

September 5, 2023

Mr. Andrew Schlack
Program Manager
Capital Magnet Fund
Community Development Financial Institutions Fund
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Capital Magnet Fund Program Request for Information

Dear Mr. Schlack:

Opportunity Finance Network (OFN) appreciates the opportunity to comment on the Community Development Financial Institution Fund's recent Request for Information on the Capital Magnet Fund (CMF) Program. OFN is a national network of more than 390 community development financial institutions (CDFIs) investing in opportunities that benefit low-income, low-wealth, and other under resourced communities across America. Our membership has originated more than \$100 billion in financing in urban, rural, and Native communities through 2021. OFN member CDFIs have helped support the development or rehabilitation of more than 2.3 million affordable housing units nationwide - and CDFIs nationwide have financed \$2 billion annually in mortgages.¹

The CMF program, created in 2008, has had a substantial impact on furthering the availability of affordable housing. To date, the CMF program has awarded \$1.07 billion dollars through seven funding rounds. Over 135 CDFIs and non-profit organizations have received CMF awards and have used the funding to leverage \$36.3 billion for affordable housing and economic development projects. In the most recent Fiscal Year 2021 award round, awardees estimated that they will develop 41,100 homes. Earlier rounds of awards have also supported the creation of tens of thousands of jobs.

OFN is a member of the Capital Magnet Fund Coalition, a group of 55 of the program's awardees and other interested organizations seeking to amplify the success of the CMF program while advocating for administrative changes to make the program even more impactful and a member of the National Association of Affordable Housing Lenders (NAAHL). We broadly support the comments submitted by both the CMF Coalition and NAAHL in addition to our own comments.

We appreciate the CDFI Fund's recent commitment to advancing incremental reforms to the CMF program. For example, several prior recommendations made by the CMF Coalition were recently implemented, such as broadening the Service Area definition to include up to 15 states, allowing 15 percent of the award to be utilized outside of Service Areas, relaxing Program Income requirements by allowing reinvested dollars to be outside a Service Area, and expanding application preferences to include high opportunity areas. These regulatory improvements are all productive steps to ensure that affordable housing funds are used to the greatest effect.

¹ [OFN Annual Member Survey 2021](#)



OFN encourages the CDFI Fund to continue to overhaul its guidance documents to encourage more flexibility and innovation and supporting increased usage to support the creation of affordable housing. The CDFI Fund can work toward this goal and address the challenges we describe below unilaterally, since they are comprised of a mixture of regulatory and sub-regulatory practices. We look forward to working with the CDFI Fund in partnership on these programmatic improvements.

General Programmatic Comments

A key component of the CMF's program success is the enterprise level nature of the funds. Enterprise level capital is essential to allow CDFIs to leverage these funds with private capital and allow organizations the flexibility to respond to local housing market needs. CMF funds have been used throughout the country to develop, preserve, rehabilitate, or purchase affordable housing, as well as related economic development activities such as day care centers, community health clinics, local charter schools and workforce development centers. As the CDFI Fund works to improve the program, **we encourage the Treasury Department to keep the funding as flexible as possible, while ensuring awards are used as proposed by applicants.** Imposing excessive administrative and compliance requirements on the CMF program will ultimately make the program less viable and decrease its impact.

Response to Questions in the Request for Information

A. Facilitate CMF Alignment with Other Federal Affordable Housing Programs

1. Using CMF with other federal programs in the same project(s)

OFN supports all efforts to streamline reporting requirements across federal programs to encourage the blending of funds and increase the development of affordable housing. Following multiple sets of compliance and reporting requirements is unnecessarily complex, burdensome, and duplicative. Streamlining CMF compliance when used in conjunction with mission-aligned federal programs would reduce administrative costs while preserving the CMF program's integrity.

Designated programs that are deemed compatible with CMF should include: Low Income Housing Tax Credits (LIHTC); the HOME Investment Partnerships Program (HOME); HUD Housing Trust Fund; HUD Section 8 rental assistance; Federal Home Loan Banks' Affordable Housing Program; USDA Section 515 rental housing; USDA Section 502 homeownership loan funds; and USDA Section 515 rental housing loan funds.

2. CMF income limit definitions

The Housing and Economic Recovery Act of 2008 (HERA) gives discretion to the CDFI Fund to define the appropriate mix of extremely low-, very low-, and low-income families that are assisted with program awards. Consistent with our response immediately above, the CDFI Fund should recognize the income definitions of other programs. We believe that the administrative efficiencies gained would clearly outweigh any minor differences between CMF and other programs' income definitions. A family receiving means-tested assistance should be recognized as Low-, Very Low-, or Extremely Low-Income for CMF compliance purposes. Such assistance



programs should include: HUD Housing Choice Vouchers; Supplemental Security Income; SNAP; Medicaid; and similar programs, including state and local programs.

CMF should define very low-income as 60% of area median income (AMI) to align with LIHTC, the federal government's predominate resource for producing and preserving affordable rental housing. The 60% AMI standard is closer to CMF's current very low-income benchmark (50% of AMI) than to CMF's low-income (80% AMI) benchmark. Sixty percent AMI rents are generally necessary to the financial feasibility of rental housing developments, unless long-term rental or operating subsidies are also involved.

3. CMF income certification for LIHTC projects

Consistent with our earlier recommendation, LIHTC projects that are 100% low-income should not have to recertify residents' incomes annually. In such cases, there is no compliance issue if a tenant's income increases because the next available unit must always be rented to a low-income tenant. Accordingly, this policy should also extend to all 100% low-income occupied projects even if LIHTC is not involved. These changes would meaningfully simplify CMF compliance.

In addition, for LIHTC projects that are not 100% low-income, the LIHTC-compliant units should be treated as CMF-compliant. CMF Recipients should be able to rely on a certification by the LIHTC project's owner, who should be required to notify the CMF Recipient of any noncompliance that is not cured as permitted by LIHTC rules. Because of significant penalties for LIHTC noncompliance, including a recapture of tax credits, this approach should mitigate risk with respect to CMF noncompliance.

B. CMF Commitment Deadline

We appreciate the CDFI Fund's interest in greater flexibility. In recent years, several unforeseen market changes beyond the control of CMF Recipients have delayed projects, including the pandemic, supply chain problems, labor shortages, higher interest rates, and escalating costs for construction, insurance, and other operating expenses. As these forces have strained financial feasibility, they frequently require project sponsors to undertake time-consuming efforts to fill financing gaps, often by seeking additional grant or low-interest loan funds. The CDFI Fund's suggested two-step process would help reconcile these realities with the statutory two-year commitment requirement.

We also stress that many CMF Recipients have strong incentives to start and complete projects as soon as possible. First, many CMF Recipients plan to achieve leverage and other impacts based on reinvestment of CMF funds previously advanced and recovered; project delays jeopardize those plans. Second, timely performance, including achieving the leverage that reinvestment of funds makes possible, are important competitive considerations for Recipients seeking to obtain subsequent awards.

C. CMF Leverage Requirements and Calculation Methods

- 1. Should Reinvestment-Level leverage, which measures the reinvestment of both a CMF Award and Enterprise-Level leverage, be removed and only Enterprise-Level leverage*



and Project-Level leverage be considered to simplify the calculation of Leveraged Costs? Please explain the rationale for your answer.

It is important to fully consider Reinvestment-Level leverage because, in many cases, it can maximize the impact of CDFIs and nonprofit housing organizations. CMF is distinctive among most federal affordable housing and community development programs because it provides enterprise-level, rather than project-level, support. A Recipient that can use, recover, and then reinvest CMF funds can multiply its (and CMF's) impact. Reinvestment-Level Leverage recognizes and encourages this impact.

- 2. If the Reinvestment-Level leverage is retained, should the calculation be changed to a multiplier and based only on the Award amount (i.e., number of times the Award amount is repaid and reinvested in excess of the original Award amount), rather than a calculation of the reinvestment of a combination of the Program Income from the Award plus new Enterprise-Level leverage? Please explain the rationale for your answer.*

No. Leverage is a central objective of CMF – the Fund was designed as a Magnet for additional Capital. Reinvestment-Level Leverage is a feature of CMF, not a bug. If a Recipient is able to use recovered CMF funds to leverage additional capital, that additional financing should be fully recognized.

D. Program Income (PI) Rules

- 1. Currently, the Recipient's Assistance Agreement requires that PI be expended only on specified eligible activities in the Agreement. Should the use of PI earned on the CMF Award be expanded to include all CMF eligible activities as outlined at 12 CFR 1807.301? Please explain the rationale for your answer.*

Yes. Once a Recipient has invested its award, it should have the flexibility to reinvest the funds in other statutorily allowable activities. In some cases, a Recipient will have completed the initiative for which it initially applied and used its CMF award, so it will be appropriate to use PI for different eligible activities. The current reinvestment requirements go beyond those demanded by the Office of Management and Budget and similar government programs, including those currently administered by the CDFI Fund. More broadly, the ability of CDFIs and nonprofit housing organizations to adjust to new challenges and opportunities, consistent with CMF's purposes, is a strength that should be appreciated and supported. CDFIs and nonprofit housing organizations have demonstrated their commitment and track record of serving people and communities in need.

- 2. Should adding eligible activities specific only to PI, and not otherwise eligible under the program, be allowed? If yes, what additional eligible activities should be contemplated for the use of PI and why? If no, please explain the rationale for your answer.*

No, not within the Investment Period. Otherwise, a Recipient could invest CMF funds in eligible activities only briefly, and then reinvest the program income in otherwise ineligible activities during the Investment Period. That would be inconsistent with the spirit of CMF.



Additionally, there should not be eligible activities exclusive to only one type of investment, such as PI.

3. *Currently, projects funded with PI must be completed within 36 months of being Committed. Should the CDFI Fund modify the 36-month completion deadline as it relates to the use of PI? If so, what deadline if any, should be established? Please explain the rationale for your answer.*

As we described above with respect to project commitment deadlines, several unforeseen market disruptions have slowed many projects in recent years, including the pandemic, supply chain problems, labor shortages, higher interest rates, and escalating costs for construction, insurance, and other operating expenses. These disruptions, along with the increasing size, complexity, and phasing of some affordable housing and community development projects, can often make it infeasible, or at least highly uncertain, to achieve project completion within three years of a funding commitment. This is especially the case where CMF funds are used for predevelopment purposes. Using CMF for predevelopment financing is especially catalytic because such financing is both essential and hard to obtain. Instead, it would be reasonable to require construction starts (or, where construction is not involved, project funding) within five years. At that point, projects should be sufficiently advanced to document affordability covenants. Monitoring affordability could continue for 10 years of rental project operations.

4. *Should the CDFI Fund modify the requirement that any PI in excess of \$100,000 be Committed to a project the following year? Please explain the rationale for your answer. If yes, what time period or threshold amount should be considered and why?*

For the same reasons stated above, a one-year commitment deadline for reinvesting PI would be counterproductive. If the CDFI Fund believes some such deadline is necessary, two or three years would be sufficient.

5. *Under the CMF Assistance Agreement, CMF's 10-year affordability period applies to projects funded with PI.*
 - a. *Should the long-term affordability period for projects funded with PI be shortened? Please explain the rationale for your answer.*

No. To reiterate, reinvestment of PI is integral to the CMF design and intent. The same affordability period should apply regardless of whether the funds are used for the first time or recycled within the Investment Period. To do so dramatically increases administrative burdens on reporting.

E. CMF Clarification of Rules on Loan Loss Reserves and Loan Guarantees:

OFN supports the continued use of the Loan Loss Reserves and Loan Guarantees as innovative means to further finance affordable homeownership. Recently, we are aware that Loan Loss Reserves have been used as an affordable loan fund to foster



homeownership, and we applaud the CDFI Fund for continuing to seek innovative solutions to achieve affordability.

Unlike many other programs across the federal government, a CMF program awardee's fiscal surety is governed by the statutory leverage ratio, and therefore we do not see a need for further constraint in the form of escrows or coverage limits.

H. CMF Affordable Homeownership Purchase Price Limitation Rules

- 1. Should the CDFI Fund use a different index or indices to set purchase price limits for affordable owner-occupied housing? If yes, please identify and describe them.*

Yes, the area median home purchase price is especially unworkable in low-priced markets, where construction and substantial rehabilitation costs are significantly higher than the median home purchase price. For example, the median home purchase price in Youngstown, Ohio, is \$140,000. In such markets, many homes command low prices because they are in poor condition. It will be appropriate for a Recipient to support the development of higher quality homes that can justify a higher sales price and still be affordable. Nor do the purchase price limits make sense in high-priced markets. For example, the median home purchase price in San Francisco is \$1,375,000, nearly ten times higher than in Youngstown.

Instead, we recommend a home purchase price standard equal to four times the area median income, a level broadly affordable to Families well within the CMF's Eligible Income cap of 120% of AMI. This is same purchase price ceiling for the proposed Neighborhood Homes Investment Act (S. 657 and H.R. 3940), a bipartisan, bicameral bill supported by the Biden-Harris administration that would build and substantially rehabilitate 500,000 ownership homes in distressed communities. A wide range of national organizations, including many representing CDFIs and nonprofit housing organizations, supports this standard.²

- 4. What are other changes to the CMF program that could foster greater use of CMF to support Homeownership activities?*

The 10-year resale restriction is unnecessarily burdensome and should be removed or significantly modified. Once a home is sold to an eligible homebuyer (or an existing owner's home is rehabilitated), the CMF Recipient has no effective control of the property. Resale restrictions – especially for 10 years – may be confusing for homebuyers/owners, and especially first-time homeowners. Moreover, excessive restrictions may discourage prospective buyers seeking to enjoy the usual unrestricted benefits of homeownership.

In particular, the rule states that: "in the event the qualifying homeowner sells the Housing before the end of the 10-year affordability period and the new homeowner does not meet the affordability qualifications set forth in § 1807.400, an amount equal to the amount of the CMF Award investment in the Housing, whether recouped or not, is used to finance

² www.neighborhoodhomesinvestmentact.org



additional Affordable Housing Activities for a qualifying Family in the same income category for Affordable Housing Homeownership....” [emphasis added] There are many reasons why recoupment may not be possible – or even desirable or appropriate - especially if development costs exceed the home’s resale value, as may often be the case in Low Income Areas. In any case, it is not reasonable that a Recipient should assume the uncertain and incalculable risk that it might have to reach into its own pocket if it cannot recoup funds that may not even be available.

A better alternative would be to apply the standard included in the previously noted Neighborhood Homes Investment Act. In this structure, an owner selling within five years of acquiring the home must repay a declining portion of their “gain”³. The repayment obligation equals 50% of gain within the first year and phases out linearly over five years. The repayment obligation would be recorded as a lien, so it will be identified in a standard title search and satisfied at the point of resale. This approach protects against flipping, while also ensuring that homeowners will always have positive home equity, which is important to wealth-building. It also protects mortgage lenders, who want owners to have equity so they will maintain and improve their homes. In a CMF context, this repayment should be treated as PI.

I. CMF Economic Development Activities Compliance Requirements

We enthusiastically support the statutory requirement that CMF awards be available to increase investment and attract private capital to economic development activities. A tenet of the flexibility provided by CMF funding is the ability to foster neighborhoods that support affordable housing, and EDA financing is both a unique and critical tool to accomplish the mission. Stable neighborhoods allow for stable and affordable housing availability.

However, we would not support setting a minimum period of time that the EDA must be financed under a CMF award. It is unreasonable to assume that a CDFI or non-profit affordable housing organization could impose a minimum period of time on a non-profit or private community service provider. Furthermore, establishing such a metric could dissuade eligible EDA projects from accepting CMF award financing.

Closing Recommendations

In closing, we would like to take the opportunity to reiterate several areas where we believe the CDFI Fund could reduce uncertainty in the administration of the CMF Program through reforms of internal processes.

1. Regular Timeline for Issuance of Annual Application and Award Functions –

We recognize that the COVID-19 pandemic has necessarily altered the annual award processes for programs directed by the CDFI Fund, however, we encourage the resumption and long-term commitment to a regular annual schedule for solicitation of

³ Under the tax code, the concept of gain reflects the resale price minus the sum of the initial purchase price, the cost of subsequent improvements, and selling costs.



project applications and awards. Doing so will allow potential CMF applicants to properly manage upcoming projects. The CMF Coalition suggests that a standard June (NOFA) to December (Award) timeline be utilized.

2. **Publicly-Released Annual Reporting** – Transparency is essential, and we recommend that compliance information on the program be made available publicly on an annual basis. The CMF program has very rigorous reporting requirements, and we believe this information should be released so that policymakers, CMF stakeholders, and the public can fully understand the program’s impact.
3. **Public Comment Period for Annual Changes to the CMF Assistance Agreement** - The CMF Assistance Agreement (AA) is the primary document governing the award’s compliance requirements. The CDFI Fund does not provide a comment period for the public to review and suggest changes to the CMF AA. The CMF AA can be improved by simplifying certain sections (most notably Program Income), which would increase awardee awareness and lessen compliance risk from confusion on compliance requirements. We recommend that the CDFI Fund provide an annual CMF Assistance Agreement public comment period on any proposed changes.
4. **Require a Post-Award Debrief** – OFN recommends that the CDFI Fund offer a post-award debrief to those organizations not selected in annual funding rounds. This communication should, at a minimum, include reviewer comments so that those who were not awarded funds will know the associated reasoning. While we are not expecting the CDFI Fund to reveal all information related to the deficiencies of an application, nor compare that application to successful peers, it is critical to strengthen the program in future years by providing guidance on areas of application and project improvement.

Thank you for the opportunity to provide these comments. OFN welcomes the opportunity for improvements to the CMF program. We look forward to working with you to meet our shared goal of addressing our nation’s affordable housing needs. If you have any questions or need additional information, please reach out to me at msbalys@ofn.org.

Sincerely,

Mary Scott Balys
Vice President, Public Policy
Opportunity Finance Network