low and moderate income persons. Although there is no direct prohibition on charging an access fee, such fees could indirectly cause the grantee a problem with meeting the national objective of benefit to low and moderate income persons for the public improvements activity on which the fee is

charged. If an access fee is so burdensome that the improvements have an adverse rather than a beneficial effect on low and moderate income persons, the CDBG-assisted water and sewer system installation may not be deemed to benefit low and moderate-income persons.

With regard to the second question, using CDBG funds to pay residents' access fees which are, in turn, used to pay operating and maintenance costs of the system is not an eligible activity. In accordance with section 570.207(b)(2), the use of CDBG funds to pay any expense associated with repairing, operating, or maintaining public facilities is generally ineligible. Using CDBG funds to pay access fees in this case would, in effect, be paying ineligible operating and maintenance expenses.

We sincerely regret the inconvenience caused to the Richmond Field Office and the City of Suffolk by the delay in the determination.