

Appendix D: Special Assessments Under the CDBG Program

Introduction

Many communities follow the practice of levying an assessment on property owners where the property is determined to benefit from a particular public facility or improvement. Examples of such facilities/improvements include the paving of streets, the installation of sidewalks, and the construction of water and sewer lines. Because of concerns about the implications for levying such assessments to recover capital costs incurred in providing a public facility or improvement with CDBG assistance, the statute contains certain restrictions. These restrictions and other related requirements are discussed in this appendix.

Definition

For purposes of the Entitlement CDBG program, the term “*Special assessment*” means 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, or
- A one-time charge made as a condition of access to the public improvement.

This term does **not** relate to:

- Taxes;
- Establishment of the value of real estate for the purpose of levying:
 - Real estate taxes,
 - Property taxes, or
 - Ad valorem taxes.
- Periodic charges based on the use of public improvements, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

States are free to use this definition as interpretive guidance.

Special Assessment to Recover Capital Costs

Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may only be used to recover capital costs as follows:

Restriction on levying a special assessment to recover CDBG funds:

Special assessments to recover the CDBG funds may be made *only* against properties **not** owned and occupied by L/M income persons. When assessments are levied against non-L/M income property owners, the proceeds are CDBG program income.

Special assessments to recover non-CDBG funds:

Special assessments to recover the non-CDBG funded cost of the public improvement may be made, provided that CDBG funds are used to *pay the special assessments on behalf of all*

properties owned and occupied by L/M income persons; except that CDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by moderate-income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments on behalf of all of the L/M income owner-occupants. Funds recovered through such special assessments are not CDBG program income. Reference: Section 104(b)(5) of the HCDA

Public improvements not initially assisted with CDBG funds:

The payment of special assessments with CDBG funds constitutes a form of financing the public facility/improvement, even though it was constructed without CDBG assistance at that time. Therefore, CDBG funds may be used to pay special assessments only if:

- Installation of the public improvement was carried out in compliance with requirements applicable to activities assisted with CDBG funds including environmental, citizen participation and Davis-Bacon requirements;
- Installation of the public improvement meets a criterion for national objectives (i.e., L/M Income Area Benefit, Slum or Blighted Area, or Urgent Needs); and
- Requirements described above for recovering non-CDBG funds are met (i.e., the assessment is paid on behalf of all L/M income property owner/occupants, or, where applicable, all low-income property owner/occupants).

Note: As discussed in Chapter 3, Meeting a National Objective, under L/M Income Area Benefit, restricting CDBG assistance to paying the special assessments levied against residential properties owned and occupied by L/M income persons is a permissible way of meeting L/M Income Area Benefit. *Reference: 24 CFR 570.483(b)(1)(ii)*

Comparison of special assessments with impact fees:

Some communities make a practice of charging what is commonly called an “impact fee” for certain developments. For example, if a developer wants to construct housing in a new subdivision, the community would charge a fee per housing unit in recognition that the new development will place a burden on the existing infrastructure and will likely lead, together with other similar developments, to a need to reconstruct or build new facilities or improvements. These impact fees differ from “special assessments” in that they do not purport to be recovering the cost of a particular public improvement that benefits the assessed property, which is a defining feature of assessments. Nor do the impact fees usually represent a one-time charge for attaining access to a particular public improvement, another defining feature of special assessments in the CDBG program.

Impact fees generally are not eligible to be paid with CDBG funds, partly because they are providing funds for future, undefined public improvements and there is no way of telling whether the use of those CDBG funds would be for an improvement that would meet a national objective of the program.

Special Assessment Q’s and A’s

1. Is the payment of special assessments a category of basic eligibility in the CDBG program?

- A. No. However, such payments are eligible because they are one way of financing a public improvement. Special assessments are not included in the listing of eligible activities in Section 105(a) of the HCDA. Therefore, the public improvement itself must be eligible under HCDA Sections 105(a)(2) or (a)(14).
2. Does the certification requirement pertaining to special assessments, as described in Section 104(b)(5) of the statute, apply to special assessments levied against commercial or industrial properties?
- A. The certification applies to special assessments against properties owned and *occupied* by L/M income persons. HUD's position is that this refers only to residential properties.
3. Does CDBG assistance in paying special assessments convert a non-assisted public improvement activity into one assisted with CDBG funds, thereby triggering all applicable federal requirements, such as Davis-Bacon?
- A. Yes. When CDBG funds are used to recover some or all of the local funds used in financing a public improvement, they in effect are being used to pay at least part of the cost of the public improvement. This payment is frequently indirect, with the CDBG funds used to repay bonds that initially paid for the construction of the public improvement. However, use of indirect financing techniques cannot be used as a means of avoiding federal requirements.
4. Are there any exceptions to the requirement that CDBG funds must be used to pay assessments for L/M income persons?
- A. Yes. A state grant recipient is not required to pay assessments for L/M income persons who own, but do not occupy, the assessed properties. Furthermore, a state grant recipient is not required to pay assessments for *moderate* income owner/occupants if the state permits a state grant recipient to certify to the state that it lacks sufficient CDBG funds to pay assessments in behalf of all L/M income persons.
5. Must outright grants be used to pay 100 percent of the special assessments levied on properties owned and occupied by L/M income persons or could the state grant recipient choose to only lend the funds to some or all of such persons to meet this requirement?
- A. The payment must be in the form of a grant to the owner/occupants. This position is based on the fact that the statute does not speak in terms of partial payment or deferred payment but simply says that recovery of capital costs is impermissible unless CDBG funds are used "to pay" the assessments for the L/M income persons.

Note: This answer assumes the state grant recipient has not made a special certification to the state that it lacks sufficient CDBG funds to pay the assessments for moderate-income persons. If such a certification were made, the requirement for 100 percent grants would only be applicable to low-income persons; the state grant recipient could lend funds to moderate-income owner/occupants.