

Grantee Performance Report Review

October 2, 1988

MEMORANDUM FOR: Joseph G. Schiff, Manager Louisville Office, 4.8S

ATTENTION: Andrew Robertson, CPD Director Louisville Office, 4.8C

FROM: Alfred C. Poran, Assistant Secretary
for Community Planning and Development, C

SUBJECT: FY 1985 Grantee Performance Report Review - Louisville, Kentucky (Eligibility Issues)

This is in response to your July 23, 1986, memorandum to me in which you raise several important eligibility issues. These issues surfaced during the review of Louisville's 1985 Grantee Performance Report (GPR). You formed a conclusion concerning each issue and asked that we comment on the basis for your determinations. Since you raised a number of issues, we will respond according to the order each appeared in your memorandum.

The first issue involves the delineation of service areas. The City claims that its corporate boundaries mark the service area for Belvedere Plaza, the Iroquois Park Amphitheater, and Cherokee Park. Benefit to low and moderate income persons is claimed on the basis of census data which shows that the City has a resident population composed of 54.2 percent low and moderate income persons. You indicate there is substantial evidence which challenges the City's delineation of these service areas.

The delineation of service areas for the purpose of determining whether low and moderate income persons will be the principal beneficiaries of an activity involves a substantial amount of judgment. Recognizing this, HUD should not challenge a grantee's service area delineation "in the absence of substantial evidence to the contrary." [24 CFR 570.208(a).] In this case, we concur in your determination that there is substantial evidence indicating low and moderate income persons are not the principal beneficiaries of these activities.

The City appears to rely exclusively on the fact that Belvedere Park, Iroquois Park Amphitheater, and Cherokee Park are located in the City with its 54.2 percent low and moderate income population. As stated at 24 CFR 570.208(a), "mere location of an activity in a low and moderate income area, while generally a primary consideration, does not conclusively demonstrate that the activity benefits low and moderate income persons." While the City as a whole has a majority of low and moderate income residents, it is not at all clear that the area served by these facilities coincides with the City boundaries. The contrary appears to be true based on the following information provided in your memorandum and in subsequent conversations with Ms. Virginia Gentry of your staff:

Belvedere Plaza -- This 4 acre plaza is located on Main street in the downtown business district, between a major hotel, the Kentucky Center for the Arts, and the Ohio River. It consists of an overlook on the Ohio River, an ice skating rink for winter usage and open space. Tourist boats dock below the plaza. The

facility is used as the site of frequent festivals and events that draws participation from the entire metropolitan area, which has a 40 percent low and moderate income population. When not in use for such festivals and events, the plaza is used primarily by tourists and workers in the downtown area. The City has budgeted \$150,908 of CDBG funds for lighting and to replace paving blocks.

Iroquois Park Amphitheater -- This facility is the only amphitheater of its kind in the metropolitan area. Admission fees are charged for attendance at the events held there, which are primarily plays and musicals. The events draw patrons from the entire metropolitan area. The City has budgeted \$101,322 of CDBG fund for various capital improvements to the amphitheater.

Cherokee Park --- The City has budgeted \$180,000 of CDBG funds for the purchase of playground equipment and the rehabilitation of masonry bridges in this 409 acre park, which is classified by the Metropolitan Parks and Recreation Board as a "major urban park" having a service area defined as a 30 minute driving radius. Additionally, the park is located on the eastern side of the City close to well-to-do suburban areas, and most of the nearby census tracts within the City do not qualify as low and moderate income areas.

In light of this information, it is highly unlikely that the areas served by these facilities contain the required percentage of low and moderate income persons. For each of these activities, unless the City can provide evidence substantiating the reasonableness of the service area delineated for the activity and showing that 51 percent of the residents in the service area are low and moderate income persons, CDBG assistance for the activity should be disallowed.

Before moving to the next issue, there is one point made in the City's June 30, 1986, letter that needs to be clarified. HUD regulations do not prohibit the expenditure of entitlement funds outside the City's corporate limits. CDBG funds are intended to be used to address the needs of a grantee's citizens. In some cases, meeting such a need requires the expenditure of CDBG funds outside the grantees corporate boundaries.

The second issue involves the use of \$25,168 of CDBG funds for various improvements in Willow Park and, more precisely, the rules that govern such use. The City appears to agree that this park serves an area which is not a low and moderate income area. However, the City believes that the applicable area benefit rules are derived from 1983 amendments to the CDBG statute, and that since the activity was funded prior to the start of the FY 1984 program year, it is exempt from the new statutory requirements. We agree with you that the City is mistaken. The primary effect of the 1983 amendments with respect to area benefit rules was to provide statutory support for the rules already contained in the program regulations. The applicable area benefit rules have been in the program regulations since 1978.

The next issue concerns the eligibility of upgrading radio fire alarm boxes, citywide. While this activity does not meet the criteria at 24 CFR 570.201(f) for an interim assistance activity, it could be eligible as a public service under Section 570.201(e). Since a citywide system of fire alarm boxes is the type of activity that can be expected to benefit all the residents of the City, and since the City's population is composed of 54.2 percent low and moderate income persons, it would appear that this activity could qualify as a low/mod activity. Considering that more than four years have passed since Mayor Harvey I. Sloane originally certified that this activity is designed to alleviate an existing condition which poses a serious

and immediate threat to the health and welfare of the community, and the activity remains incomplete, the urgency of the activity is questionable. Therefore, unless the City can fully document how the activity meets the criteria for urgent need activities set forth at Section 570.208(c), the activity should not be classified as an urgent need activity.

The fourth issue involves the City's provision of fans and air conditioners purchased with CDBG funds to low income residents. We agree that this activity may be classified as a public service activity, provided the City or a subrecipient agency maintains ownership of this equipment, and the personal property management standards in OMB Circular A-102 or A-110, as applicable, are followed. You are correct in your conclusion that the purchase of portable fans and window air conditioners is not an eligible rehabilitation cost. The purchase of smoke detectors is an eligible rehabilitation cost because the regulations at Section 570.202(b)(2) specifically mention the installation of security devices as an eligible rehabilitation activity.

You bring up several project related costs. The first is \$95,143 for the Landmarks Commission justified in the GPR as a direct CDBG rehabilitation cost under historic preservation. Your description of activities of the Commission (i.e., planning, design technical assistance, and market analysis for various city historic preservation projects) strongly indicates that it performs a broad planning function as described under Section CFR 570.205 of the CDBG regulations, "eligible planning and policy - planning - management - capacity building activities." Although Section 570.202(d) specifically addresses historic preservation as an eligible rehabilitation activity, it does so in the context of direct assistance for historic structures resulting in physical change, versus market analysis or project planning, etc. You are correct in concluding that this activity is not eligible as historic preservation. However, it could be eligible as a planning activity under Section CFR 570.205(a)(3)(ix) or (4)(iv). Of course, the City must maintain its 20 percent cap on administrative costs with this additional expenditure and meet all applicable statutory and regulatory provisions.

Another expenditure that you questioned is \$246,732 for a building inspection program which the GPR shows as a direct rehabilitation cost. You are correct that this is not an eligible rehabilitation cost. However, the City's June 30, 1989, response to you states that the GPR will be corrected to show this activity as eligible under the code enforcement section of the regulations, CFR 570.202(c). The City's letter goes on to say that these activities are carried out in specific areas rather than citywide as originally stated in the GPR. Under these circumstances, this activity may be eligible under Section CFR 570.202(c) code enforcement. You should be certain that these "specific areas" are deteriorated or deteriorating areas where other action is being taken to arrest the decline of the area. This activity should be one that is closely monitored.

The final issue you raise concerns assistance provided by the City of Louisville for the removal of architectural barriers at the Presbyterian Community Center. You should now have received my August 4, 1986, memorandum which applies to this issue. You will note that page two of this memorandum prohibits the use of CDBG funds for any activities which improve real property owned by a religious organization. The removal of architectural barriers in this instance is clearly ineligible. Due to the lack of clear guidance in this area prior to the August 4 memorandum, we do not believe it would be appropriate to require the repayment of CDBG funds clearly expended for this activity. A warning letter should be a sufficient corrective action in this case.

I would like to take this opportunity to commend your staff for their diligence and technical expertise evidenced by such a comprehensive and professional review of Louisville's 1986 GPR. It is this type of quality service that maintains my strong confidence in our Field Office staff.