

## **Disclaimer**

**The attached draft of the Assistance Agreement for the Capital Magnet Fund (CMF) Program is provided for illustrative purposes only and should not be relied upon or used for any other purpose. The draft Assistance Agreement provides boilerplate provisions of the terms and conditions of the Assistance Agreement that may be entered into between the CDFI Fund and an Awardee under the CMF Program.**

**These boilerplate provisions are subject to further modification by the CDFI Fund. The exact terms and conditions of each award will be set forth in the Assistance Agreement that is executed by the CDFI Fund and each Awardee.**

**CAPITAL MAGNET FUND  
ASSISTANCE AGREEMENT**

<b>Awardee:</b> [2]	<b>Capital Magnet Fund Award Number:</b> [1] <b>DUNS Number:</b> <b>Employer Identification Number:</b>
<b>Address:</b>	
<b>Applicable Program:</b> Capital Magnet Fund <b>Date of Applicable NOFA:</b> 03/15/10	<b>Date of Notice of Award:</b> 10/28/10
<p>By signing this Assistance Agreement and in consideration of the mutual covenants, conditions and agreements hereinafter set forth, the parties hereto, by their respective Authorized Representatives, agree to the following: (i) the award of Assistance hereunder shall be administered pursuant to the General Award Terms and Conditions, attached hereto as Schedule 1 and made a material part hereof; and (ii) the award of Assistance shall be further subject to the provisions, terms, conditions, requirements, certifications and representations set forth in all such additional schedules as are indicated by the Checklist of Schedules, below, which are attached hereto and constitute a material part hereof.</p> <p>In witness whereof, the parties hereto do hereby execute and enter into this Assistance Agreement.</p>	
<b>Community Development Financial Institutions Fund</b>	[2]
<b>By:</b> _____ Authorized Representative: David Dworkin Title: Program Manager	<b>By:</b> _____ Authorized Representative: Title:
<b>Effective Date :</b>	
<b>Awardee Information</b>	
<b>Entity Type:</b>	
<b>Eligibility Status: Certified CDFI or Nonprofit Organization</b>	
<b>Assistance</b>	
<b>Total Grant: \$</b>	

## **INSTRUCTIONS FOR COMMUNICATING WITH THE FUND**

### 1. **MyCDFIFund.**

- (a) The Awardee must establish an account through the myCDFIFund interface at the Fund's website at [www.cdfifund.gov](http://www.cdfifund.gov). This interactive tool serves as the primary mode of communication between the Fund and the Awardee including, but not limited to, the maintenance of up-to-date organizational information and the submission of certain information required by this Assistance Agreement.
- (b) Through its myCDFIFund account, the Awardee must maintain complete and current information including, but not limited to, Employer Identification Number (EIN), e-mail and other contact information for the Awardee, its Authorized Representative, Contact Person, fiscal year end and information regarding all Subsidiaries and Affiliates.
- (c) If all or any portion of the Assistance is transferred to any Subsidiary or Affiliate, said Subsidiary or Affiliate must establish its own myCDFIFund account.
- (d) The Awardee must follow the instructions on the myCDFIFund Help page in order to provide updated information and request changes in the myCDFIFund account of the Awardee and each of its Subsidiaries or Affiliates.

### 2. **Fund Communications.** As needed, the Fund generally will contact and provide notices to the Awardee's Authorized Representative and Contact Person via e-mail, using the addresses provided by the Awardee through the respective myCDFIFund account. If other means of communication are necessary or appropriate, the Fund will use the contact information (such as telephone numbers, delivery addresses, facsimile numbers) provided by the Awardee through the respective myCDFIFund account. It is the Awardee's responsibility to ensure that its Subsidiary(ies) and/or Affiliate(s), if any, receive such Fund messages, if applicable.

### 3. **Awardee Communications.**

- (a) **Information to be submitted via facsimile, mail or e-mail.** The Awardee (and each Subsidiary or Affiliate, as applicable) must submit the following to the Fund's Certification, Compliance, Monitoring and Evaluation Unit:
  - Requests for disbursement
  - Requests for Assistance Agreement amendments
- (b) **Information to be submitted through the Awardee's myCDFIFund account.** The Awardee (and each Subsidiary or Affiliate, as applicable) must submit the following to the Fund via the respective myCDFIFund account:
  - Annual Report (Schedule 6-A)

**All communication by the Awardee to the Fund must include the CDFI Fund's Award Number (found on the first page of this Assistance Agreement) and the Awardee's Employer Identification Number (EIN).**

<b>Checklist of Schedules:</b> This Assistance Agreement comprises the following documents (checked as applicable) that are hereby incorporated by reference to the same extent as if fully set forth herein:			
Award Summary; Notice of Award; Instructions for Communicating with the Fund	<b>X</b>		
1. Organization Specific Terms and Conditions	<b>X</b>		
2-A. General Award Terms & Conditions	<b>X</b>		
2-A Opinion of Counsel	<b>X</b>		
6-A. Annual Report	<b>X</b>		
6-B. Annual Report Submission Deadlines	<b>X</b>		
		11. Terms and Conditions related to Regulated Institutions	
		12. Automated Clearinghouse (ACH) form	<b>X</b>

**Schedule 1**  
**Award No.: [1]**  
**Awardee: [2]**

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**CAPITAL MAGNET FUND**  
**AWARDEE SPECIFIC TERMS AND CONDITIONS**

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The provisions set forth below correspond to the specified sections in Schedule 2 (General Award Terms and Conditions) of this Assistance Agreement.

**Section 3.2(a): SERVICE AREA**

[National or State(s) listed in Awardee's application]

**Section 3.2(b): NON-METROPOLITAN AREA**

Applicable       Not Applicable

Non-Metropolitan Area Percentage:

**Section 3.4(c): CONCERTED STRATEGY**

Concerted Strategy Clause:     Applicable       Not Applicable

**Section 3.5: LEVERAGING MULTIPLIER**

Leveraging Multiplier:

**Section 3.5(d): TOTAL MINIMUM COSTS COMMITMENT**

Clause:  Applicable       Not Applicable

**Section 4.1: COMMITMENT**

Committed for use date:                      (2 Years after Effective Date)

**Section 4.2: DISBURSEMENT**

Initial Disbursement date:                      (3 Years after Effective Date)

**Section 4.3: PROJECT COMPLETION**

Project Completion date: (5 years after Effective Date)

**Section 5.1(c): TARGETED INCOMES AND GEOGRAPHIES**

Awardee’s total Eligible Project Costs shall be attributable to housing that meets at least one of the criteria below:

- Low-Income Families %
- Very Low-Income Families %
- Extremely Low-Income Families %
- Located in High Housing Need areas %

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**Schedule 2**  
**Award No.: [1]**  
**Awardee: [2]**

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**GENERAL AWARD TERMS AND CONDITIONS**

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**ARTICLE I  
INCORPORATION BY REFERENCE**

12 C.F.R. Part 1807, as from time to time amended, is incorporated by reference and given the same force and effect as if set out in full text. In the event of any inconsistency between 12 C.F.R. Part 1807 and the terms set forth in these General Award Terms and Conditions, all Schedules and any amendments hereto, the provisions of 12 C.F.R. Part 1807 shall govern.

**ARTICLE II  
DEFINITIONS**

When used in this Assistance Agreement (including all schedules and any amendments hereto), the following terms shall have the meanings specified below. Capitalized terms used, but not defined herein, shall have the respective meanings assigned to them in the Act, the Capital Magnet Fund Regulations, the Notice of Funding Availability and/or the Application (as such terms are hereinafter defined).

2.1 Act. "Act" shall mean section 1131 of the Housing and Economic Recovery Act of 2008, as amended (Pub Law 110-289);

2.2 Advance. "Advance" shall mean payment of Assistance by electronic funds transfer to Awardee to be applied in accordance with the approved, eligible uses of Assistance defined in Section 3.3 of this Agreement.

2.3 Affiliate. "Affiliate" shall mean any company that Controls, is Controlled by, or is under common Control with the Awardee, as defined in 12 C.F.R. § 1807.104(b).

2.4 Affordability Period. "Affordability Period" shall mean the period beginning when Awardee has achieved Project Completion for each CMF funded project and includes the full ten consecutive years after each completed project during which the Awardee must ensure the affordability requirements, as set forth in 12 C.F.R. Part 1807.400 et seq., are met, or such other period as may be established by the Fund.

2.5 Affordable Housing. "Affordable Housing" shall mean rental or for sale single-family or multi-family housing that meets the requirements set forth in 12 C.F.R. § 1807.400 et seq.

2.6 Affordable Housing Fund. "Affordable Housing Fund" shall mean a loan, grant, or investment fund, managed by the Awardee, whose capital is used to finance Affordable Housing Activities, as defined in 12 C.F.R. § 1807.104(e).

2.7 Applicant. "Applicant" shall mean the entity that submitted an Application.

2.8 Application. "Application" shall mean the Fund's Capital Magnet Fund application form, including any written or verbal information in connection therewith and any attachments,

appendices and/or written or verbal supplements thereto, submitted by the Awardee to the Fund, in response to the applicable NOFA.

2.9 Assistance. “Assistance” shall mean the award made pursuant to this Agreement, which is in the form of a grant.

2.10 Assistance Agreement. “Assistance Agreement” or “Agreement” shall mean the Assistance Agreement between the Fund and the Awardee, of which these General Award Terms and Conditions are a material part, including the cover signature page, any schedules and attachments hereto, as the Agreement may, from time to time, be amended in accordance with its terms.

2.11 Awardee. “Awardee” shall mean the Applicant selected by the CDFI Fund to receive a Capital Magnet Fund Award and listed on the cover signature page of this Assistance Agreement.

2.12 Capital Magnet Fund. “Capital Magnet Fund” or “CMF” shall mean the program authorized by section 1131 of the Act, Public Law No. 110-289, and implemented under 12 C.F.R. Part 1807.

2.13 Capital Magnet Fund Proposal. “Capital Magnet Fund or CMF Proposal” shall mean the proposal submitted by the Awardee as, or in connection with, its Application.

2.14 Capital Magnet Fund Regulations. “Capital Magnet Fund Regulations” or “CMF Regulations” shall mean the regulations set forth in 12 C.F.R. Part 1807.

2.15 Closing. “Closing” shall mean any proper execution and delivery of the Agreement and/or any other document connected herewith and/or any disbursement of Assistance by electronic funds transfer to an account designated by the Awardee. Pursuant hereto, there will be an initial Closing at which, for example, the Agreement and documents connected herewith will be properly executed and delivered, subsequent to which an initial disbursement connected herewith will be made. Subsequently, there may be a subsequent Closing or Closings at which subsequent disbursements connected herewith will be made and any documents in addition to the Agreement that may be connected with such disbursements shall be properly executed and delivered by the Awardee to the Fund.

2.16 Committed. “Committed” shall mean that the Awardee is able to demonstrate, in written form and substance that is acceptable to the CDFI Fund, a commitment for use pursuant to 12 C.F.R. § 1807.501.

2.17 Community Development Financial Institution or CDFI. “Community Development Financial Institution” or “CDFI” shall mean any entity certified as a CDFI by the Fund pursuant to 12 C.F.R. § 1805.201 of the Community Development Financial Institutions Program Regulations, with such certification indicating that the entity meets the CDFI eligibility

requirements set forth in the Community Development Financial Institutions Program Regulations, including, without limitation, 12 C.F.R. § 1805.200 thereof.

2.18 CDFI Fund or Fund. “CDFI Fund” or “Fund” shall mean the Community Development Financial Institutions Fund, an office of the U.S. Department of Treasury, established under the Community Development Banking and Financial Institutions Act of 1994, as amended 12 U.S.C. 4701 et seq.

2.19 Community Service Facility. “Community Service Facility” shall mean the physical structure in which service programs for residents or service program for the broader community (including, but not limited to, health care, childcare, educational programs including literacy and after school programs, job training, food and nutrition services, cultural, and/or social services) operate which, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area.

2.20 Concerted Strategy. “Concerted Strategy” shall mean a formal planning document that evidences the connection between Affordable Housing Activities and Economic Development Activities or Community Service Facilities. Such documents include, but are not limited to, a comprehensive, consolidated, or redevelopment plan, or some other local or regional planning document adopted or approved by the jurisdiction.

2.21 Control. “Control” shall mean that described in 12 C.F.R. § 1807.104(q).

2.22 Depository Institution Holding Company. “Depository Institution Holding Company” shall mean means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(w)(1).

2.23 Development. “Development” shall mean land acquisition, demolition of existing facilities, and construction of new facilities, which may include site improvement, utilities development and rehabilitation of utilities, necessary infrastructure, utility services, conversion, and other related activities.

2.24 Economic Development Activity. “Economic Development Activity” shall mean the development, preservation, rehabilitation, or purchase of Community Service Facilities and/or other physical structures in which neighborhood-based businesses operate which, In Conjunction With Affordable Housing Activities, implements a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area.

2.25 Eligible-Income. “Eligible-Income” shall mean that described in 12 C.F.R. § 1807.104(u).

2.26 Effective Date. “Effective Date” shall mean the date that this Assistance Agreement is effective; such date is determined by the Fund after the Awardee has returned an executed original of this Assistance Agreement, along with all required supporting documentation,

including either the opinion of counsel (Schedule 2-A of this Agreement) or the Certificate of Good Standing (Schedule 2-B), as applicable.

2.27 Eligible Project Costs. “Eligible Project Costs” shall mean Leverage Costs plus those costs funded directly by a CMF award, exclusive of Operations.

2.28 Extremely Low-Income. “Extremely Low-Income” shall mean that described in 12 C.F.R. § 1807.104(w).

2.29 Families. “Families” shall mean households as described in 12 C.F.R. § 1807.104(x).

2.30 High Housing Need. “High Housing Need” shall mean census tracts that have a score of at least 18 on the vacancy index or foreclosure index in HUD’s Neighborhood Stabilization Data.

2.31 HOME Program. “HOME Program or HOME” shall mean the HOME Investment Partnership Program set forth in the HOME Investment Partnerships Act under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. § 12701 et seq.

2.32 Homeownership. “Homeownership” shall mean that described in 12 C.F.R. § 1807.104(z).

2.33 Housing. “Housing” shall mean single- and multi-family residential units, including, but not limited to, manufactured housing and manufactured housing lots, permanent housing for disabled and/or homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO), 24 C.F.R. Part 92.258.

2.34 HUD. “HUD” shall mean the Department of Housing and Urban Development established under the Department of Housing and Urban Development Act of 1965, 42 U.S.C. §§ 3532-3537.

2.35 In Conjunction With. “In Conjunction With” shall mean physically proximate to Affordable Housing and reasonably available to residents of Affordable Housing. For a Metropolitan Area, In Conjunction With means located within the same census tract or within two miles of the Affordable Housing. For a Non-Metropolitan Area, In Conjunction With means located within the same county, township, or village, or within twenty miles of the Affordable Housing.

2.36 Insider. “Insider” shall mean any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of the Awardee or of any Affiliate the Awardee.

2.37 Insured Credit Union. “Insured Credit Union” shall mean any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund by the National Credit Union Administration pursuant to authority granted in 12 U.S.C. § 1783 et seq.

2.38 Investment Period. “Investment Period” shall mean the period beginning with the Effective Date and ending on the fifth year anniversary of the Effective Date. If the conditions set forth in Article IV have not been met by the fifth year anniversary of the Effective Date, the Investment Period shall continue until the conditions in Article IV have been met, or such other period as may be established by the Fund in writing.

2.39 Insured Depository Institution. “Insured Depository Institution” shall mean any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation, 12 U.S.C. § 1813(c)(2).

2.40 Leverage Costs. “Leveraged Costs” shall mean those costs as described in 12 C.F.R. § 1807.500.

2.41 Loan Guarantee. “Loan Guarantee” means an agreement to indemnify the holder of a loan all or a portion of the unpaid principal balance in case of default by the borrower.

2.42 Loan Loss Reserves. “Loan Loss Reserves” shall mean funds that the Applicant or Awardee will set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable, or for related purposes that the CDFI Fund deems appropriate.

2.43 Low-Income. “Low-Income” shall mean that described in 12 C.F.R. § 1807.104(jj).

2.44 Low-Income Area or LIA. “Low-Income Area” or “LIA” shall mean a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located. With respect to a census tract or block numbering area located within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater. In the case of a census tract or block numbering area located outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide Non-Metropolitan Area median family income or the national Non-Metropolitan Area median family income, whichever is greater.

2.45 Material Event. “Material Event” shall mean an occurrence that affects the Awardee’s strategic direction, mission, or business operation; its status as a certified CDFI, or Nonprofit Organization and/or its compliance with the terms and conditions of this Assistance Agreement.

2.46 Material Weakness. “Material Weakness” shall have the same meaning ascribed by the American Institute of Certified Public Accountants, meaning a reportable condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be

material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

2.47 Metropolitan Area. “Metropolitan Area” shall mean an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 C.F.R., 1949-1953 Comp., p. 758), as amended.

2.48 Multi-family housing. “Multi-family housing” shall mean residential properties consisting of five or more dwelling units, such as a condominium unit, cooperative unit, apartment or townhouse.

2.49 myCDFIFund. “myCDFIFund” means an account established through the Fund’s website, through which the Awardee and the Fund will communicate.

2.50 Non-Metropolitan Area. “Non-Metropolitan Area” shall mean a county or adjacent counties not contained within either a Consolidated Metropolitan Statistical Area (CMSA) or a Primary Metropolitan Statistical Area (PMSA), as such areas are defined in OMB Bulletin No. 99-04, with respect to the 2000 census. Non-Metropolitan Counties can be identified in the CDFI Fund's mapping system (CIMS), and are also listed on the CDFI Fund's website.

2.51 Nonprofit Organization. “Nonprofit Organization” shall mean any corporation, trust, association, cooperative, or other organization that is (i) designated as a nonprofit or not-for-profit entity under the laws of the organization’s State of formation; and (ii) exempt from Federal income taxation pursuant to the Internal revenue Code of 1986.

2.52 Notice of Funds Availability or NOFA. “Notice of Funds Availability” or “NOFA” shall mean the notice published by the Fund in the Federal Register that announced the availability of funds for the Capital Magnet Fund (refer to the cover form of this Assistance Agreement for the date of the NOFA that is applicable to this Assistance Agreement).

2.53 Operations. “Operations” shall mean all allowable expenses as defined by Office of Management and Budget (OMB) Circular A-122, “Cost Principles For Non-Profit Organizations,” and OMB Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” incurred by the Awardee in the administration, operation, and implementation of a CMF award;

2.54 Participating Jurisdiction. “Participating Jurisdiction” shall mean a jurisdiction designated by HUD, as a participating jurisdiction under the HOME Program in accordance with the requirements of 24 C.F.R. 92.105;

2.55 Performance Period. “Performance Period” shall mean the period beginning with the Effective Date and continuing until such time as the conditions in Section 9.11 have been met, or such other time established by the Fund in writing.

2.56 Preservation. “Preservation” shall mean that described in 12 C.F.R § 1807.104(tt).

2.57 Project Completion. “Project Completion” shall mean that described in 12 C.F.R. § 1807.104(uu).

2.58 Program Income. “Program Income” shall mean gross income earned by an Awardee that is directly generated by a supported activity or earned as a result of the Fund’s award of assistance in the form of grant assistance. Program Income includes, but is not limited to, gross income from: fees for services performed that were funded or supported by the Fund’s grant assistance; the use or rental of real or personal property acquired with or supported by the Fund’s grant assistance; license fees and royalties on the patents and copyrights on processes or works that were funded or supported by the Fund’s grant assistance; and payments of principal received on loans and interest earned on loans made using the Fund’s grant assistance. Interest earned on Advances is not Program Income.

2.59 Purchase. “Purchase” shall mean to provide direct financing to a homeowner to acquire ownership in fee simple title or a 99- year leasehold interest in a one-to-four unit dwelling or in a condominium unit, through an exchange of money.

2.60 Rehabilitation. “Rehabilitation” shall mean any repairs and or capital improvements that contribute to the long-term preservation, current building code compliance, habitability, sustainability, energy efficiency of affordable housing.

2.61 Revolving Loan Fund. “Revolving Loan Fund” shall mean a pool of funds managed by the Awardee wherein repayments on Affordable Housing Activities loans, Economic Development Activities loans and/or Community Services Facilities loans are used to finance additional loans.

2.62 Risk-Sharing Loan. “Risk-Sharing Loan” shall mean loans for Affordable Housing Activities and/or Economic Development Activities in which the risk of borrower default is shared by the Applicant or Awardee with other lenders (e.g., participation loans).

2.63 Service Area. “Service Area” shall mean the geographic area in which the Applicant proposes to use CMF funding, and the geographic area approved by the CDFI Fund in which the Awardee shall use CMF funding as set forth in its Assistance Agreement.

2.64 Single-family housing. “Single-family housing” shall mean a one- to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.

2.65 State. “State” shall mean the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Island, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory of the United States.

2.66 State-Insured Credit Union. “State-Insured Credit Union” shall mean any credit union that is regulated by, and/or the member accounts of which are insured by, a State agency or instrumentality.

2.67 Subsidiary. “Subsidiary” shall mean any company which is owned or Controlled directly or indirectly by another company.

2.68 Tribal Government. “Tribal Government” shall mean the federally recognized governing body (including a tribal council) of a Native American tribe or Alaska Native village, as applicable.

2.69 Underserved Rural Area. “Underserved Rural Area” shall mean that described in 12 C.F.R. § 1807.104(eee).

2.70 Very Low-Income. “Very Low-Income” shall mean that described in 12 C.F.R. § 1807.104(fff).

### **ARTICLE III THE ASSISTANCE**

3.1 The Assistance. At all Closings connected herewith, including without limitation, any initial Closing and any subsequent Closing(s), and subject to all of the terms and conditions hereof and in reliance upon all representations, warranties, assurances, certifications and agreements contained herein, the Fund hereby agrees to provide to the Awardee, subject to the availability of funds, and the Awardee hereby agrees to accept from the Fund, the Assistance in the form of a grant.

3.2 Geographic Requirements. The Awardee shall use the Assistance, as set forth in Section 3.4, and in the manner below.

(a) Awardee shall use the Assistance in the Service Area designated in Schedule 1.

(b) As Applicable, the Awardee shall ensure that the percentage of total Eligible Project Costs, as set forth in Schedule 1, is used to finance or support Affordable Housing located in Non-Metropolitan Areas.

3.3 Eligible Uses of the Assistance. The Awardee shall use the Assistance only as follows:

(a) To support Affordable Housing Activities, Economic Development Activities or Community Service Facilities in the following manners:

(i) To provide Loan Loss Reserves;

- (ii) To capitalize a Revolving Loan Fund;
- (iii) To capitalize an Affordable Housing Fund;
- (iv) To capitalize a fund to support Economic Development Activities or Community Service Facilities;
- (v) For Risk-Sharing Loans;
- (vi) For the Awardee's Operations.

(b) Awardee shall use no more than 5 percent of its Assistance for the Awardee's Operations.

(c) Awardee shall use no more than 30 percent of its Assistance to capitalize a fund to support Economic Development Activities or Community Service Facilities.

3.4 Purpose of Assistance. Awardee shall use the Assistance for the eligible activities, as set forth in Section 3.3, for the following purposes and in the following manners:

(a) The Development, Preservation, Rehabilitation or Purchase of Affordable Housing for primarily Extremely Low-Income, Very Low-Income and Low-Income families; and

(b) Economic Development Activities or Community Service Facilities.

(c) As applicable, the Awardee shall demonstrate that the Multi-family Affordable Housing Activities, Economic Development Activities and Community Service Facilities are part of a Concerted Strategy.

3.5 Leveraging of Assistance. Awardee shall demonstrate that it leveraged, over its CMF funded portfolio, the Assistance resulting in Eligible Project Costs that total the multiplier set forth in Schedule 1 of this Assistance Agreement. Leveraged Costs are costs that exceed the dollar amount of the Awardee's CMF contribution to each CMF-funded activity with the following limitations:

(a) No costs attributable to Operations may be reported as Leveraged Costs.

(b) No costs attributable to prohibited uses as identified in 12 C.F.R. § 1807.302(a) and § 1807.302(c) may be reported as Leveraged Costs.

(c) All costs attributable to Affordable Housing Activities reported as Leveraged Costs must be for housing units that qualify as Affordable Housing under 12 C.F.R. § 1807.401 or § 1807.402 for Eligible-Income Families.

(d) As applicable, for each CMF funded project, Awardee shall ensure that 5 percent of the total Eligible Project Costs of that project constitute CMF funding.

3.6 Restrictions on Use of Assistance. Awardee shall use the Assistance in accordance with the restrictions below.

(a) The Awardee's activities under 3.3(a) shall not include the use of Assistance for the following:

- (i) political activities;
- (ii) advocacy;
- (iii) lobbying, whether directly or through other parties;
- (iv) counseling services (including homebuyer or financial counseling);
- (v) travel expenses;
- (vi) preparing or providing advice on tax returns;
- (vii) emergency shelters (including shelters for disaster victims);
- (viii) nursing homes;
- (ix) convalescent homes;
- (x) student dormitories;
- (xi) projects consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises; or
- (xii) projects consisting of farming, as set forth in 12 C.F.R. § 1807.302(c)(2).

(b) The Awardee shall not distribute Assistance to any Affiliate or Subsidiary, other than for the eligible uses in Section 3.3, without the Fund's prior written consent.

(c) The Awardee shall not use any Assistance to pay any costs incurred in connection with (i) any defense against any claim or appeal of the United States Government, any agency or instrumentality thereof (including the Fund), against the Awardee, or (ii) any prosecution of any claim or appeal against the United States Government, any agency or instrumentality thereof (including the Fund), which the Awardee instituted or in which the Awardee has joined as a claimant.

(d) The Awardee may not use any Assistance provided hereunder for the purpose of covering expenses, including consultant fees, related to the preparation of an application for certification or funding to the CDFI Fund.

(e) The Awardee may not use any Assistance provided hereunder to cover the costs of organized fund raising (including financial campaigns, solicitations of gifts and requests, grant writing, and similar expenses incurred to raise capital or obtain contributions) regardless of the purpose for which the funds will be used. For additional information regarding fund raising and investment management costs, please refer to OMB Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments) or OMB Circular A-122 (Cost Principles for Non-Profit Organizations), as applicable.

(f) The Awardee shall not use any Assistance provided hereunder to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State, local or Tribal government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State, local or Tribal government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. § 1352.

3.7 Closing(s). The obligation of the Fund to provide any or all of the Assistance to the Awardee at any Closing connected herewith is subject to the fulfillment, as determined by the Fund, in its sole discretion, of the following conditions precedent, each of which shall be fulfilled prior to any Closing(s) connected herewith, to the satisfaction of the Fund.

- (a) Performance; Representations and Warranties. As of the initial Closing, (i) the Awardee shall have performed and complied with all applicable agreements and conditions contained herein required to be performed or complied with by it and (ii) the representations and warranties set forth in this Agreement and the Assurances and Certifications contained in the Application shall be true and correct in all material respects.
- (b) (i) Opinion of Awardee Counsel. Unless otherwise determined by mutual agreement of the Fund and the Awardee, the Fund shall have received from counsel for the Awardee, a favorable opinion satisfactory in scope, form, and substance to the Fund and the Fund's counsel, with respect to the matters set forth on Schedule 2-A. Such opinion shall also cover such other matters incident to the transactions contemplated hereby as the Fund or its counsel may require. The Awardee must provide such opinion of counsel prior to the initial Closing and a new opinion for each subsequent Closing.
- (c) Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated by the Assistance Agreement and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Fund, and the Fund shall have received from the Awardee all such counterpart originals or certified or other documents as the Fund may reasonably request.

3.8 Disbursement of Assistance.

- (a) If, at any Closing connected herewith, any of the conditions specified herein or in any document connected herewith shall not have been fulfilled to the satisfaction of the Fund, the Fund will not effect such Closing until such time as said conditions shall be fulfilled to the satisfaction of the Fund.
- (b) The Fund will not disburse any Assistance pursuant hereto until the Awardee has satisfied all conditions precedent to receiving such Assistance, including, but not

limited to, the Awardee being in compliance (or being noncompliant but not determined by the Fund to be in default) with the terms and conditions of any prior award from the Fund, and the Awardee certifying that it has identified at least one project that meets one or more of the Categorical Exclusions in 12 C.F.R. § 1815.110, or involves actions that do not normally require an Environmental Impact Statement (EIS) as defined in 12 C.F.R. § 1815.102(a)(7).

- (c) In order to receive disbursement of award proceeds, the Awardee first must provide the Fund with a complete and accurate Automated Clearinghouse (ACH) form (see Schedule 12 of this Assistance Agreement) related to the bank account into which the Awardee wants the award proceeds deposited, prior to each disbursement. If the ability to provide banking information through myCDFIFund is available, this information must be updated prior to each disbursement. The Awardee is responsible for the accuracy of its banking information as reflected on the ACH form or in myCDFIFund, if applicable. In the event that the Awardee provides inaccurate, non-current or incomplete banking information, the Fund is not responsible for reimbursement or payment to the Awardee for any Assistance transferred to an incorrect account.

3.9 Authorized Uses of Program Income. Any Program Income derived by the Awardee from the Assistance provided under the terms of the Assistance Agreement shall be used by the Awardee solely to further the objectives of its Application.

3.10 Restrictions on the Use of Program Income.

- (a) The Awardee shall not use any Program Income in a manner other than as authorized hereunder, unless the Awardee consults with and obtains the prior written approval of the Fund.
- (b) The Awardee shall not use any Program Income earned hereunder to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. § 1352.
- (c) The Awardee shall not use any Program Income to pay any costs incurred in connection with (i) any defense against any claim or appeal of the United States Government, any agency or instrumentality thereof (including the Fund), against the Awardee, or (ii) any prosecution of any claim or appeal against the United States Government, any agency or instrumentality thereof (including the Fund), which the Awardee instituted or in which the Awardee has joined as a claimant.

**ARTICLE IV  
COMMITMENT, DISBURSEMENT AND PROJJECT COMPLETION**

4.1 Commitment. Awardee shall demonstrate that the Assistance is Committed for use by the date set forth in Schedule 1. Commitment is demonstrated by evidence of an executed written, legally binding agreement under which Assistance will be provided to a qualified homebuyer, a developer or project sponsor for Affordable Housing Activities or Economic Development Activities for an identifiable project under which the following occurs:

- (a) Construction can reasonably be expected to start within 12 months of the agreement date; or
- (b) Property title will be transferred within six months of the agreement date.

4.2 Disbursement. Awardee shall make an initial disbursement of the Assistance for Affordable Housing Activities or Economic Development Activities by the date set forth in Schedule 1.

4.3 Project Completion. Once a CMF-funded project has been completed, Awardee shall ensure that it is placed into service by the date set forth in Schedule 1. Project Completion occurs as set forth in 12 C.F.R. § 1807.503, and as determined by the Fund.

**ARTICLE V  
AFFORDABILITY REQUIREMENTS**

5.1 Affordability General. Awardee shall ensure the following affordability qualifications:

(a) For each housing unit for which Assistance is used to finance or support, Awardee shall ensure that 100 percent of total Eligible Project Costs are attributable to housing units that meet the affordability qualifications for Eligible-Income Families.

(b) Awardee shall ensure that, at a minimum, greater than 50 percent of the total Eligible Project Costs are attributable to housing units that meet the affordability qualifications for Low-Income, Very Low-Income or Extremely Low-Income Families, as set forth in 12 C.F.R. Part 1807.400 et seq.

(c) Notwithstanding the above, Awardee shall ensure that its total Eligible Project Costs are attributable to housing units located in a High Housing Need area or that meet the affordability qualifications in the percentages set forth in Schedule 1.

5.2 Rental Affordability Qualifications. Awardee shall ensure the following are met for ten years beginning at Project Completion:

(a) For each Multi-family rental housing project for which all or a portion of Assistance is used or supported, at least 20 percent of the housing units in each project must be occupied by Low-Income, Very Low-Income, or Extremely Low-Income Families.

(i) The maximum rent of each affordable unit is a rent that does not exceed:

(1) For an Eligible-Income Family, 30 percent of the annual income of a family whose annual income equals 120 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(2) For a Low-Income Family, 30 percent of the annual income of a family whose annual income equals 80 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(3) For a Very Low-Income Family, 30 percent of the annual income of a family whose annual income equals 50 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD; or

(4) For an Extremely Low-Income Family, 30 percent of the annual income of a family whose annual income equals 30 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD.

(ii) The monthly allowances for utilities and services is in compliance with the applicable Participating Jurisdiction, city, county or State public housing authority, as set forth in 12 C.F.R. § 18077.401(c).

(b) A tenant's income is determined annually in the manner set forth in 12 C.F. R. 1807.401 et seq.; and

(c) The affordable housing rental provisions of 12 C.F.R. Part 1807.401 et seq. are otherwise met.

5.3 Homeownership Affordability Qualifications. Awardee shall ensure that the following homeownership affordability requirements, as set forth in 12 C.F.R. Part 1807.402 et seq., are met for ten years beginning at Project Completion:

(a) The housing must be Single-family housing.

(b) The housing price does not exceed 95 percent of the median purchase price for the area as used in the HOME Program and as determined by the applicable Participating Jurisdiction.

(c) The housing must be the principal residence of the family and meet the definition of "Homeownership" as defined in 12 C.F.R. § 1807.104(z).

- (d) Resale strategies are imposed as described in 12 C.F.R. § 1807.402(a)(5).
- (e) If applicable, CMF-funded rental units are converted to Homeownership units in accordance with 12 C.F.R. § 1807.402(e). and
- (f) The affordable homeownership provisions of 12 C.F.R. Part 1807.402 et seq. are otherwise met.

5.4 Tracking Affordability. Once Awardee achieves Project Completion for any given project, the Awardee shall designate a certain number of housing units attributable to that project for which it is responsible for tracking during the Affordability Period. The Awardee shall ensure that the housing units meet the affordability requirements for no less than ten years, beginning after Project Completion and at initial occupancy, by ensuring the following:

(a) For rental housing units:

- (1) Each year during the Affordability Period, the tenant's income is re-examined annually to determine if the family remains income eligible.
- (2) Each year during the Affordability Period, the housing adheres to the applicable Participating Jurisdiction's maximum monthly allowances for utilities and services (excluding telephone).
- (3) Each year during the Affordability Period, any increase in rents adheres to the rent limitations and notice requirements set forth in 12 C.F.R. § 1807.401(a) and (e).

(b) For homeownership housing units:

- (1) Each year during the Affordability Period, the original or a subsequent qualifying family owns and resides in the housing.
- (2) Each year during the Affordability Period, resale strategies in 12 C.F.R. § 1807.402(a)(5) are imposed should the housing be sold to a non-qualifying family.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES**

The Awardee hereby represents and warrants to the Fund the following:

6.1 Organization, Standing and Powers. The Awardee is a validly existing Tribal Government, instrumentality of a state, or an entity validly existing and in good standing under

federal law or the laws of the state or Tribe of its legal formation and has all requisite power and authority to own and operate its assets and properties, to carry on its business as it is now being conducted and to carry out its proposed, hereby authorized use(s) of the Assistance provided hereunder.

6.2 Qualification. The Awardee is duly qualified, in good standing and authorized to transact business in each jurisdiction where the conduct of the Awardee's business, the carrying out of its proposed, hereby authorized use(s) of the Assistance to be provided hereunder or the ownership of its assets and properties requires such qualification, or, if not so qualified, the Awardee's failure so to qualify shall not have a material adverse effect on the Awardee, its financial condition or operations and will not impair the Awardee's ability to carry out its proposed, hereby authorized use(s) of the Assistance to be provided hereunder or its right to enforce any material agreement to which it is a party. The Awardee has performed and complied with all applicable agreements and conditions required by the Assistance Agreement to be performed or complied with by it before or at the Closing.

6.3 Authorization; Consents. The execution, delivery and performance by the Awardee of the Assistance Agreement and the carrying out of its proposed, hereby authorized use(s) of the Assistance provided hereunder are within the Awardee's corporate powers and have been duly authorized by all requisite corporate action. No consent, license, approval, authorization, qualification, exemption, franchise, designation, permit or order of, notice to or declaration or filing with, any third party, including, without limitation, any governmental entity (other than the Fund), is required in connection with the conduct of the Awardee's business or in connection with the valid execution, delivery and performance by the Awardee of the Assistance Agreement or any documents or agreements connected herewith or the carrying out of the proposed, hereby authorized use(s) of the Assistance to be provided hereunder.

6.4 Execution and Delivery; Binding Agreement. The Assistance Agreement and all documents connected therewith have been or will be, on or before the Effective Date, duly authorized, executed and delivered on behalf of the Awardee and constitute, on or before the Effective Date, legal, valid and binding obligations of the Awardee enforceable in accordance with their respective terms.

6.5 No Conflicts. The execution, delivery and performance by the Awardee of the Assistance Agreement and the carrying out of the proposed, hereby authorized uses(s) of the Assistance provided hereunder shall not result in any violation of and shall not conflict with, or result in a breach of any of the terms of, or constitute a default under, any provision of Federal or State law to which the Awardee is subject, the Awardee's incorporation, charter, organization, formation or otherwise establishing documentation, bylaws or any agreement, judgment, writ, injunction, decree, order, rule or regulation to which the Awardee is a party or by which it is bound.

6.6 Litigation. The Awardee has neither actual nor constructive knowledge of any suit, action, proceeding or investigation pending or threatened that questions the validity of the Assistance Agreement or any action taken or to be taken pursuant hereto or contemplated hereby

including, but not limited to, the carrying out of the proposed, hereby authorized use(s) of the Assistance to be provided hereunder.

6.7 Compliance with Other Instruments. The Awardee is not, and at any Closing connected herewith will not be, in violation of any provision of its incorporation, charter, organization, formation or otherwise establishing documents, or any loan agreement or other material agreement to which it is a party. The Awardee is not, and at any Closing connected herewith will not be, in violation of any instrument, judgment, decree, order, statute, rule or governmental regulation applicable to it, the violation of which might have a material adverse effect on the business, affairs, operations, or condition of the Awardee.

6.8 Disclosure. Neither the Assistance Agreement nor any attachment thereto, nor any certification or other document referenced or incorporated herein or therein and furnished to the Fund by the Awardee contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. The Awardee has disclosed, in writing, to the Fund all facts that might reasonably be expected to result in a material adverse effect upon the Awardee's ability either to conduct its principal business or to carry out its proposed and herein authorized use of the Assistance to be provided hereunder. The Awardee has not knowingly and willfully made or used a document or writing containing any false, fictitious or fraudulent statement or entry as part of its correspondence or communication with the Fund. The Awardee acknowledges, under 18 U.S.C. § 1001, that if it knowingly and willfully makes or uses such document or writing it or its employee(s) or agents shall be fined or imprisoned for not more than five years, or both.

6.9 Taxes; Debts; Bankruptcy. The Awardee is not delinquent on any debts owed to Federal, State, local or Tribal governments including, but not limited to, amounts due under the Internal Revenue Code, and has never filed for bankruptcy nor had a conservator appointed. The Awardee has neither actual nor constructive knowledge of any pending or anticipated bankruptcy filings or conservatorship appointments on its behalf.

6.10 Debarment, Suspension and Other Responsibility Matters. Pursuant to 31 C.F.R. 19.335, neither the Awardee nor any of its principals (as defined by 31 C.F.R. 19.995): (a) are presently excluded or disqualified from covered transactions by any Federal department or agency; (b) within the three-year period preceding the date of this Assistance Agreement, have been convicted of or had a civil judgment rendered against them for any of the offenses listed in 31 C.F.R. 19.800(a); (c) are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in 31 C.F.R. 19.800(a); or (d) within the three-year period preceding the date of this Assistance Agreement, have had one or more public transactions (Federal, State, or local) terminated for cause or default.

6.11 Status as a CDFI or Nonprofit Organization.

(a) For CDFIs: Since its certification as a CDFI, the Awardee has neither actual nor constructive knowledge of any changes that may adversely affect its status as a certified CDFI.

(b) For Nonprofit Organizations:

- (i) The Awardee has neither actual nor constructive knowledge of any events or pending matters that may adversely affect its status as a nonprofit or not-for-profit entity under the laws of the Awardee's state of formation.
- (ii) The Awardee has neither actual nor constructive knowledge that may adversely affect its Federal income taxation pursuant to the Internal Revenue Code of 1986.

6.12 Environmental Review Certification and Notification.

(a) At the time of closing, and as applicable each time the Awardee identifies a new project for which it would like to use the Assistance, the Awardee certifies the following:

- (i) The Awardee has identified one or more categorical exclusions, as set forth in 12 C.F.R. § 1815.110, that apply to the Awardee's proposed CMF project(s); and
- (ii) The Awardee has determined that the proposed project(s) does not involve actions that normally require an Environmental Impact Statement (EIS) as defined in 12 C.F.R. § 1815.102(a)(7).

(b) Each time the Awardee identifies a new project for which it would like to use the Assistance but cannot make the certifications in Section 6.12(a) above, the Awardee shall complete and submit to the Fund the Environmental Review Notification Report (form to be provided), but no later than 90 days prior to the Awardee's Committed date set forth in Section 4.1 of the Assistance Agreement.

**ARTICLE VII  
COVENANTS AND AGREEMENTS OF THE AWARDEE**

Until the termination of the Assistance Agreement pursuant to Section 9.11 of the General Award Terms and Conditions (except with respect to Section 7.4 hereof which shall remain in effect for three years following the termination hereof pursuant to said section), the Awardee shall duly perform and observe each and all of the following covenants and agreements:

7.1 Compliance with Government Requirements. In carrying out its responsibilities pursuant to the Assistance Agreement, the Awardee shall comply with all applicable Federal, State, local

and Tribal laws, regulations, ordinances, Office of Management and Budget (OMB) Circulars, and Executive Orders.

7.2 Fraud, Waste and Abuse. If the Awardee becomes aware at any time of the existence or apparent existence of fraud, waste or abuse of Assistance provided pursuant to the Assistance Agreement, the Awardee shall promptly report such incidence(s) to the Office of Inspector General of the U.S. Department of the Treasury.

7.3 Right to Inspect and Audit. The Awardee shall submit such financial and activity reports, records, statements and documents as may be required by the Fund and the U.S. Department of the Treasury to ensure compliance with the Assistance Agreement. The United States Government including, but not limited to, the U.S. Department of the Treasury and the Comptroller General, and their duly authorized representatives, shall have full and free access during reasonable business hours to the Awardee's offices and facilities and all books, documents, records and financial statements relevant to the Assistance provided hereunder. The Awardee shall permit any of these authorities to copy such documents as they deem appropriate, except as proscribed in 12 C.F.R. § 1805.804(f)(5). The purposes of such inspections and/or audits will include, but not be limited to, ensuring that representations, warranties, covenants, and/or certifications are accurate. The Fund will, consistent with applicable law, maintain the confidentiality of all financial and other proprietary information disclosed to the Fund pursuant to this section.

7.4 Retention of Records. The Awardee shall comply with all record retention requirements set forth in OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Institutions (2 C.F.R. 215), and OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments. Pursuant to this Circular, the Awardee shall retain all financial records, supporting documents, statistical records and any other records pertinent to the Assistance for a period of three years after the conditions in Section 9.11 have all been met.

7.5 General Data Collection. The Awardee shall maintain such records as reasonably may be necessary to:

- (a) disclose the manner in which the Assistance provided hereunder is used;
- (b) demonstrate compliance with the requirements of the Act, CMF Program Regulations and the Assistance Agreement; and
- (c) evaluate the accomplishments of the CMF.

7.6 Equal Credit Opportunity Act. The Awardee shall provide its products and services in a manner that is consistent with the Equal Credit Opportunity Act (15 U.S.C. § 1691), to the extent that the Awardee is subject to the requirements of such Act.

7.7 Maintain CDFI Certification (if applicable) or Nonprofit Organization.

(a) If the Awardee is certified as a CDFI as of the date of this Assistance Agreement: The Awardee shall do all things necessary to preserve, renew and keep in full force and effect its certification as a CDFI.

(b) If the Awardee is a Nonprofit Organization as of the date of this Assistance Agreement: The Awardee shall do all things necessary to maintain its status as a Nonprofit Organization.

7.8 Advise the Fund of Certain Material Events. The Awardee shall advise the Fund in writing, within 30 days of the event and in reasonable detail, of any of the following Material Events:

- (a) any proceeding instituted against the Awardee in, by or before any court, governmental or administrative body or agency, which proceeding or its outcome could have a material adverse effect upon the operations, assets or properties of the Awardee;
- (b) any proceeding instituted against the Awardee in, by or before any court, governmental or administrative body or agency, which proceeding involves allegations of discrimination by the Awardee on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex;
- (c) any material adverse change in the condition, financial or otherwise, or operations of the Awardee that would impair the Awardee's ability to carry out the authorized uses of the Assistance;
- (d) any substantial change in the business of the Awardee;
- (e) the occurrence of any Event of Default, as that term is defined in Section 8.1 hereof, or any event which upon notice or lapse of time, or both, would constitute an Event of Default;
- (f) the merger, consolidation or acquisition of the Awardee by or with another entity;
- (g) the debarment, suspension, exclusion or disqualification, by the Department of Treasury, or any other Federal department or agency, of any individual or entity (or principal thereof) that received any portion of the Assistance in a procurement or nonprocurement transaction, as defined in 31 C.F.R. § 19.970;
- (h) any event or change that would result in the Awardee not being certified as a CDFI (if applicable) or losing its status as a Nonprofit Organization; or

- (i) such other events that may be determined by the Fund, in its sole discretion, to be material events and for which the Fund issues related guidance.

7.9 Tracking Use of Assistance and Interest Earned on Advances. Throughout the Performance Period, the Awardee shall comply with the following:

- (a) The Awardee must account for and track the use of the Assistance and total Eligible Project Costs. For further information, see Schedule 6-A (Annual Report).
- (b) For every dollar of Assistance received from the Fund, the Awardee must be able to verify how it was used. This requires the Awardee to separately account for the proceeds and uses of the Assistance for eligible activities set forth in 12 C.F.R. 1807.301. Nonprofit institutions should refer to OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Institutions, for additional guidance. If the Awardee is a division of a State or local government, it should refer also to OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments, for additional guidance on administrative requirements, as appropriate.
- (c) OMB Circular A-110 states that non-profit recipients shall maintain Advances of Federal funds in interest-bearing accounts and that the interest earned on such Advances in excess of certain amounts per year must be remitted annually to the Department of Health and Human Services. Refer to OMB Circular A-110 for additional information and guidance, 2 C.F.R. 215.
- (d) The Awardee shall determine whether any individual or entity (or principal thereof), receiving any portion of the Assistance is currently debarred, suspended, excluded or disqualified by the Department of Treasury or any other Federal department or agency. The Awardee shall include in all of its procurement and nonprocurement contracts and agreements, between the Awardee and an individual or entity (or principal thereof) receiving any portion of the Assistance, a representation that such individual or entity (or principal thereof) is not currently debarred, suspended, excluded or disqualified by any Federal department or agency. Notwithstanding the foregoing, the above representations are not required in those procurement contracts in which the Awardee enters into for goods or services for less than \$25,000.
- (e) The Awardee shall include in all of its nonprocurement transaction agreements, for which it is using Assistance, a representation that the individual or entity (or principal thereof) receiving the Assistance is currently not debarred, suspended, excluded or disqualified by the Department of Treasury or any other Federal department or agency.

7.10 Federal Funding Accountability and Transparency Act of 2006 Compliance

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the

Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <http://www.ccr.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a

given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards,

and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. \_\_ .210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

8.1 Events of Default. If any one or more of the following events occurs, the Fund, in its sole discretion, may find the Awardee to be in default:

(a) fraud, mismanagement or noncompliance with the Act;

(b) any representation, warranty, certification, assurance or any other statement of fact set forth in this Assistance Agreement or the Application including, but not

limited to, the Assurances and Certifications contained in the Application, or any representation or warranty set forth in any document, report, certificate, financial statement or instrument now or hereafter furnished in connection with the Assistance Agreement, is found by the Fund to be inaccurate, false, incomplete or misleading when made, in any material respect;

- (c) A Material Weakness, a qualified opinion or any statement in the Awardee's annual audited financial statements that evidences a failure of the Awardee to be financially sound, be managerially sound and/or maintain appropriate internal controls;
- (d) the failure of the Awardee to observe, comply with or perform any term, covenant, agreement or other provision contained in the CMF Program Regulations, this Assistance Agreement including, but not limited to, the Application including, but not limited to, the Assurances and Certifications contained therein or any document delivered to the Fund in connection with or pursuant to the Assistance Agreement;
- (e) the failure of the Awardee to conduct its business in the usual and ordinary course or to maintain its corporate existence and right to carry on its business and duly obtain all necessary renewals, licensing and extensions thereof and to maintain, preserve and renew all such rights, powers, privileges and franchises;
- (f) the Awardee's becoming insolvent or unable to meet its obligations as they mature, making a general assignment for the benefit of creditors, or consenting to the appointment of a trustee or a receiver, or admitting in writing its inability to pay its debts as they mature;
- (g) the institution of bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings by or against the Awardee and, if instituted against it, the same being consented to by the Awardee or remaining undismissed for a period of thirty (30) calendar days;
- (h) the occurrence of a material event (as defined in Section 7.8 of this Assistance Agreement) to the extent that such event has a material adverse effect on the Awardee, its financial condition or business operations and impairs the Awardee's ability to carry out the eligible uses.

8.2 Sanctions. If the Fund finds the Awardee to be in default under Section 8.1, the Fund may, in its sole discretion, take any one or more of the following actions, subject to Section 8.4:

- (a) require changes in the Awardee's Assistance Agreement ;
- (b) require changes in the Awardee's Capital Magnet Fund Proposal;

- (c) revoke approval of the Awardee's Application;
- (d) revoke approval of any other applications submitted to the Fund by the Awardee under any of the Fund's programs, and declare such applications to be ineligible;
- (e) reduce or terminate the Assistance authorized hereunder;
- (f) require repayment of any Assistance that has been distributed to the Awardee pursuant hereto;
- (g) render the Awardee ineligible to apply for additional Assistance from the Fund through future funding rounds;
- (h) require the Awardee to convene a meeting(s) of its board of directors at which meeting(s) the Fund will be given the opportunity to address the attendees with respect to the Fund's evaluations and concerns regarding the performance of the Awardee under the Assistance Agreement;
- (i) limit the availability of Assistance to specific uses;
- (j) take such other actions as the Fund deems appropriate including, but not limited to, suspension or revocation of CDFI certification.

8.3 No Waiver. No course of dealing on the part of the Fund or any delay or failure on the part of the Fund to exercise any right herein will operate as a waiver of the right or otherwise prejudice the Fund's rights, powers and remedies under the Assistance Agreement, the Act, the CDFI Program Regulations or any other applicable law or regulation.

8.4 Notice of Default; Time to Cure. Prior to exercising or imposing any sanction(s) under Section 6.2 herein, the Fund will, to the maximum extent practicable, provide the Awardee with written notice of the default and the prescribed sanctions(s). Unless otherwise specified in the notice, the Awardee shall have thirty (30) days from the date of the default notice to cure the default. If the Awardee believes that the default is of such a nature that it cannot be cured within the time set forth in the notice, then the Awardee may, within five (5) days of the date of the notice, request, in writing, additional time to cure the default. If the Fund determines, in its sole discretion, that such additional time is necessary, then the Fund may extend the cure period. If the Fund does not extend the cure period, as outlined above, and the Awardee fails to cure the default within the 30-day (or other period specified in the written notice) cure period, the Fund may, in its sole discretion, impose or exercise the sanction(s) set forth in its written notice, and any other sanction to which it might be entitled hereunder, or in law or at equity, within a timeframe set by the Fund in its sole discretion. Nothing in the Assistance Agreement, however, will create in the Awardee any right to any formal or informal hearing or comparable proceeding not otherwise required by law.

Notwithstanding the foregoing, if the Fund determines, in its sole discretion, that the Awardee has engaged in fraud, mismanagement, or other prohibited misconduct, or that the default is of such a nature that it cannot be cured, the Fund may, in its sole discretion, impose the prescribed sanction(s) without notice, except as may be required by law.

## **ARTICLE IX MISCELLANEOUS**

9.1 Entire Agreement. The Assistance Agreement (including all schedules and amendments thereto), the Application and the attachments, exhibits, appendices and supplements to the Application, and the Notice of Award, between the Awardee and the Fund with respect to the obligation of funds necessary to provide Assistance to the Awardee contain the entire agreement of the parties with respect to the subject matter hereof and supersede all prior agreements or understandings, written or oral, in respect thereof, and no change, modification or waiver of any provision hereof shall be valid unless in writing and signed by the party to be bound. The Application, including any attachments, exhibits, appendices and supplements thereto, any attachments, schedules, exhibits, appendices and supplements to the Assistance Agreement, and said Notice of Award are incorporated in and made a part of this Agreement.

9.2 Assignment. The Awardee may not assign, pledge or otherwise transfer any rights, benefits or responsibilities of the Awardee under the Assistance Agreement without the prior written consent of the Fund. In addition, any assignment by the Awardee shall comply, to the extent applicable, with the Assignment of Claims Act, codified at 31 U.S.C. § 3727.

9.3 Successors. The rights, benefits and responsibilities of each of the parties to the Assistance Agreement shall inure to their respective successors, subject to this Section 9.3. If the Awardee merges with or is acquired by another entity, the Fund reserves the right to request information from and examine the new entity, which acquired or merged with the Awardee, to determine its acceptability as an Awardee. If the Fund determines that the new entity is not eligible or acceptable as an Awardee, or if the new entity does not agree to abide by all the provisions of the Assistance Agreement and shall continue operations and performance as if there were no interruption in the parties to the Assistance Agreement, the Fund may terminate the continued provision of Assistance under the Assistance Agreement and take any or all remedies it deems appropriate in accordance with Article VIII hereof.

9.4 Severability. If any provision of the Assistance Agreement shall for any reason be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other provision of the Assistance Agreement, and the Assistance Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

9.5 Applicable Law. The Assistance Agreement shall be governed by and construed in accordance with Federal law to the extent such Federal law is applicable, and to the extent Federal law is not applicable, the Assistance Agreement shall be governed by and construed in accordance with the law of the State of incorporation of the Awardee.

9.6 Disclaimer of Relationships.

- (a) The Awardee shall not be deemed to be an agency, department or instrumentality of the United States merely by virtue of it being an Awardee.
- (b) Nothing in the Assistance Agreement, nor any act of the Fund or the Awardee, shall be construed by either of them, or by a third party, to create any relationship of third-party beneficiary, principal and agent, limited or general partner or joint venture, or of any association or relationship whatsoever involving the Fund.
- (c) Notwithstanding any other provision of law, the Fund shall not be deemed to control the Awardee by reason of any Assistance provided hereunder for the purpose of any other applicable law.

9.7 Counterparts. The Assistance Agreement may be executed in counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument.

9.8 Headings. The headings contained in the Assistance Agreement are for convenience only and shall not affect the meaning or interpretation of the Assistance Agreement.

9.9 Amendments.

- (a) The terms of the Assistance Agreement may be amended, modified, or supplemented by the mutual written consent of the parties hereto.
- (b) If the Awardee proposes to make an amendment to the Assistance Agreement, it must submit a request, in writing, to the Fund's Certification, Compliance, Monitoring and Evaluation Unit at least three (3) months prior to the date or the year in the Performance Period being modified.
- (c) Notwithstanding the above, the Fund may, upon reasonable notice to the Awardee, unilaterally amend the Assistance Agreement for the sole purpose of making ministerial or administrative changes or correcting scrivener's errors.

9.10 Survival of Representations and Warranties. All representations, warranties, covenants, and agreements made by the Awardee in the Assistance Agreement or the Application, including, without limitation, all Assurances and Certifications contained in the Application, or in any document, report, certificate, financial statement, note or instrument now or hereafter furnished in connection with the Assistance Agreement shall survive the execution and delivery of the Assistance Agreement and the provision of any Assistance pursuant hereto.

9.11 Termination. Unless otherwise mutually agreed upon in writing by the parties hereto, the Assistance Agreement shall terminate when all of the following conditions have been met:

- (a) the Fund determines that the Awardee has submitted to the Fund all reports required under Schedule 6;
- (b) the Fund determines that all Assistance provided hereunder has been used as permitted hereby; and
- (c) the Fund determines that the Awardee has met all of the requirements under the Act, the CMF Regulations and this Assistance Agreement.

9.12 Applicability of Criminal Provisions. The criminal provisions of 18 U.S.C. § 657 regarding embezzlement or misappropriation of funds are applicable to all Awardees and Insiders.

9.13 Disclosure of Awardee Reports by Fund. The Fund will, consistent with applicable law, make reports described in Schedule 6 hereof available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

9.14 Limitation on Fund and Federal Liability. The liability of the Fund and the United States Government arising out of the provision of any Assistance to the Awardee hereunder shall be limited to the amount of such Assistance. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing herein is intended or should be construed to affect the application of any Federal tax law.

9.15 Compliance with Non-Discrimination Statutes. The Awardee shall comply with all Federal statutes relating to non-discrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; §§ 523 and 527 of the Public Health Service Act of 1912; and Title VIII of the Civil Rights Act of 1968.

9.16 Trafficking in persons.

**a. Provisions applicable to an Awardee that is a Private Entity.**

1. The Awardee, its employees, subrecipients under this award, and subrecipients' employees may not--
  - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - ii. Procure a commercial sex act during the period of time that the award is in effect; or
  - iii. Use forced labor in the performance of the award or subawards under the award.
2. The Fund as the Federal awarding agency may unilaterally terminate this award, without penalty, if the Awardee or a subrecipient that is a Private Entity --

- i. Is determined to have violated a prohibition in paragraph a.1 of this Section; or
- ii. Has an employee who is determined by the Fund official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this Section through conduct that is either--
  - A. Associated with performance under this award; or
  - B. Imputed to the Awardee or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 31 CFR 19.335.

**b. Provision applicable to an Awardee other than a Private Entity.** The Fund as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a Private Entity--

- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this Section; or
- 2. Has an employee who is determined by the Fund official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this Section through conduct that is either--
  - i. Associated with performance under this award; or
  - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 31 CFR 19.335.

**c. Provisions applicable to any recipient.**

- 1. The Awardee must inform the Fund immediately of any information the Awardee receives from any source alleging a violation of a prohibition in paragraph a.1 of this Section.
- 2. The Fund’s right to terminate unilaterally that is described in paragraph a.2 or b of this Section:
  - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - ii. Is in addition to all other remedies for noncompliance that are available to the Fund under this award.
- 3. The Awardee must include the requirements of paragraph a.1 of this Section in any subaward the Awardee makes to a Private Entity.

**d. Definitions.** For purposes of this Section:

- 1. “Employee” means either:
  - i. An individual employed by the Awardee or a subrecipient who is engaged in the performance of the project or program under this award; or
  - ii. Another person engaged in the performance of the project or program under this award and not compensated by the Awardee including, but not limited to, a

volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subsection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**OPINION OF COUNSEL**

**[This form must be submitted to the Fund on the Awardee's counsel's letterhead]**

[Date]

TO: Community Development Financial Institutions Fund  
601 13<sup>th</sup> Street, N.W., Suite 200 South  
Washington, D.C. 20005  
Attention: Grants Manager

RE: Awardee: [2]; Award No. [1]

Dear Ladies and Gentlemen:

The undersigned firm represents the above-referenced [Awardee] as counsel in connection with a Capital Magnet Fund (CMF) Fiscal Year 2010 award of funds from the Community Development Financial Institutions (CDFI) Fund to the [Awardee]. We have reviewed 12 CFR Part 1807; the Notice of Funding Availability for the CMF Program (75 FR 12422); the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289) section 1131, and made such other investigations of law, as we have deemed appropriate. We have also reviewed the Assistance Agreement and such other documents and records as we have deemed necessary to render this opinion. Capitalized terms contained herein shall have the same meaning assigned to them in the Assistance Agreement.

Based upon the foregoing, the undersigned is of the opinion that:

1. Organization, Standing and Powers. The Awardee is a [insert corporate form] and is in good standing (if applicable) under the laws of the State of \_\_\_\_\_ and it is legally authorized to transact business in each jurisdiction in which it is authorized to use the Assistance to the extent such authorization is required to undertake the activities under the Assistance Agreement. The Awardee's principal place of business is in the State of \_\_\_\_\_. The Awardee is currently transacting business in the State(s) of \_\_\_\_\_.
2. Authorization; Consents. The execution, delivery and performance by the Awardee of the Assistance Agreement are within the Awardee's corporate powers and have been

duly authorized by all requisite corporate action and no additional authorizations are required which have not been previously obtained.

3. Execution and Delivery; Binding Agreement. The Assistance Agreement and all documents related thereto to which the Awardee is a party and executed and delivered by the Awardee as of the date hereof constitute the legal, valid and binding obligations of the Awardee enforceable in accordance with their respective terms.
4. No Conflicts. The execution, delivery and performance by the Awardee of the Assistance Agreement shall not result in any violation of and shall not conflict with, or result in a breach of any of the terms of, or constitute a default under any provision of the Awardee's incorporation, charter, organization, bylaws or other establishing documents or to our knowledge any provision of Federal or State law which the Awardee is subject or any agreement, judgment, writ, injunction, decree, order, rule or regulation to which the Awardee is a party or by which it is bound.
5. Litigation. To our knowledge, there is no suit, action, proceeding or investigation pending or threatened against the Awardee that questions the validity of the Assistance Agreement or any action taken or to be taken pursuant thereto.
6. Environmental. The Awardee has made the following certifications with regard to at least one CMF project at the time of execution of the Assistance Agreement:
  - (i) The Awardee has identified one or more categorical exclusions, as set forth in 12 C.F.R. § 1815.110, that apply to the Awardee's proposed CMF project(s); and
  - (ii) The Awardee has determined that the proposed project(s) does not involve actions that normally require an Environmental Impact Statement (EIS) as defined in 12 C.F.R. § 1815.102(a)(7).

This opinion is based upon the laws of the State(s) of \_\_\_\_\_ and the Federal laws of the United States. This opinion is rendered solely in connection with the Fund's provision of the Assistance to the Awardee. Accordingly, it may be relied upon only by the Fund and may not be relied upon by any other party for any other purpose.

\_\_\_\_\_  
Firm Name

By: \_\_\_\_\_

**Note: Opinions 1 through 5 should be made with respect to Federal law and the following jurisdictions:**

**-----For Awardees with a single-state Service Area: state of formation, state of the Service Area where Awardee is currently transacting business, and state of principal place of business.**

**-----For Awardees with a multi-state or national Service Area: state of formation and principal place of business and state(s) of Service Area where Awardee is currently transacting business.**

**The opinion on the state of formation may be limited to the corporate laws; however, the opinion on the principal place of business and state(s) where the Awardee is currently transacting business must cover all state laws that are relevant to the Awardee's execution, delivery, and performance of the Assistance Agreement.**

**ANNUAL REPORT**

**Throughout the term of this Assistance Agreement, the Awardee must provide to the Fund an Annual Report, which comprises the following multiple components.**

Applicable if Checked	Annual Report Component	How/where to submit:
X	<b><u>Financial Report (Financial Statements and Related Auditor's and Accountant's Review Reports)</u></b>	<p>The Financial Report will be reviewed by the CDFI Fund to determine the Awardee's financial and managerial soundness.</p> <p>NOTE: If the Awardee is an Insured Credit Union, Insured Depository Institution, or Depository Institution Holding Company, it is not required to submit Financial Reports; the CDFI Fund will obtain the necessary financial information from publicly available sources.</p> <p><b>Form of Submission: electronic.</b></p>
X	<b><u>A-133 Audit Report (if applicable)</u></b>	<p>The Awardee must submit via e-mail whether or not it is required to have a single audit pursuant to OMB Circular A-133.</p> <p>If the Awardee is required to have a single audit pursuant to OMB Circular A-133, it must submit such audit in accordance with Schedule 7-B hereof.</p> <p><b>Form of Submission: electronic.</b></p>
X	<b><u>CMF Activities Report</u></b>	<p>The Awardee must submit the CMF Activities Report to the CDFI Fund.</p> <p><b>Form of Submission: electronic.</b></p>

**Report Deadlines:** The Awardee must submit to the Fund the required reports by the dates set forth on Schedule 6-B of this Assistance Agreement.

**I. FINANCIAL REPORT:** The financial report will be reviewed by the Fund to determine that the Awardee is financially and managerially sound.

**A. Non-Profit Organizations (excluding all regulated financial institutions)** must submit to the Fund financial statements that have been prepared and reviewed by an independent certified public accountant in accordance with *Statements on Standards for Accounting and Review Services*, issued by the American Institute of Certified Public Accountants. The financial statements must include the related auditor's or accountant's review report, a statement of financial position, a statement of activities, and a statement of cash flows. The

financial statements must be submitted no later than 180 days after the end of the Awardee's fiscal year (audited financial statements can be provided by the due date in lieu of reviewed statements, if available).

**B. For-Profit Organizations (excluding all regulated financial institutions)** must submit to the Fund financial statements prepared and audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants. Financial statements must include the related auditor's or accountant's review report, a statement of financial position and a statement of cash flows. The financial statements must be submitted no later than 180 days after the end of the Awardee's fiscal year.

**C. Regulated Financial Institutions (Insured Depository Institutions, Depository Institution Holding Companies, and Insured Credit Unions), including regulated non-profit organizations,** are not required to submit financial statements to the Fund, the Fund will obtain the necessary information from publicly available sources.

**II. OMB Circular A-133 SINGLE AUDITS:** For the purposes of preparing an A-133 Audit Report, the Awardee should consider the Assistance expended once the Awardee applies the funds towards the eligible uses, as currently outlined in Section 3.3 of the Assistance Agreement. It is permissible under the Assistance Agreement to incrementally allocate the award during the Performance Period. Prior to full expenditure the funds are deemed to be "Advances" as defined in the Assistance Agreement and should be kept in interest-bearing accounts with interest remitted in compliance with the OMB Circular No. A-122 and 2 C.F.R. Part 215 (as applicable). The Awardee's A-133 Audit Report will be reviewed by the CDFI Fund to determine the following: i) whether the Awardee's financial statements are presented fairly in all material respects in conformity with Government Auditing Standards (GAS) or Generally Accepted Accounting Principles (GAAP) and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole; ii) the condition of the Awardee's internal control related to its financial statements and major programs and iii) the Awardee's compliance with laws, regulations and the provisions of contracts or grant agreements, which could have a direct and material effect on each of its major program. Please review Schedule 6-B regarding the applicable dates for this report."

**A. Non-profit organizations, including regulated institutions, that are required to have their financial statements audited pursuant to OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*,** must also submit their single audit pursuant to OMB Circular A-133 to the Fund electronically no later than 270 days after the end of the Awardee's fiscal year.

**B. Non-profit organizations, including regulated institutions, that are NOT required to have financial statements audited pursuant to OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*,** must indicate in their electronic reports to the Fund through the Awardee's myCDFIFund account that it is not required to have a

single audit pursuant to OMB Circular A-133 no later than 180 days after the end of the Awardee's fiscal year.

**III. CMF ACTIVITIES REPORT:** The Awardee must submit a CMF Activities Report, which is a progress report on the Awardee's use of the Assistance, affordable housing outcomes and the Awardee's overall performance. The CMF Activities Report consists of project-level data and transaction-level data. Transaction level data are specific data elements of each of the Awardee's loans/investments used to finance each project, including but not limited to, borrower, loan/investment type, loan/investment amount and terms. Project-level data consists of data points about each specific project funded with the Assistance, including but not limited to, address, income of tenant/homeowner, Leveraged Costs, and eligible activity used. Please review Schedule 6-B for information regarding the due dates for this report.

**IV. ENVIRONMENTAL REVIEW NOTIFICATION REPORT.** The Awardee shall submit the Environmental Review Notification Report each time the Awardee identifies a new CMF project for which (i) a categorical exclusion does not apply and/or (ii) the Awardee determines that the proposed project does involve actions that normally require an Environmental Impact Statement. The Environmental Review Notification Report must be submitted no later than 90 days prior to the Awardee's Committed date set forth in Section 4.1 of the Assistance Agreement.

**ANNUAL REPORT SUBMISSION DEADLINES**

<b>Annual Report Deadlines</b> <b>(for all components except the A-133 Audit Report)</b>	
For period ending on:	Due date:
(6/30/2011 or 9/30/2011 or 12/31/2011 or 3/31/2012)	[FYE + 180 days]

<b>A-133 Audit Report Deadlines</b> <b>[if applicable: to be determined by Awardee annually]</b>		
For period ending on:	Due Date for Awardee to indicate via its myCDFIFund Account whether or not it is required to have a single audit pursuant to A-133 :	A-133 Audit Due Date:
(6/30/2011 or 9/30/2011 or 12/31/2011 or 3/31/2012)	[FYE + 180 days]	[FYE + 270 days]

**TERMS AND CONDITIONS RELATED TO REGULATED INSTITUTIONS**

1. Prior Notice to Appropriate Federal Banking Agency of Sanctions. Prior to imposing or exercising any sanction (s) under Section 6.2 of the Assistance Agreement, the Fund will provide the Appropriate Federal Banking Agency with written notice of the proposed remedy (or remedies). Moreover, the Fund will not impose or exercise any proposed remedy (or remedies) if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving the notice from the Fund of any proposed remedy (or remedies) against the Awardee, takes all of the following actions:

- (a) Objects to the proposed remedy (or remedies);
- (b) Determines that the remedy (or remedies) would:
  - (i) Have a material adverse effect on the safety and soundness of the Awardee; or
  - (ii) Impede or interfere with an enforcement action against the Awardee by the Appropriate Federal Banking Agency;
- (c) Proposes a comparable alternative action; and
- (d) Specifically explains:
  - (i) The basis for the determination made pursuant to this section, and, if appropriate, provides documentation to support the determination; and
  - (ii) How the alternative action proposed would be as effective as the remedy (or remedies) proposed by the Fund in securing compliance and deterring future noncompliance.

2. Insured Depository Institution, Depository Institution Holding Companies or Insured Credit Union as Awardee. The provisions of the Act, the CDFI Program Regulations, and the Assistance Agreement shall be enforceable under 12 U.S.C. § 1786, 12 U.S.C. § 1818, and 12 U.S.C. § 1844 by the Appropriate Federal Banking Agency, and any violation of such provisions will be treated as a violation of the Federal Credit Union Act, Federal Deposit Insurance Act, or Bank Holding Company Act, as applicable. Nothing herein shall be construed to preclude the Fund from directly enforcing the Assistance Agreement as provided for hereunder and under the terms of the Act.

3. No Authority to Limit Supervision and Regulation. Nothing herein is intended nor should be construed to affect any authority of the Appropriate Federal Banking Agency to supervise and regulate the Awardee.

**AUTOMATED CLEARINGHOUSE (ACH) FORM**

In order to receive disbursement of award proceeds, the Awardee first must provide the Fund with a complete and accurate Automated Clearinghouse (ACH) form related to the bank account into which the Awardee wants the award proceeds deposited via wire transfer. The Awardee is responsible for the accuracy of the banking information it provides on the ACH form. In the event that the Awardee provides inaccurate, non-current or incomplete banking information, the Fund is not responsible for reimbursement or payment to the Awardee for any Assistance transferred to an incorrect account.