



May 14, 2010

Capital Magnet Fund Manager  
Community Development Financial Institutions Fund  
Department of Treasury  
601 13<sup>th</sup> Street NW  
Suite 200 South  
Washington, DC 20005

**RE: Proposed rulemaking on the Capital Magnet Fund**

Dear Sir:

The Housing Partnership Network (the Network or HPN) and Stewards of Affordable Housing for the Future (SAHF) are pleased to provide you with our comments on the proposed rule for the Capital Magnet Fund (CMF). With its emphasis on supporting nonprofit institutions in leveraging private capital, the CMF represents a potentially significant new tool in the housing and community development field. We welcome this opportunity to help refine the program design and support the CDFI Fund in realizing the potential for this important new program.

HPN and SAHF are membership organizations representing the nation's high-capacity nonprofits in the affordable housing field. Individually and collectively, our members bring an extraordinary amount of experience developing, managing, and financing affordable housing that is supported by the entire array of federal, state, and local housing assistance programs. HPN and SAHF were integral members of the coalition that worked hard for the creation of the CMF program and we would anticipate that our member organizations will be among those who work with the CDFI Fund to ensure that these resources are effectively utilized to expand affordable housing opportunities.

HPN is a peer network and business alliance of 97 of the nation's top-performing nonprofit housing developers, owners, lenders, and housing counselors. The Network helps these strong, accomplished organizations increase their production and impact through a unique, member-driven cooperative that shares knowledge and innovation, pools resources to access the capital markets more efficiently, and shapes policy that reflects and enhances their practice. Through its partnerships with business, government, and civic leaders, the Network's members tackle the most pressing housing and economic development challenges facing communities. Collectively, the Network's members have developed and/or financed more than 750,000 affordable homes and apartments, and have provided homeownership and foreclosure prevention counseling to more than 450,000 families.



Stewards of Affordable Housing for the Future is a 501(c)(3) consortium of nine sophisticated, non-profit, affordable housing providers who are committed to the long-term, sustainable affordability of multifamily rental properties for low-income families, seniors, and disabled individuals. SAHF members include: the Evangelical Lutheran Good Samaritan Society, Mercy Housing, National Church Residences, National Affordable Housing Trust, National Housing Trust/Enterprise Preservation Corporation, NHP Foundation, Preservation of Affordable Housing, Inc., the Retirement Housing Foundation, and Volunteers of America. Together, SAHF members own and operate housing in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands – providing homes to approximately 90,000 low-income households across the country. SAHF's members promote their shared objectives, which embrace the notion that stable, affordable rental homes are critically important in people's lives.

On behalf of the members of our organizations who applied for funding in the initial CMF round, we want to commend the CDFI Fund for the open and transparent way in which the staff made themselves available to applicants. We and our members had ample opportunity to ask questions about the rules and the application materials, and to get answers in a timely manner. The CDFI staff showed significant flexibility in its ability and willingness to clarify and modify its initial direction, and to provide continually updated guidance through its commentary, e-mails, and Questions and Answers posted on the web. In our experience, this openness and flexibility was nothing short of extraordinary.

While the following comments are focused on the proposed rule, we note that several of the issues raised in this letter derive from other aspects of the application process. As the CDFI Fund puts in place the final infrastructure for the program, we want to reinforce the ongoing need for a flexible and dynamic approach. While it will be important to add clarity to the rule in certain instances, we urge the CDFI fund to avoid encumbering the program with a regulation that is too detailed and specific. Regulations are harder to change as we learn more about what works and what does not work in this initial phase of the program. Instead, we would look forward to working with you on an implementation approach that answers questions and addresses detailed concerns in less formal and process-bound ways.

## **Overview**

The Capital Magnet Fund was established in the Housing and Economic Recovery Act of 2008 (Public Law 110–289) to carry out a competitive grant program administered by the CDFI Fund. Through the CMF, the CDFI Fund is authorized to make financial assistance grants to certified Community Development Financial Institutions (CDFIs) and nonprofit organizations in the affordable housing business with the purpose of attracting increased investment in: (i) the development, preservation, rehabilitation, and purchase of affordable housing for low-income families; and (ii) economic development activities or community service facilities in conjunction with affordable housing activities.



Enacted at the same time from an identical funding source as the National Affordable Housing Trust Fund, an underlying policy rationale for the CMF program was not to provide financing for individual affordable housing developments – as was the case for the Trust Fund – but to provide support to nonprofit organizations that finance and develop affordable housing. The program’s goal was to provide a source of equity capital into these entities such that they could leverage other public and private funds, expand the scale of their activities, and increase their impacts in the communities in which they work. We believe that the greatest promise of the Capital Magnet Fund is in its potential to support the growth of high-capacity nonprofits in the affordable housing field with capital infusions that take advantage of these entities’ existing scale and capacity.

In this spirit, our comments seek to achieve the following policy objectives through changes to the proposed regulations or other program guidance:

- Ensure that the program allows applicants to utilize CMF funds effectively at the enterprise level. This is particularly important for those members of our organizations whose main lines of business are affordable housing development and management, and who own and manage multiple properties. The organization can deploy the funds more efficiently if allowed to aggregate and leverage the CMF grants at the parent or headquarters level of the organization – and not only at the project level. The final rules or guidance should make it clear that development entities can utilize an Affordable Housing Fund at the enterprise level and count capital raised at the enterprise level as pre-investment match without having to create a separate legal entity or investment facility.
- Encourage both short-term and longer-term investments in affordable housing. This issue is particularly relevant with respect to the definition and scoring of “leverage” in the selection process where, as currently written and calculated, a shorter-term lending model can create more leverage than a more patient capital investment model because the CMF funds are recycled. In the affordable housing development process, sometimes the ideal application of subsidy is in the form of equity or other patient capital that is not recycled as rapidly. Both approaches should be equally valid and not disadvantaged in the selection process, so long as minimum leverage requirements are met.
- Allow new nonprofit businesses created by an otherwise eligible entity or a consortium of eligible entities to apply. We strongly support the effort by the CDFI Fund to design a program where the limited funds available to the program go to those organizations with capacity and the highest probability of success. And, we agree that the length of time an organization has been in existence is potentially one measure of an organization’s strength. However, we argue below that the CDFI Fund should permit applications from newly-created, special purpose entities, provided the partners involved in these entities can meet appropriately strong standards of competence, capacity, and previous success. In the case of newly-formed entities, the Fund should look to the experience of the partners participating in



the new venture to utilize the resources effectively and leverage significant amounts of additional capital.

- Conform targeting and income rules to other federal programs. We urge the CDFI Fund to modify its proposed rules for targeting and rent setting to allow greater conformity with other federal programs. One of the most challenging features of affordable housing development is the need to layer subsidies from multiple sources and the complexity that the different rules of these multiple sources add to the transaction. As a source of funds to support the entities financing or investing in affordable housing and (not the deals themselves), we recommend that the CDFI Fund defer to the project-related rules governing these other housing programs in order to avoid adding a new layer of complexity and cost.
- Change the definitions of Development, Rehabilitation, Preservation, and Purchase to avoid having these terms limit flexibility. Most importantly, we advocate that the CDFI Fund modify the proposed definitions to ensure that entities participating in the CMF program can utilize the grant funds as part of a strategy based on the acquisition, rehabilitation, and long-term preservation of multifamily properties that are not yet subject to federal subsidy program requirements or use restrictions, so long as the properties are repurposed with long-term affordable use restrictions.

### **Support for Entities at the Enterprise Level**

In working through the application process, many of our members in affordable housing development and management businesses found some difficulty in working with the CMF rules and application process when contemplating the creation and use of an affordable housing fund at the enterprise level. At several instances in the application process, we, or our members, understood the CDFI Fund staff to explain that housing development entities could only apply CMF and leveraged funds at the project level.

As national and regional housing development enterprises, many of our member organizations are managing development pipelines with multiple properties in multiple jurisdictions at any given time. In addition, these entities may, at the same time, have projects that they own and manage with recapitalization needs related to longer-term preservation. The size and complexity of these activities suggest that the entities can achieve economies of scale and greater leverage if they are permitted to finance and operate these multiple capital projects at the enterprise level.

An applicant might seek to create an affordable housing fund at the enterprise level and utilize its resources the following ways:

- A. The nonprofit developer has raised lines of credit from commercial banks and foundations to support a pipeline of development projects. It earmarks these funds for investments in conjunction with CMF grants. As is typically the case for this type of arrangement, these funds are not segregated into a separate fund or legal entity, but are instead distinctly



accounted for among the nonprofit's organizational resources. These funds are then used as a source of capital by the developer for eligible expenses of a project to fill financing gaps. These types of funds should count as pre-investment leverage for the CMF.

- B. Some of the funds described in A, while purposed to support the nonprofit's overall development pipeline, require project-by-project approval by the lender. The senior lender will often require approval prior to final release of funds made under a master line of credit to a nonprofit developer. Even with the project level application of the funds and sign off by the senior lender for a specific project, the debt aggregated by the entity at the enterprise level should still be treated as pre-investment leverage, because the nonprofit entity would retain the discretion with respect to how to apply the CMF funds to the deal.
- C. An eligible entity – either a CDFI or a nonprofit housing organization – has raised funds for a specific pipeline of projects which are under development by a separate organization at the time the funds were raised. The eligible entity makes loans, investments, or grants to the developer that are not secured by the individual projects. The funds raised by the eligible entity that are used alongside CMF funds for this effort should also count as pre-investment leverage.

Presuming that these three examples are consistent with the program objectives, the final CMF rules or guidance should clarify that development entities can establish Affordable Housing Funds and clarify the parameters for the operation and management of such a fund. For example, does the enterprise need to segregate the CMF investment and the pre-investment leverage in a separate account? We urge the CDFI Fund to adopt the most flexible standards possible and clarify that an Affordable Housing Fund need not be a separate legal entity for the purpose of making investments in eligible affordable housing properties.

To this end, we would also urge that the definition of Affordable Housing Fund provided at §1807.104 (e) in the proposed rule be amended to read identically to the language in the Notice of Funds Availability: “*Affordable Housing Fund* means a loan, grant, or investment fund, managed by the Awardee, whose capital is used to finance Affordable Housing.” In the proposed rule, Affordable Housing Fund is defined solely as a “loan fund managed by the Awardee whose capital is used to finance Affordable Housing Activities.” To this definition from the Notice of Funds Availability, the final rule could add the sentence: “An Affordable Housing Fund does not need to be a separate legal entity.”

### **Short-Term v. Longer-Term Investments**

In going through the application process and other implementation materials, we observed that there is a risk that the program could create a bias for shorter-term investments in affordable housing. We would want to argue for program implementation that treats short-term and longer-term investments equitably, as long as minimum leverage requirements are met.



The potential for favoring short-term investments is particularly apparent in the way in which leverage is calculated and valued in the selection and ranking process. The calculation of leverage allows for the additional leverage created by the reinvestment of recycled CMF proceeds. A lending model based on acquisition and predevelopment loans, for example, has the potential to create significant additional leverage as loans are put into the initial phases of a project and then recycled when the borrower finds permanent financing and takes out the initial short-term loan. A housing development entity, on the other hand, may find that its business model or the needs of the community it serves require it to provide investment capital that is more patient and consistent with longer-term affordability and preservation strategies. This latter strategy for investments may pale in comparison to the leverage achieved by former strategy, but could arguably prove more beneficial to the affordable housing objectives of the program. At the very least, the CDFI Fund should examine how it defines leverage and, more critically, assess the weight that leverage gets in the selection process relative to other criteria.

### **Increasing Flexibility with Respect to the Types of Applicant Entities**

As organizations representing high-capacity nonprofits in the affordable housing field, HPN and SAHF applaud those places in the rule and the application process that signal a desire by the CDFI Fund to ensure that successful applicants have a strong track records of performance and success. We would urge the CMF program managers to increase the rigor of its criteria for participation to ensure that the program is not using its limited resources to merely shore up weaker players in the delivery system, but instead to provide sufficient investment dollars that the stronger, high-capacity entities can use to leverage other private dollars, build their businesses, take their businesses to a larger scale, and thus make a bigger impact in their communities.

That said, in writing the final program rules, we would urge the CDFI fund to revisit the requirement in the 2010 Notice of Funds Availability that an applicant entity must have been in existence for 3 or more years. Instead, we would urge a standard that allows an application by a new entity, so long as the entity is a consortium of otherwise eligible organizations that can also demonstrate the ability to deliver on the program requirements based on the backing and support of high-capacity, successful nonprofit organizations who come together to support the new venture. There are several examples of the types of organizations we would urge the CMF to support.

Recent experience has shown us that rapid changes in the environment or market place can create new housing challenges where new institutions are needed to address the challenge. For example, in the aftermath of Hurricanes Katrina and Rita, those working on the Gulf Coast redevelopment strategy recognized the need for a strong nonprofit housing entity to manage and develop new affordable housing to replace the many units of housing lost in the storms and the floods. In 2006, in response to the enormous needs on the Gulf Coast, HPN, along with other established public and private organizations interested in revitalization, came together to capitalize a new entity: the Gulf Coast Housing Partnership (GCHP). With an initial investment



of \$2 million in capital from HPN matched by an identical investment from Enterprise Community Partners, GCHP has been able to leverage at least \$30 million of new capital and has emerged as a premier affordable housing development entity in the region. GCHP has 1,558 units developed or under development with total development costs of \$221 million. If the CMF had launched in 2007, GCHP would not have been an eligible applicant. The CDFI Fund would have precluded CMF from investing in this venture and helping to respond to the housing crisis on the Gulf Coast.

Another example of experienced and capable entities coming together to meet a new emergency need is the National Community Stabilization Trust (NCST). The National Community Stabilization Trust was sponsored by six experienced nonprofit organizations with national reputations for innovation in community-based housing and economic development. The partners in this venture were Enterprise Community Partners, the Housing Partnership Network, Local Initiatives Support Corporation, NeighborWorks America, the National Council of La Raza, and the National Urban League. All of these organizations individually had been directly involved in activities to address foreclosure prevention, loss mitigation, and issues facing communities across the country that are resulting from the foreclosure crisis, but they concluded that they would have a greater impact on the emerging crisis if they acted collectively. NCST is new enough that it would not have been an eligible applicant under this year's NOFA, and yet it has already attracted more than \$6 million in start up capital and \$35 million in lending capital from the philanthropic sector to support an even larger effort in the acquisition and rehabilitation of vacant residential properties.

In both instances, capable, effective nonprofit organizations with significant track records of success came together to create a new entity in order to address a particular and immediate affordable housing need. GCHP and NCST argue for a more flexible definition of an eligible entity's capacity that recognizes those instances where collaborations, partnerships, or consortia make sense. The advantages of supporting collaborative ventures as applicants is that these organizations allow the members to share resources, leverage each others' access to additional resources, scale up each others' efforts to better respond to the crisis, take advantage of different member organizations' strengths, and share risks. In theory and in practice, each organization in a collaborative venture brings something different to the table, a different skill set or a different perspective based on its own experience in the housing and community development field.

We anticipate that the CDFI Fund chose to apply the 3-year rule as an indicator of the applicant's capacity to implement the CMF requirements and to ensure that grants are given to relatively stronger entities. We strongly support this policy thrust and would support strengthening the requirements in the application process in favor of strong, competent nonprofit organizations with strong track records of success. In order to balance the need to allow new entrants to apply and to protect against weak applicants, we would suggest that the CDFI Fund establish other threshold criteria for organizational strength and capacity. For example, in addition to requiring that the partner organizations in a new entity meet threshold eligibility and capacity standards, the Fund could require evidence that the new entity has raised sufficient funds already to operate



for a significant period of time, that the applicant has a strong management team with a strong track record, and/or that the applicant has a high probability of being able to raise the requisite amount leverage and deliver its activities within the timeframes expected under the program. Additionally, the program could require that these entities apply for 501(c)(3) status in advance of their application and, if they receive a CMF award, require that they finalize their status with the Internal Revenue Service before they can enter into a grant agreement with the CDFI Fund.

### **Housing Targeting and Affordability Requirements**

One of the greatest challenges in affordable housing development is the aggregation of sufficient capital resources and public subsidies to serve very low-income populations and produce a development that is economically viable over a very long period of time. The typical affordable housing project includes multiple sources of capital from various subsidy programs. This layering of subsidies from multiple housing programs creates additional challenges and costs for the developer, because each subsidy source comes with different rules and requirements, and the timing of the funding sources are often not synchronized. In addition to the HOME Investment Partnership program managed by the Department of Housing and Urban Development (HUD) and the Low Income Housing Tax Credit (LIHTC) programs managed by the Treasury, the CDFI Fund could anticipate that CMF resources will end up in developments that also include HUD Section 8 subsidies, project-based vouchers provided by public housing agencies, HUD Section 202, Section 811, or Supportive Housing Program grants, Community Development Block Grants, Affordable Housing Program funds provided by the Federal Home Loan Banks, Neighborhood Stabilization Program funds, Federal Housing Administration loan guarantees, Rural Housing Service direct loans, National Affordable Housing Trust Fund resources, and local finance programs funded with non-federal funds – among others.

For this reason, we strongly urge the CDFI Fund to revisit the rules outlined in §1807.401. The rent-setting mechanisms and income definitions outlined there risk creating a new level of needless complexity when CMF funds are used in conjunction with other federal programs. In those instances where the CMF investments are part of the financing, leveraging requirements suggest that CMF funds will represent 10 percent or less of the capital structure of the property. The program rules should defer to the targeting and rent-setting requirements of the other programs included in the capital structure. For example, developments supported by Low Income Housing Tax Credits will bring with them deeper targeting and longer low-income housing use restrictions than those proposed in the CMF rules. Housing Finance Agencies, which allocate the tax credits on a state level, generally have even deeper targeting requirements as a result of the highly competitive process through which tax credits are allocated. When credits are awarded, these requirements are memorialized in restrictive use agreements that are binding on current and future property owners.

In the final rule, the CDFI Fund should defer to HUD, Rural Housing Service, and Low Income Housing Tax Credit rules for rent-setting and income determinations. Affordable housing development entities applying to the program will be familiar with these rules and have



significant facility to meet the requirements. The CMF program will benefit by having its requirements match those of these other programs. As the rules in other programs change, the CMF requirements would change simultaneously.

We are particularly concerned by the provision in the proposed rule at §1807.401(a) that establishes the maximum rent at “30% of the family’s annual income.” This formula may be overly restrictive and unworkable in those instances where the housing provider does not have access to rental assistance subsidies. The developer can only guarantee that a family will pay 30 percent of its income for rent when Section 8 or comparable rental subsidy is available to the family. In order to underwrite a development and attract private capital, the developer must be able to demonstrate predictable rental proceeds for the property. If a tenant in the property is only to pay 30 percent of his or her income for rent, than the rent proceeds are not predictable and will fluctuate with the incomes of the residents. With Section 8 subsidies, the investor can underwrite the property because the rents are set at a certain level and the subsidy pays the difference between 30 percent of the resident’s income and the rent charged for the unit. We recommend that the CMF program instead adopt an approach like that used in the Low Income Housing Tax Credit program where the rents are restricted based on levels that are affordable to a family making 60 percent of area median income or less and occupancy is targeted to low- and very low- income families for units in the property. The rules should permit rent payments at 30 percent of a family’s annual income only to the extent, and so long as, the property is benefiting from federal rental assistance subsidies.

We also want to raise significant concerns with the design of the rules for the homeownership program and the application of 10-year affordability restrictions in the case of homeownership activities. This provision is a serious impediment to the use of these funds for homeownership activities. The proposed rule would impose an onerous administrative burden on the nonprofit program sponsor as well as the homeowner across the 10-year period in which the affordability restrictions are in place. Affordable homeownership programs run by competent nonprofits have learned how to underwrite these programs successfully and structure both the financing and the support to the homeowner to achieve sustainable homeownership opportunities for low-income families. We believe that the appropriate standard is to require affordability at the time of purchase.

Further, the ratios for homeownership approaches published in the proposed rule may not be sufficiently flexible to support many successful low-income homeownership programs. The Fund should delete the specific front-end and back-end ratios and retain for itself the ability to negotiate with grantees on this aspect of program design should it discover the potential for abusive lending. Alternatively, the CDFI Fund could consider requiring purchasers assisted with CMF dollars to participate in pre-purchase counseling programs as an additional protection for consumers. Other protections to combat predatory lending risk creating new mortgage lending standards that potentially conflict with those in other federal, state, and local laws. We are relatively confident that the new rules emerging for mortgage finance will provide additional protections for low-income home purchasers.



In existing homeownership programs there are a variety of mechanisms that program sponsors employ to ensure that participants do not inordinately or unfairly benefit from a public subsidy by flipping the property prematurely and cashing out on the equity. The CDFI Fund should defer to these proven approaches. One vision the Fund might consider supporting would be a shared equity arrangement that would allow the assisted homeowner to gain any upside from his or her tenure, but would also allow the CMF grantee to recapture the subsidy provided to the homeowner, if appropriate. However, the rules should be permissive, allowing the grantee to design the affordability and recapture provisions in a way that makes sense for the grantee and their program beneficiaries.

### **Definitions of Development, Preservation, Rehabilitation, and Purchase**

An additional area where the rule would benefit from some increased flexibility is in the definitions section. In the proposed rule, the CDFI Fund has chosen definitions for the words “Development,” “Preservation,” “Rehabilitation,” and “Purchase” that are somewhat inconsistent with the way these terms might be used by affordable housing entities and are defined in a way that potentially narrows the range of desirable activities undertaken by affordable housing social enterprises. In the affordable housing world, sometimes these terms are used interchangeably. It would benefit the implementation of the CMF program if the CDFI Fund adopted definitions that were more inclusive of the different ways these terms are used by the affordable housing community. For example, many of our members employ a development staff whose responsibilities not only include new construction of affordable housing, but also the acquisition of housing or a controlling interest in that housing, substantial and moderate rehabilitation of new acquisitions and/or properties already owned by the entity, and/or the recapitalization of existing properties including the refinancing of existing debt, and the restructuring of the financing and subsidies. The development team would lead all of these activities consistent with the missions of these enterprises to provide affordable housing opportunities for low-income households. In the proposed rule, the CDFI Fund has defined the terms in ways that suggest that they consider these activities as mutually exclusive. It would be very helpful if the definitions were not crafted to represent mutually exclusive activities given that these terms are often used interchangeably or more broadly by the industry.

Most importantly, we believe that the definitions should change to make it clear that nonprofit participants in the CDFI program can pursue a strategy of acquiring subsidized or unsubsidized properties (or a controlling interest in these properties), rehabilitating these properties, and restructuring the financing of these properties in order to preserve the properties as affordable housing over the longer term. Preservation, Purchase, and Rehabilitation are defined in ways that may inadvertently serve as a barrier to this very valuable affordable housing activity. Notably, the specificity with which the definitions are drafted appears to preclude an affordable housing strategy where the CMF grantee might acquire unsubsidized market rate properties that were not previously subsidized or considered affordable, but which would be restructured with the use of CMF funds to meet the definition of Affordable Housing. With the current softness in



the multifamily real estate market, affordable housing development entities have the potential to pursue a preservation strategy that begins with the acquisition of market rate, unsubsidized properties, and then structure the properties' management and capital structure to keep the properties affordable over the longer term, with or without subsidy. With rental assistance and/or Low Income Housing Tax Credits subsidies, use restrictions related to those programs would apply after the properties are refinanced. Without subsidy, the acquiring entity could commit, through a restrictive use agreement, to keep the property affordable at market rents for low- and moderate-income households as workforce housing.

The definitions appear to thwart this acquisition and preservation strategy in two ways. First, the definition of "Preservation" is limited to properties that already enjoy some form of federal or state subsidy support or use restrictions, and does not include those properties where the rents are "naturally" affordable based on market conditions. While the affordable housing preservation debate in the legislative context often focuses on the public policy challenges created by the expiration of federal subsidy contracts and federal use restrictions, the affordable housing field recognizes that many lower-rent, unsubsidized multifamily properties represent important community assets. Every year, thousands of these affordable, unsubsidized housing units are lost to poor maintenance, structural obsolescence, or gentrification across the country. Those entities concerned with affordable housing preservation in a community development context will often include these types of properties in their local strategies. To consider these strategies as preservation strategies, the acquiring entity would apply some mechanism such as a restrictive use agreement to ensure that the properties are used as affordable housing over the long term. We strongly believe that the CDFI Fund should expand its definition of preservation to include these types of properties and ensure that the rules do not preclude the acquisition, rehabilitation, and preservation of unsubsidized rental housing where this makes sense as an affordable housing strategy.

Likewise, we would urge the CDFI Fund to make a change in the definition of Purchase. As currently drafted, the rule would limit purchase activities to single-family homes. Many of our members, if they are CDFIs, will finance the acquisition of multifamily properties by nonprofits for the purposes of restructuring that property as housing affordable to low-income households. Many of our members who are housing developers will pursue the acquisition of an existing property – or a controlling interest in an existing property – over a strategy that is based solely on new construction. We would recommend that the final rule include a definition of purchase that makes it clear that affordable housing enterprises may use CMF funds to acquire multifamily properties – whether these properties are affordable or not at the time of acquisition. In its questions and answers accompanying the application process, the CDFI Fund signaled concurrence with this point. Question 21 states:

“Acquiring a multifamily property that is unassisted (or that does not meet the affordability standards) for the purposes of making it affordable is intended to be an allowed use, even though it is not explicitly mentioned as an eligible activity in the CMF NOFA. The CDFI Fund will ensure that this is clarified in future documentation, including the Interim or Final Rule.”



Further, we note that the definition of purchase should allow the purchase of general/limited partner interests in existing affordable rental housing. Our members have found this to be a great method for preventing conversion of Low Income Housing Tax Credit deals to market rate rentals at the end of the 15-year compliance period and helping nonprofit groups exercise their right of first refusal to acquire the ownership interest at a later time. According to our members, it is really difficult to obtain financing for this activity, but it can be a relatively low-cost way to obtain control of an affordable housing property, put it in more responsible hands, and ensure its long-term affordability.

In defining Rehabilitation, the proposed rule appears to limit rehabilitation activities only to “affordable housing.” The wording potentially implies that the grantee may only engage in the rehabilitation of properties that already qualify as affordable housing. We note that the definition of Rehabilitation does not capitalize the words “affordable housing” to signal that the property must meet the definition of Affordable Housing provided in the rule at §1807.104 (c). However, we are concerned that a close reading of this definition could potentially preclude a strategy by a nonprofit to acquire market-rate properties that do not currently meet the definition of affordable, even in those instances where the nonprofit developer would intend to convert the property to meet the definition of Affordable Housing following recapitalization and rehabilitation.

In light of these concerns, we have suggested some changes to the definitions below. The intent of the proposed changes is to provide some flexibility in the application of these terms throughout the rule and the application process to ensure that these definitions do not limit the range of important activities that grantees may wish to undertake with CMF funds. We recommend the following changes to the definitions draft rule:

- §1807.104 (s) “*Development* means land acquisition, *acquisition and redevelopment of existing building , rehabilitation of existing structures*, demolition of existing facilities, and construction of new facilities, which may include site improvements, utilities development and rehabilitation of utilities, necessary infrastructure, utility services, conversion or other related activities.”
- §1807.104 (rr): At the end of the definition of “Preservation,” insert the new paragraph “*(4) Activities to acquire or refinance single-family or multi-family rental property mortgages or properties, with or without rehabilitation, with the commitment to subject the properties to long-term affordability and use restrictions.*”
- §1807.104 (tt): Replace the proposed definition of “Purchase” as follows: “*Purchase* means to acquire ownership in a fee simple title or a 99-year leasehold interest in a one-to-four unit dwelling or in a condominium unit, *or in a residential property with 5 or more units, or a general or limited partnership interest in a residential property*, through the exchange of money.”



- §1807.104 (uu): Change the definition of “Rehabilitation” as follows: “Rehabilitation means any repairs and/or capital improvements that contribute to the long-term preservation, current building code compliance, habitability, sustainability, or energy efficiency of *a residential structure affordable housing.*”

### **Additional Technical Comments**

- *Add “Resident Services” to Eligible Activities:* One feature that distinguishes affordable rental housing owned and/or managed by nonprofits from affordable housing owned and managed by for-profit entities is the provision of services to the residents of the properties. To reflect this practice, we would recommend adding the term “resident services” to the definition of Community Service Facility to acknowledge the presumed eligibility of physical spaces for resident services in the use of CMF grant funds. We would also recommend adding to the list of the types of community services provided to include several of the common services provided by our members to the residents. The new definition of Community Service Facility could be changed to read:

§1807.104 (o): Community Service Facility means the physical structure in which ~~community-based programs~~ *service programs for residents or service programs 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)...

- *Definition of Economic Development Activity:* The CDFI Fund may want to consider rewriting this definition. As currently proposed, the rule defines Economic Development Activity as the “Development, Preservation, Rehabilitation, or Purchase of Community Service Facilities...” However, since Preservation, Rehabilitation, and Purchase are all specifically defined in relationship to housing-related activities, these may not be the appropriate terms to apply to this activity. One possible solution would be to use these terms in the lower case.
- *Definition of “In Conjunction with”:* The CDFI Fund has chosen to define “Economic Development Activities or Community Service Facilities financed In Conjunction with Affordable Housing Activities” with physical proximity. In metropolitan areas, this physical proximity is defined as “located within the same census tract.” In the neighborhood development context, sometimes the census tract boundaries are not necessarily consistent with the neighborhood boundaries. We would like to propose a more flexible definition for “In Conjunction with” based on the defined term Service Area in the proposed rule. The rules should ensure that Economic Development Activities and Community Service Facilities are accessible to the residents of the affordable housing supported with CMF resources. The rule could define accessible to include not just physical proximity but also strategies that



provide access to the services through transit options within the Service Area designated in the application.

- *Definition of Low Income Housing Tax Credit Program:* The definition in the proposed rule states that the program is “set forth in Title I of the United States Housing Act of 1937.” This is probably not correct. The Low Income Housing Tax Credit program was enacted in the Tax Reform Act of 1986 and has been codified as Section 42 of the Internal Revenue Code of 1986.

As this letter signals, there were various issues that arose as we worked through the application process and accompanying materials. We would highly recommend that the CDFI Fund launch a process that would allow the public to comment on the non-regulatory elements of the initial phases of the program, including the structure of the NOFA and the accompanying application materials. It is important to keep the rules themselves flexible and to implement the details of the program through handbooks, Frequently Asked Questions, and other guidance to the public. This approach makes it easier to adapt the program to changing market conditions rather than a formal rule-making process used to implement changes.

In closing, we want to congratulate the CDFI Fund for the flexible manner in which it has written the proposed rules and encourage additional flexibility for grantees in the crafting of the final rule. The initial roll out of this new program is very encouraging. We look forward to working with you over the coming months and years to refine and improve the implementation of the Capital Magnet Fund program.

Sincerely,

A handwritten signature in blue ink that reads "Tom Bledsoe".

Tom Bledsoe  
CEO and President  
Housing Partnership Network

A handwritten signature in black ink that reads "William C. Kelly, Jr.".

Bill Kelly  
President  
Stewards of Affordable Housing for the Future



## **APPENDIX RESPONSES TO QUESTIONS ASKED BY THE CDFI FUND**

1. This proposed rule currently defines Economic Development Activities as ‘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’. Is this an appropriate definition? Should it be expanded to include working capital loans to businesses? Should refinancing of existing loans be permissible activity?

COMMENT: Affordable housing activities are very often undertaken in conjunction with other community development activities as part of a concerted strategy. The CDFI Fund’s efforts to define these related activities seem appropriate. We note, though, that the terms Development, Preservation, Rehabilitation, and Purchase in the proposed rule are all defined in the context of housing-related activities. The CDFI Fund may want to revisit the use of these terms in the definition for Economic Development Activities. The CMF program was originally conceived as providing new resources supporting affordable housing and we would, therefore, support provisions that limit the use of CMF funds for non-housing activities. Activities like working capital loans to businesses are eligible activities of under other federal programs; applicant entities will have opportunities to support business finance activities even if these are proscribed or limited by the CMF rules.

2. Should physical proximity be necessary to meet the requirement that Economic Development Activities or Community Service Facilities financed In Conjunction with Affordable Housing Activities implement a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area? If physical proximity is necessary, what is the best measure of being ‘‘physically proximate’’ with respect to projects undertaken in urban areas, and with respect to projects undertaken in rural areas?

COMMENT: The CDFI Fund has chosen to define ‘‘Economic Development Activities or Community Service Facilities financed In Conjunction with Affordable Housing Activities’’ with physical proximity. In metropolitan areas, this physical proximity is defined as ‘‘located within the same census tract.’’ In the neighborhood development context, sometimes the census tract boundaries are not consistent with the neighborhood boundaries and, therefore, census tract boundaries might not work. Economic Development Activities and Community Service Facilities should be readily accessible to the residents of the affordable housing supported with CMF resources and clearly intended to serve them. Accessibility could be flexibly defined to include not just physical proximity but also allow for strategies that provide access to the services through readily available transit options within the Service Area proposed by the applicant.



3. The eligibility requirements for Applicants are set forth in 12 CFR 1807.200. Is an eligibility requirement that 33 percent of the Applicant's resources (measured by staff time and/or budget) be dedicated to Affordable Housing appropriate (12 CFR 1807.200(a) (2) (iii))? If not, what is the appropriate percentage of activities, and how should this be measured?

COMMENT: We can support the definition as proposed by the CDFI Fund.

4. The proposed rule in 12 CFR 1807.302 sets forth a number of restrictions on the use of CMF award funds. Are there suggested restrictions that will prevent the CMF from financing predatory lending practices that should be included in this section? Is the use restriction that no more than 30% of an Awardee's CMF award can be used for Economic Development Activities and Community Service Facilities appropriate (12 CFR 1807.302(d))? If not, what is the appropriate percentage?

COMMENT: We are relatively confident that the new rules emerging for mortgage finance will provide additional protections for low-income home purchasers. If the CDFI Fund attempted to write rules to prevent predatory lending, we would be concerned that the anti-predatory lending rules would in some way conflict with other laws regulating the terms of mortgage lending and create unnecessary complexity. If the CDFI Fund is concerned that its nonprofit grantees would engage in inappropriate lending, it could consider requiring purchasers using CMF funds to participate in pre-purchase counseling programs as an additional consumer protection for consumers. The 30 percent restriction on non-housing activities seems appropriate, given the primary purpose of the program is to support affordable housing and activities undertaken in conjunction with the housing. At the same time, our members would want as much flexibility as possible to use CMF resources and would argue against other limits on the use of the funds. For example, we would oppose a cap on the amount of funds that could go to operations. The leveraging requirements in the program should serve to discourage excessive use of funds for operations.

5. Is the Affordable Housing qualification that requires a minimum of 20 percent of units in multi-family rental housing projects financed with a CMF award be occupied by Low-Income, Very Low-Income, or Extremely Low-Income Families appropriate (12 CFR 1807.401)? If not, what is the appropriate percentage?

COMMENT: This level of targeting is not overly restrictive. The proposed rule defines "Low-Income" as 80 percent of AMI. Our members will often develop properties with a 20 percent at a *very low-income* targeting requirement; this level of targeting has become fairly standard in a mixed-income context where subsidies are available for the deeply targeted units. At the same time, the current market environment might present opportunities to acquire and preserve unsubsidized properties as affordable "workforce" housing where 20 percent of the units meeting an 80 percent of AMI targeting requirement might allow the deal to pencil out. Establishing standards that do not overly constrain other federal subsidy programs included in the deal are welcome.



6. As set forth in 12 CFR 1807.400 *et seq.*, Affordable Housing is subject to a 10-year affordability requirement that begins at Project Completion. Is this 10-year affordability requirement appropriate? How should this be measured with respect to funds that are deployed, returned to the Awardees, and reinvested during the life of the Assistant Agreement (e.g., in the case of CMF awards that are used to establish a revolving loan fund)?

COMMENT: We have significant concerns with the design of the rules for homeownership programs. The application of 10-year affordability restrictions is a serious impediment to the use of these funds for homeownership activities. The provision would impose an onerous administrative burden on the nonprofit program sponsor as well as the homeowner across the 10-year period in which the affordability restrictions are in place. The appropriate standard is one that requires affordability at purchase by an eligible household. We also oppose defining affordability by putting specific underwriting criteria in the final rule. Affordable homeownership programs run by competent nonprofits have learned how to structure both the financing and the support to low-income families to achieve sustainable homeownership opportunities.

In existing housing programs there are a variety of mechanisms that program sponsors employ to ensure that participants in a homeownership program do not inordinately or unfairly benefit from the public subsidy by flipping the property prematurely and cashing out on the equity. The CDFI Fund should defer to these other approaches. One vision the Fund might consider supporting would be a shared equity arrangement that would allow the assisted homeowner to gain any upside from his or her tenure, but would also allow the CMF grantee to recapture the subsidy provided to the homeowner if appropriate. Still, the rules should be permissive, allowing the grantee to design the affordability and recapture provisions in a way that makes sense for the grantee and their program beneficiaries.

7. The proposed rule sets forth record data collection and record retention requirements in 12 CFR 1807.902. What documentation should Awardees be required to retain to demonstrate compliance with (i) the affordability qualification requirements in 12 CFR 1807.400 *et seq.* and (ii) the leveraging, commitment, and Project Completion.

COMMENT: We are supportive of the government having a way to monitor appropriate use of grant dollars, urge flexibility for grantees and regulatory restraint to avoid administrative burden.