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Part IV

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Part 1807

Capital Magnet Fund; Proposed Rule; Notice of Funds Availability; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1807

RIN 1559–AA00

Capital Magnet Fund

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The Department of the Treasury is issuing this proposed rulemaking, and requesting comment on this proposed rule, for the implementation of the Capital Magnet Fund (CMF), administered by the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury. The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The CMF was established through the Housing and Economic Recovery Act of 2008, which added section 1339 to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

DATES: *Comment due date:* Comments on this proposed rulemaking must be received in the offices of the CDFI Fund on or before May 14, 2010.

ADDRESSES: All comments concerning this proposed rule should be addressed to the Capital Magnet Fund Manager, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; by e-mail to *cdfihelp@cdfi.treas.gov*; or by facsimile at (202) 622–7754. Comments will be made available for public review on the CDFI Fund's Web site at *http://www.cdfifund.gov*.

Comments may also be submitted and viewed through the Federal e-Rulemaking Portal, *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Berg, Legal Counsel, Community Development Financial Institutions Fund, at (202) 622–8662 (This is not a toll free number). Information regarding the CDFI Fund and the CMF may be downloaded from the CDFI Fund's Web site at *http://www.cdfifund.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Capital Magnet Fund (CMF) was established through the Housing and Economic Recovery Act of 2008 (the Act), Public Law 110–289, section 1131, as a trust fund whose appropriation will be used 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 (if one of their principal purposes is the Development or management of Affordable Housing). CMF grants must be used to attract financing for and increase investment in: (i) The Development, Preservation, Rehabilitation, and Purchase of Affordable Housing for primarily Extremely Low-, Very Low-, and Low-Income Families; and (ii) Economic Development Activities or Community Service Facilities (such as day care centers, workforce development centers, and health care clinics) which In Conjunction With Affordable Housing Activities will implement a Concerted Strategy to stabilize or revitalize a Low-Income Area or Underserved Rural Area. This proposed rulemaking creates the requirements and parameters for CMF implementation and administration including, among others, application eligibility, application review, award selection, Assistance Agreements, eligible uses of award dollars and related funds, Awardee reporting, and compliance monitoring.

On March 6, 2009, the CDFI Fund published in the **Federal Register** a Request for Public Comment, 74 FR 9869, seeking responses to specific questions regarding CMF design, implementation, and administration. The CDFI Fund seeks public comment on this entire proposed rule and the specific questions below. All capitalized terms are defined in the definition section of the proposed rule, as set forth in 12 CFR 1807.104.

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 a permissible activity?

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?

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?

4. The proposed rule in 12 CFR 1807.302 sets forth a number of restrictions on 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?

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?

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 Awardee, 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)?

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

requirements in 12 CFR 1807.500 *et seq.?*

Simultaneously published with this proposed rule is the Notice of Funds Availability (NOFA) inviting applications for the FY 2010 funding round of the CMF.

II. Responses to the Request for Public Comment (March 6, 2009)

The CDFI Fund received comments from 22 organizations in response to the Request for Public Comment (RPC) that was published in the **Federal Register** on March 6, 2009 (74 FR 9869). The following discussion summarizes the comments and the CDFI Fund's responses, many of which have been incorporated in the proposed rule. Discussion is generally in the order in which the questions were posed in the RPC.

A. Eligible Use of Funds

(1) What definition should the CDFI Fund use to assess what constitutes "affordable housing?" What affordability thresholds or restrictions (if any) should the CDFI Fund require, and for how long a period should these be in place?

The majority of the commentators supported the imposition of affordability thresholds and restrictions compatible with the Low Income Housing Tax Credit (LIHTC) Program, authorized under the Tax Reform Act of 1986, I.R.C. section 42, and the HOME Investment Partnership Program (HOME Program), authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.,* administered by the U.S. Department of Housing and Urban Development (HUD). Some commentators suggested that the CDFI Fund allow a percentage of CMF funds to be used under a modified version of these affordability thresholds in order to support workforce housing for moderate-income families. Commentators suggested that the affordability requirements should be imposed for a duration ranging from 10 to 50 years.

CDFI Fund response: The income requirements for the CMF are set forth in the Definitions section of the proposed rule at 12 CFR 1807.104(v), (hh), and (ddd); the CMF affordability requirements (12 CFR 1807.400 *et seq.*) are based generally on the affordability qualifications for rental and homeownership properties under the HOME Program regulations set forth at 24 CFR 92.252–92.255. The affordability requirements for CMF-funded housing units apply without regard to the term of any loan or mortgage or the transfer of ownership; they must be imposed by deed restrictions, covenants running with the land, or other recordable mechanisms approved, in writing and in advance, by the CDFI Fund (12 CFR 1807.401(d) and 1807.402(a)(5)). CMF-funded housing units must meet the affordability requirements for a period of not less than 10 years, beginning after completion of project construction and at initial occupancy (12 CFR 1807.401(d) and 1807.402).

(2) Section 1131 of the Act, referencing section 1339(c) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, requires that CMF grants must be used to attract private capital for and increase investment in "the development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely low-, very low-, and low-income families." How should "primarily" be defined? What are the appropriate minimum levels of targeting that each project should be required to achieve?

Several commentators proposed that "primarily" should mean: (i) At least 50 percent of units in a housing project that is funded, in whole or in part, with CMF funding, or (ii) 50 percent of costs directly traced to CMF funding in a given project. Several commentators suggested deeper income targeting.

CDFI Fund Response: The proposed rule adopts the comment that "primarily" means, with respect to Affordable Housing Activities financed with CMF funding, that greater than 50 percent of the Eligible Project Costs must be attributable to the support of housing units that meet the affordability standards (12 CFR 1807.400).

(3) How should "preservation" be defined, as such term is used in section 1131 of the Act, referencing section 1339(c)(1) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992? Should it include the re-financing of single- or multi-family mortgages as eligible activities?

Many commentators suggested broad and inclusive definitions of these terms. Commentators suggested definitions of preservation that included restoration of deteriorated properties, preventing troubled properties from default, refinancing of single-family and multi-family mortgages, and preservation of expiring-use properties with restrictions on tenant income and affordability under other federal programs that are coming to an end. Some commentators proposed using existing LIHTC or HUD definitions of preservation.

CDFI Fund Response: The CDFI Fund has adopted the definition of Preservation that is set forth in the proposed rule at 12 CFR 1807.104(rr).

(4) How should "rehabilitation" be defined, as such term is used in section 1131 of the Act, referencing section 1339(c)(1) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992?

Commentators suggested that "rehabilitation" be broadly defined to include promoting habitability, energy efficiency, and building code compliance of housing units. Commentators also suggested a minimum rehabilitation cost of approximately $6,000 per unit.

CDFI Fund Response: The CDFI Fund has adopted the definition of Rehabilitation that is set forth in the proposed rule at 12 CFR 1807.104(uu).

(5) CMF grants may be used to finance economic development activities or community service facilities, such as daycare centers, workforce development centers, and health care clinics which, in conjunction with affordable housing activities, implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area.

(a) What restrictions (if any) should the CDFI Fund place on the percentage of award dollars that an awardee may apply towards economic development activities and/or community service facilities?

Many commentators proposed that the CDFI Fund place no restrictions on the amount of CMF funding provided for economic development activities and/or community service facilities in conjunction with affordable housing activities. Others suggested that CMF grantees be allowed to apply 25 to 30 percent of their award to this use.

CDFI Fund Response: To ensure that the limited CMF funding is most efficiently targeted to Affordable Housing Activities, an Awardee may use no more than 30 percent of CMF funding for Economic Development Activities and/or Community Service Facilities, as set forth in the proposed rule, 12 CFR 1807.302(d).

(b) Should the CDFI Fund support economic development activities/community service facilities in conjunction with affordable housing activities financed by sources other than CMF grants or solely in conjunction with CMF grants?

Many commentators proposed that economic development activities and/or community service facilities should be allowed to be undertaken in conjunction with affordable housing activities that are financed with or without CMF funding.

CDFI Fund Response: The proposed rule adopts this suggestion at 12 CFR 1807.300.

(c) How should the CDFI Fund define "in conjunction with"?

Several commentators suggested that "in conjunction with" should be defined as including activities that are on the same site as or adjacent to the site of affordable housing. Others suggested a broader definition, to allow for proximate activities that are not physically adjacent to the affordable housing activities.

CDFI Fund Response: The proposed rule defines In Conjunction With to require that Economic Development Activities and/or Community Service Facilities must be physically proximate to Affordable Housing, and reasonably available to residents of Affordable Housing (12 CFR 1807.104(aa)).

(d) How should the CDFI Fund define "concerted strategy"?

Most commentators suggested that applicants identify some type of formal planning document to illustrate the connection between the affordable housing and proposed economic development activities or community service facilities, such as a local government's comprehensive housing development plan or a HUD-approved HOPE VI Program redevelopment plan, pursuant to section 803 of the National Affordable Housing Act, 42 U.S.C. 8012.

CDFI Fund Response: The proposed rule definition of Concerted Strategy (12 CFR 1807.104(p)) adopts this suggestion, requiring that, if the Economic Development Activity or Community Service Facility is not located on the same premises or immediately adjacent to the Affordable Housing, the Economic Development Activities/Community Service Facilities and the Affordable Housing must be included together in a planning document describing the community revitalization strategy for the area. Such documents may 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.

B. Eligible Grantees

Section 1131 of the Act, referencing section 1339(e) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 states that a CMF grant may only be made to: (i) A CDFI that has been certified by the CDFI Fund; or (ii) a nonprofit organization having as one of its principal purposes the development or management of affordable housing. How should the CDFI Fund define "principal purpose," with respect to determining whether one of an entity's principal purposes is the development or management of affordable housing?

For purposes of defining "nonprofit organization" in section 1339(e) of the Act, several commentators suggested automatic eligibility for certain types of organizations, such as community housing development organizations (CHDOs) as defined by HUD under the HOME Program, 24 CFR 92.2, and rural housing developers under the U.S. Department of Agriculture (USDA) section 523 Program, 7 CFR part 3551. For purposes of defining "principal purpose," a number of commentators proposed that 20 percent of the applicant's financial resources should be dedicated to affordable housing. Several commentators suggested a mission test, based on the applicant's bylaws or recognition by the Internal Revenue Service (IRS) that the applicant meets a tax-exempt purpose under I.R.C. section 501(c)(3); others recommended a track record test. Some suggested that a track record test could prevent desired activities in traditionally underserved areas.

CDFI Fund Response: For purposes of CMF applicant eligibility, the proposed rule at 12 CFR 1807.200(a) states that affordable housing development and/or management requirements will be set forth in the applicable NOFA that is published for each CMF funding round, and will comprise track record and resource dedication criteria.

C. Applications

(1) Are there other competitive award programs, federal or otherwise, upon which the CDFI Fund should model the CMF's application scoring and review protocols?

A few commentators suggested model programs such as the CDFI Program and HUD's Community Development Block Grant (CDBG) Program, authorized under the Housing and Community Development Act of 1974, 42 U.S.C. 5301 *et seq.*

CDFI Fund Response: The CMF application evaluation and selection protocols described in the proposed rule (12 CFR 1807.800 *et seq.*), are generally modeled on existing CDFI Fund award programs.

(2) Should the CDFI Fund divide applicants among different pools so that they compete only among organizations that have the same capacity level?

Most commentators recommended that CMF applications should not be divided into different pools based upon applicant capacity levels.

CDFI Fund Response: The proposed rule adopts this recommendation (12 CFR 1807.800 *et seq.*), thereby maintaining a single applicant pool in order to ensure that the highest qualified organizations receive funding and to ensure the efficiency of the application process.

(3) Should the CDFI Fund accept applications on an annual basis or more often *(e.g.,* twice a year)?

Commentators recommended an annual CMF application round.

CDFI Fund Response: Given the anticipated cycle of annual appropriation of CMF funding, the CDFI Fund will implement an annual funding round, subject to funding availability. Application requirements will be set forth in the NOFA that will be published for each funding round.

(4) Section 1131 of the Act, referencing section 1339(j)(2)(D)(ii) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires "a prioritization of funding based upon: (I) The ability to use such funds to generate additional investments; (II) affordable housing need (taking into account the distinct needs of different regions of the country); and (III) ability to obligate amounts and undertake activities so funded in a timely manner." How should the CDFI Fund quantify each of the three priority factors? For each of the three factors, what should applicants be required to present and/or address as part of their application materials? Should this prioritization be incorporated into the standard scoring of the application *(e.g.,* by weighting certain questions more heavily) or should there be separate "priority points" specific to each of the three criteria?

Many commentators provided specific suggestions on priority points, including deeper affordability targeting, targeting disaster areas, projects with guaranteed financing, workforce housing, rehabilitation or repair projects, projects in strong job areas or near good schools, manufactured housing, projects involving partnerships with state and local agencies, and rural projects, among others.

CDFI Fund Response: For the three priority factors specified in the Act, the CDFI Fund will not create separate priority points to be assigned for each. Rather, specific questions will be asked in the application to illustrate the applicant's strengths in each of the three areas, which will then be given weight in the application review process.

D. Geographic Diversity

Section 1131 of the Act, referencing section 1339(h)(2)(A) of the Federal Housing Enterprises Financial Safety

and Soundness Act of 1992 states: "The Secretary of the Treasury shall seek to fund activities in geographically diverse areas of economic distress, including metropolitan and undeserved rural areas in every State." Section 1339(h)(2)(B) provides a list of characteristics that objective criteria of economic distress may include:

(1) What objective criteria of economic distress should the CDFI Fund adopt based upon the language in section 1339(h)(2)(B)?

Many commentators proposed both place- and person-based indicators to allow for funding to projects that seek to de-concentrate poverty. Some commentators suggested utilizing existing CDFI Fund indicators.

CDFI Fund Response: In the CMF funding application, the CDFI Fund will set forth distress indicators that are the same or similar to those used in other CDFI Fund programs: Low-Income communities (less than 80 percent of area median income); high-poverty communities (poverty rate of 20 percent or greater); high unemployment rate (1.5 times the national average). In addition, the CMF application design will be sensitive to varying housing need in different communities, such as rural areas, high cost areas, and areas of revitalization or housing displacement by allowing for the use of readily available housing-specific measures such as housing vacancy rates, proportion of sub-standard or demolished housing, concentration of foreclosures, or changes in property values. As suggested by commentators, in measuring distressed communities, the CDFI Fund will allow consideration of the level of need in the population served.

(2) How should the CDFI Fund define "rural areas"? For example, is a rural area any census tract that is not located in a metropolitan statistical area (MSA)?

For purposes of defining rural, several commentators suggested using the USDA Rural Housing definition set forth in Section 520 of the Housing Act of 1949, 42 U.S.C. 1441.

CDFI Fund Response: The proposed rule adopts a definition of Non-Metropolitan Area, which includes rural areas, at 12 CFR 1807.104(mm) and a definition of Underserved Rural Area at 12 CFR 1807.104(ccc).

(3) Should the CDFI Fund ensure that, in any given award round, there is a CMF-funded project located in every state? Should the CDFI Fund "skip over" otherwise higher rated applicants to ensure that this geographic diversity goal is met? Section 1131 of the Act, referencing section 1339(j)(2)(D)(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires that "funds be fairly distributed to urban, suburban, and rural areas." How can the CDFI Fund best achieve this outcome?

Generally, commentators did not support skipping highly rated applicants to achieve geographic diversity. Some commentators suggested giving preferences to areas or even states with particularly high levels of economic distress.

CDFI Fund Response: As suggested by commentators, due in part to funding limitations and the unforeseeability of the applicant pool, the CDFI Fund will not likely be able to ensure that there is a CMF-funded project in every state. However, the CMF application will require applicants with national service areas to indicate the states in which they are most likely to provide Affordable Housing financing with CMF funding. The CDFI Fund reserves the right to adjust award decisions to ensure that the goal of geographic diversity is met.

Regarding urban, suburban, and rural distribution of awards, the CDFI Fund will incorporate an approach similar to the New Markets Tax Credit (NMTC) Program, requiring CMF applicants to indicate minimum and maximum commitments to invest in rural areas. Based on this information, the CDFI Fund will attempt to ensure that at least 20 percent of CMF funding is invested in rural communities.

E. Leverage of Funds

(1) Section 1131 of the Act, referencing section 1339(h)(3) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 states: "Each grant from the Capital Magnet Fund awarded under this section shall be reasonably expected to result in eligible housing, or economic and community development projects that support or sustain an affordable housing project funded by a grant under this section whose aggregate costs total at least 10 times the grant amount." What documentation should be required to demonstrate a leveraging ratio of 10:1 of "total aggregate costs"?

Most commentators suggested that the leveraging requirement is a reporting requirement, not an application or award requirement. As such, they proposed that the application should not require any documentation, but should instead utilize projections. One commentator proposed requiring conditional letters of commitment to help ensure that leveraging will be met.

CDFI Fund Response: In the CMF application, the CDFI Fund will require projections of leveraging, but will not require documentation. Once CMF funds have been committed to projects, information will be self-reported by the awardee through a standard system developed and managed by the CDFI Fund. Awardees will be required to retain appropriate documentation, such as audited financial statements, wire transfer documents, pro-formas, etc., and will be subject to periodic CDFI Fund audits to support their reports under the proposed rule, 12 CFR 1807.902.

(2) How should this 10:1 standard be measured (*e.g.,* on a project-by-project basis for each project funded, or on a collective basis for all projects financed)?

Many commentators proposed that leverage should be measured on a portfolio or collective basis; one commentator proposed that the requirement should be measured for each project.

CDFI Fund Response: The CDFI Fund notes that the statutory requirement is that CMF funds shall be reasonably expected to result in eligible housing or economic and community development projects that support or sustain an affordable housing project funded by a CMF grant whose aggregate costs total at least 10 times the CMF grant amount. The proposed rule adopts a 10 multiplier standard or some other standard set forth in an Awardee's Assistance Agreement that must be measured as Leveraged Costs on a collective basis for all projects financed (12 CFR part 1807.500).

(3) Is there a timing consideration as to when the CDFI Fund should release CMF award dollars (*e.g.,* not until all other sources of financing have been secured)?

Most commentators proposed that, since the CMF funding will constitute a small portion of overall project costs, the funding should be released upon closing of the assistance agreement.

CDFI Fund Response: The CDFI Fund has adopted this suggestion at 12 CFR 1807.901, with CMF funding released as a lump sum payment, or in another manner determined appropriate by the CDFI Fund, after the Assistance Agreement is executed.

F. Commitment for Use Deadline

Section 1131 of the Act, referencing section 1339(h)(4) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 states: "Amounts made available for grants under this section shall be committed for use within 2 years of the date of such allocation." How should the term "committed" be defined, and how it can

be verified, for the purposes of this requirement?

Several commentators suggested using HUD's HOME Program regulations, 24 CFR 92.2, to define the term "committed." Others suggested that a legally binding agreement should constitute commitment for use.

CDFI Fund Response: As described in the proposed rule at 12 CFR part 1807, subpart C (Use of Funds/Eligible Activities), the CDFI Fund will require all Awardees to allocate CMF funding for a specific eligible purpose, and to be able to demonstrate that these funds are so designated. Similar to HUD's HOME Program regulations at 24 CFR 92.2, CMF funds for Affordable Housing Activities, Economic Development Activities or Community Service Facilities must be Committed for use within two years of the effective date of an Awardee's Assistance Agreement. The proposed rule adopts a definition of Committed as set forth in 12 CFR 1807.104(m).

G. Prohibited Uses

Section 1131 of the Act, referencing section 1339(h)(5)–(6)) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 lists prohibited uses with respect to grants awarded under this program. Are there any additional prohibitions or limitations that should be applied?

Commentators did not propose additional specific prohibitions of CMF funding. Some commentators suggested that the CDFI Fund place a limitation of 10 to 15 percent on the amount of a CMF award that could be used for the awardee's operation costs.

CDFI Fund Response: The proposed rule states that the applicable NOFA will set forth the limitation on the amount of a CMF award that can be used for Operations (12 CFR 1807.302(b)) as well as other limitations, including a 30 percent limitation on use of an Awardee's CMF funding for Economic Development Activities and Community Service Facilities (12 CFR 1807.302(d)); and a requirement that 100 percent of Eligible Project Costs must be attributable to housing units that meet the affordability qualifications set forth in 12 CFR 1807.400 for families whose annual income does not exceed 120 percent of the median income for the area, as determined by HUD.

H. Accountability of Recipients and Grantees

(1) What requirements should be imposed to implement Section 1131 of the Act, referencing section 1339(h)(8)) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 which provides for accountability standards with respect to tracking the use of award dollars, as well as remedies in the event that an awardee misuses funds?

Commentators proposed various forms of documentation to illustrate completion of projects and satisfaction of affordability requirements and restrictions, including certificates of occupancy, closing documentation, and deeds and covenants.

CDFI Fund Response: The CDFI Fund has adopted a definition of Project Completion at 12 CFR 1807.104(ss) that applies when (i) All necessary title transfer requirements and construction work have been performed; (ii) the project complies with specified property standards; and (iii) the final drawdown has been disbursed for the project. Awardees will be required to report their compliance with CMF affordability requirements and to maintain adequate records to demonstrate compliance to the CDFI Fund during any audits that are undertaken by the CDFI Fund (12 CFR 1807.902).

(2) What specific industry standards for impact measures (units produced, percentage of units affordable to low-income persons; time to complete; *etc.*) should the CDFI Fund adopt for evaluating and monitoring projects funded under the CMF?

Commentators proposed various standards for impact measurements, including using the CDFI Fund's existing Community Investment Impact System (CIIS) and measures applied under USDA's Guaranteed Rural Rental Housing Program, 42 U.S.C. 1490p–2, as well as individual measurements such as affordable units produced, energy efficiency, cost per unit, length of time for development, project location, and others.

CDFI Fund Response: CMF awardees will be required to report on the impacts of their use of CMF funds and any Leverage Costs as set forth in 12 CFR 1807.902(e). The specific impact measures will be incorporated into the Assistance Agreement as described at 12 CFR 1807.900, and may include metrics such as the number of Affordable Housing units produced (including how many are affordable to Low-, Very Low- and Extremely Low-Income families), the ratio of leverage produced by the CMF award, and the deployment rate of CMF awards, among other measures.

III. Rulemaking Analysis

Executive Order (E.O.) 12866

It has been determined that this proposed rule is not a significant regulatory action under Executive Order 12866. Accordingly, a regulatory impact assessment is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The undersigned has determined and certified by signature of this document that this proposed rule will not have a significant economic impact on a substantial number of small entities. The CDFI Fund anticipates that a large number of applicants under this proposed rule will be certified CDFIs that have received funding under the CDFI Fund's programs or other similar federal government programs. Thus, awardees will be familiar with the types of reporting requirements that the CMF will require and most will have the necessary processes in place to participate in the CMF, regardless of their size. Many, if not all, applicants will be reporting on information and activities for which they report for other federal or state programs. Thus, this proposed rule will not impose a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities that would have a negative impact on either small or large entities in an economic way.

Paperwork Reduction Act

The collection of information contained in this proposed rule has been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Number 1559–0036. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

National Environmental Policy Act

This proposed rule has been reviewed in accordance with 12 CFR part 1815. The CDFI Fund's Environmental Regulations under the National Environmental Protection Act of 1969 (NEPA) require that the CDFI Fund adequately consider the cumulative impact proposed activities have upon the human environment. It is the determination of the CDFI Fund that the proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the NEPA and the CDFI Fund Environmental Quality Regulations, 12 CFR part 1815, neither an Environmental Assessment nor an

Environmental Impact Statement is required.

Administrative Procedure Act

Because this proposed rule relates to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act, 5 U.S.C. 553(a)(2).

Catalogue of Federal Domestic Assistance Number

Capital Magnet Fund—21.011.

List of Subjects in 12 CFR Part 1807

Community development, Grant programs—housing and community development, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 12 CFR chapter XVIII is proposed to be amended by adding part 1807 to read as follows:

PART 1807—CAPITAL MAGNET FUND

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1807.300 Purposes of grants.
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1807.700 Notice of Funds Availability.
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Subpart I—Terms and Conditions of Assistance

1807.900 Assistance Agreement.
1807.901 Disbursement of funds.
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1807.904 Lobbying restrictions.
1807.905 Criminal provisions.
1807.906 CDFI Fund deemed not to control.
1807.907 Limitation on liability.
1807.908 Fraud, waste and abuse.

Authority: Housing and Economic Recovery Act of 2008, Pub. L. 110–289, section 1131

Subpart A—General Provisions

§ 1807.100 Purpose.

The purpose of the Capital Magnet Fund (CMF) is to attract private capital for and increase investment in Affordable Housing Activities and related Economic Development Activities and Community Service Facilities.

§ 1807.101 Summary.

(a) Through the CMF, the CDFI Fund will competitively award grants to CDFIs and qualified Nonprofit Organizations to leverage dollars for:

(1) The Development, Preservation, Rehabilitation or Purchase of Affordable Housing primarily for Low-Income Families; and

(2) Financing Economic Development Activities or Community Service Facilities.

(b) The CDFI Fund will select Awardees to receive financial assistance grants through a merit-based, competitive application process. Financial assistance grants that are awarded through the CMF may only be used for eligible uses set forth in Subpart C. Each Awardee will enter into an Assistance Agreement which will require it to leverage the CMF grant amount and abide by other terms and conditions pertinent to any assistance received under this part.

§ 1807.102 Relationship to other CDFI Fund programs.

A Certified CDFI will automatically be deemed to meet the eligible entity requirements, provided that it has been in business as an operating entity for a period of at least three years prior to the application deadline.

§ 1807.103 Awardee not instrumentality.

No Awardee shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1807.104 Definitions.

For the purpose of this part:

(a) *Act* means the Housing and Economic Recovery Act of 2008, as amended, Pub. L. No. 110–289, section 1131;

(b) *Affiliate* means, any entity that Controls, is Controlled by, or is under common Control with, an entity;

(c) *Affordable Housing* means rental or for-sale single-family or multi-family housing that meets the requirements set forth in Subpart D of this part;

(d) *Affordable Housing Activities* means the Development, Preservation, Rehabilitation, or Purchase of Affordable Housing;

(e) *Affordable Housing Fund* means a loan fund, managed by the Awardee, whose capital is used to finance Affordable Housing Activities;

(f) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q), and includes, with respect to Insured Credit Unions, the National Credit Union Administration;

(g) *Applicant* means any entity submitting an application for assistance under this part;

(h) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;

(i) *Assistance Agreement* means a formal, written agreement between the CDFI Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(j) *Awardee* means an Applicant selected by the CDFI Fund to receive assistance pursuant to this part;

(k) *Capital Magnet Fund (or CMF)* means the program authorized by section 1131 of the Act, Public Law No. 110–289, and implemented under this part;

(l) *Certified Community Development Financial Institution (or Certified CDFI*) means an entity that has been determined by the CDFI Fund to meet the eligibility requirements set forth in 12 CFR Part 1805.201;

(m) *Committed* means 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 § 1807.501;

(n) *Community Development Financial Institutions Fund (or CDFI Fund*) means 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.;*

(o) *Community Service Facility* means the physical structure in which community-based programs (including,

but not limited to, health care, childcare, educational, 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;

(p) *Concerted Strategy* means 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;

(q) *Control* means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company;

(r) *Depository Institution Holding Company* 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);

(s) *Development* means 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;

(t) *Economic Development Activity* means 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;

(u) *Eligible Project Costs* means Leverage Costs plus those costs funded directly by a CMF award, exclusive of Operations;

(v) *Extremely Low-Income* means

(1) In the case of owner-occupied housing units, income not in excess of 30 percent of the area median income and

(2) In the case of rental housing units, income not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD;

(w) *HOME Program* means 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.;*

(x) *Homeownership* means ownership in fee simple title or a 99-year leasehold interest in a one- to four-unit dwelling or in a condominium unit, or equivalent form of ownership (which shall include cooperative housing and mutual housing project). For purposes of housing located on trust or restricted Indian lands, homeownership includes leases of 50 years. The ownership interest may be subject only to the following:

(1) Restrictions on resale permitted under the Assistance Agreement;

(2) Mortgages, deeds of trust, or other liens or instruments securing debt on the property; or

(3) Any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

(y) *Housing* means 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 CFR 92.258;

(z) *HUD* means 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;

(aa) *In Conjunction With* means 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. For a Non-Metropolitan Area, In Conjunction With means located within the same county, township, or village;

(bb) *Insured CDFI* means a Certified CDFI that is an Insured Depository Institution or an Insured Credit Union;

(cc) *Insured Credit Union* means 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.;*

(dd) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation, 12 U.S.C. 1813(c)(2);

(ee) *Leveraged Costs* means those costs as described in 12 CFR 1807.500;

(ff) *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;

(gg) *Loan Loss Reserves* means 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;

(hh) *Low-Income* means

(1) In the case of owner-occupied housing units, income not in excess of 80 percent of area median income and

(2) In the case of rental housing units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by HUD;

(ii) *Low-Income Area (LIA)* means 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;

(jj) *Low-Income Families* means those households that reside within the boundaries of the United Sates (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands) meeting the criteria as set forth in § 1807.104(hh);

(kk) *Low Income Housing Tax Credit Program or LIHTC Program* means the program as set forth under Title I of the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.;*

(ll) *Metropolitan Area* means 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 CFR, 1949–1953 Comp., p. 758), as amended;

(mm) *Non-Metropolitan Area* means 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 most recent decennial census. Non-Metropolitan Counties can be identified in the CDFI Fund's mapping system (CIMS), and are also listed on the CDFI Fund's Web site;

(nn) *Nonprofit Organization* means any corporation, trust, association, cooperative, or other organization that is

(1) Designated as a nonprofit or not-for-profit entity under the laws of the organization's State of formation and

(2) Exempt from Federal income taxation pursuant to the Internal Revenue Code of 1986;

(oo) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in 12 CFR 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(pp) *Operations* means 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;

(qq) *Participating Jurisdiction* means a jurisdiction designated by HUD, as a participating jurisdiction under the HOME Program in accordance with the requirements of 24 CFR 92.105;

(rr) *Preservation* means:

(1) Activities to refinance, with or without Rehabilitation, single-family or multi-family rental property mortgages that, at the time of refinancing, are subject to affordability and use restrictions under State or federal affordable housing programs, including but not limited to, the HOME Program, the LIHTC Program, the Section 8 Tenant-Based Assistance and the Section 8 Rental Voucher programs (24 CFR part 982), or the Section 515 Rural Rental Housing program (7 CFR Part 3560), hereinafter referred to as "similar State or federal affordable housing programs," where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(2) Activities to refinance and acquire single-family or multi-family properties that, at the time of refinancing or acquisition, were subject to affordability and use restrictions under similar State or Federal affordable housing programs, by the former tenants of such properties, where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties; or

(3) Activities to refinance the mortgages of single-family, owner-occupied housing that at the time of refinancing are subject to affordability and use restrictions under similar State or Federal affordable housing programs, where such refinancing has the effect of extending the term of any affordability and use restrictions on the properties;

(ss) *Project Completion* means that all of the requirements set forth at 12 CFR 1807.503 for a project supported by a CMF award have been met;

(tt) *Purchase* means 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;

(uu) *Rehabilitation* means any repairs and/or capital improvements that contribute to the long-term preservation, current building code compliance, habitability, sustainability, energy efficiency of affordable housing;

(vv) *Revolving Loan Fund* means a pool of funds managed by the Applicant or Awardee wherein repayments on Affordable Housing Activities loans, Economic Development Activities loans and/or Community Services Facilities loans are used to finance additional loans;

(ww) *Risk-Sharing Loan* means 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);

(xx) *Service Area* means 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;

(yy) *Single-family housing* means a one- to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot;

(zz) *State* means 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;

(aaa) *State-Insured Credit Union* means any credit union that is regulated by, and/or the member accounts of which are insured by, a State agency or instrumentality;

(bbb) *Subsidiary* means any company which is owned or Controlled directly or indirectly by another company;

(ccc) *Underserved Rural Area* means a Non-Metropolitan Area that:

(1) Qualifies as a Low-Income Area;

(2) Is experiencing housing stress evidenced by 30 percent or more of resident households with one or more of these housing conditions in the last decennial census:

(i) Lacked complete plumbing,

(ii) Lacked complete kitchen,

(iii) Paid 30 percent or more of income for owner costs or rent, or (D) had more than 1 person per room; or

(3) Is remote-rural county consisting of a Non-Metropolitan Area that is also not adjacent to a Metropolitan Area;

(ddd) *Very Low-Income* means

(1) In the case of owner-occupied housing units, income not greater than 50 percent of the area median income; and

(2) In the case of rental housing units, income not greater than 50 percent of the area median income, with adjustments for smaller and larger families, as determined by HUD.

§ 1807.105 Waiver authority.

The CDFI Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the **Federal Register.**

§ 1807.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1559–0036.

Subpart B—Eligibility

§ 1807.200 Applicant eligibility.

(a) *General requirements.* An Applicant will be deemed eligible for a CMF award if it is:

(1) A Certified or certifiable CDFI. An entity may meet the requirements described in this paragraph (a)(1) if it is:

(i) A Certified CDFI, as set forth in 12 CFR Part 1805.201, that has been in existence as a legally formed entity as set forth in the Notice of Funds

Availability (NOFA) for the applicable funding round; or

(ii) A certifiable CDFI that has been in existence as a legally formed entity as set forth in the NOFA for the applicable round and, although not yet certified as a CDFI, has submitted a complete CDFI certification application as of the date set forth in the applicable NOFA; or

(2) A Nonprofit Organization having as one of its principal purposes the development or management of affordable housing. An entity may meet the requirements described in this paragraph (a)(2) if it:

(i) Has been in existence as a legally formed entity as set forth in the applicable NOFA;

(ii) Demonstrates, through articles of incorporation, by-laws, or other board-approved documents, that the development or management of affordable housing are among its principal purposes; and

(iii) Can demonstrate that at least one-third of the Applicant's resources (either as a portion of total staffing or as a portion of total assets) are dedicated to the development or management of affordable housing.

(b) *Eligibility verification.* An Applicant shall demonstrate that it meets the eligibility requirements described in § 1807.200(a)(2) above by providing information described in the application, NOFA, and/or supplemental information, as may be requested by the CDFI Fund. For an Applicant seeking eligibility under subsection 1 of this Subpart, the CDFI Fund will verify that the Applicant is a Certified CDFI during the application eligibility review. For an Applicant seeking eligibility under subsection 2 of this Subpart, the CDFI Fund, in its sole discretion, shall determine whether the Applicant has satisfied said requirements.

Subpart C—Use of Funds/Eligible Activities

§ 1807.300 Purposes of grants.

The CDFI Fund may provide financial assistance grants to organizations described under Subpart B of this part for the purpose of attracting private capital for and increase investment in:

(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 Services Facilities. With respect to an Economic Development Activity or Community Service Facility funded with a CMF grant, the Affordable Housing that it is In Conjunction With may be financed by sources other than the CMF grant.

§ 1807.301 Eligible activities.

Grants awarded under this part shall be used by an Awardee to support Affordable Housing Activities, Economic Development Activities or Community Service Facilities, including the following eligible uses:

(a) To provide Loan Loss Reserves;

(b) To capitalize a Revolving Loan Fund;

(c) To capitalize an Affordable Housing Fund;

(d) To capitalize a fund to support Economic Development Activities or Community Service Facilities;

(e) For Risk-Sharing Loans;

(f) For Loan Guarantees; and

(g) For the Awardee's Operations.

§ 1807.302 Restrictions on use of assistance.

(a) An Awardee's activities under Part 1807.301 shall not include the use of CMF for the following:

(1) Political activities;

(2) Advocacy;

(3) Lobbying, whether directly or through other parties;

(4) Counseling services (including homebuyer or financial counseling);

(5) Travel expenses;

(6) Preparing or providing advice on tax returns;

(7) emergency shelters (including shelters for disaster victims);

(8) Nursing homes;

(9) Convalescent homes;

(10) Residential treatment facilities;

(11) Correctional facilities; or

(12) Student dormitories.

(b) An Awardee may use up to a percentage of CMF award for Operations as specified in the applicable NOFA.

(c) An Awardee shall not use CMF award to support projects that:

(1) Consist 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;

(2) Consist of farming (within the meaning of I.R.C. section 2032A(e)(5)(A) or (B)) if, as of the close of the taxable year of the taxpayer conducting such trade or business, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer that are used in such a trade or business, and the aggregate value of the assets leased by the taxpayer that are used in such a trade or business, exceeds $500,000.

(d) In any given funding round, no more than 30 percent of an Awardee's CMF award may be used for purposes described in § 1807.300(b).

Subpart D—Qualification as Affordable Housing

§ 1807.400 Affordable Housing—general.

Each Awardee that uses CMF funding to support Affordable Housing Activities shall ensure that 100 percent of Eligible Project Costs are attributable to housing units that meet the affordability qualifications set forth below for families whose annual income does not exceed 120 percent of the median income for the area, as determined by HUD. In addition, greater than 50 percent of the Eligible Project Costs must be attributable to housing units that meet the affordability qualifications set forth below for either Low-Income, Very Low-Income, or Extremely Low-Income Families.

§ 1807.401 Affordable Housing—Rental Housing.

To qualify as Affordable Housing, a multi-family rental housing project financed with a CMF award must have at least 20 percent of the housing units occupied by Low-Income, Very Low-Income, or Extremely Low-Income Families and must comply with the rent limits set forth herein.

(a) *Rent limitation.* The maximum rent that is deemed to be affordable under the CMF is a rent that does not exceed 30 percent of the family's annual income.

(b) *Nondiscrimination against rental assistance subsidy holders.* The Awardee shall require that the owner of a rental unit cannot refuse to lease the unit to a Section 8 Program certificate or voucher holder (24 CFR Part 982, Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

(c) *Initial rent schedule and utility allowances.* The Awardee shall ensure that the housing adheres to the applicable Participating Jurisdiction's maximum monthly allowances for utilities and services (excluding telephone). If the Participating Jurisdiction's allowances have not been determined or are otherwise unavailable, the Awardee shall rely upon the utility and services allowances established by the applicable city,

county or State public housing authority.

(d) *Periods of Affordability.* Housing under § 1807.401 must meet the affordability requirements for not less than 10 years, beginning after Project Completion and at initial occupancy. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership and must be imposed by deed restrictions, covenants running with the land, or other recordable mechanisms, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. Other recordable mechanisms must be approved in writing and in advance by the CDFI Fund. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

(e) *Subsequent rents during the affordability period.* Any increase in rent for a CMF-funded unit requires that tenants of those units be given at least 30 days prior written notice before the implementation of the rent increase.

(f) *Tenant income determination.* (1) Each year during the period of affordability the tenant's income shall be re-examined; tenant income examination is the responsibility of the Awardee. Annual income shall include income from all household members.

(2) One of the following two definitions of "annual income" must be used to determine whether a family is income eligible:

(i) Annual income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(A) Wages, salaries, tips, commissions, etc.;

(B) Self-employment income from owned non-farm business, including proprietorships and partnerships;

(C) Farm self-employment income;

(D) interest, dividends, net rental income, or income from estates or trusts;

(E) Social Security or railroad retirement;

(F) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(G) Retirement, survivor, or disability pensions;

(H) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; and

(I) Any other sources of income the CDFI Fund may deem appropriate; or

(ii) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

(3) The CDFI Fund reserves the right to deem certain government programs, under which a Low-Income family is a recipient, as income eligible for purposes of meeting the tenant income requirements under this subsection.

(g) *Over-income tenants.* (1) CMF-funded units continue to qualify as Affordable Housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to the CDFI Fund are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

(2) Tenants whose incomes no longer qualify must pay rent equal to the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's annual income, except that tenants of units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986, I.R.C. section 42, must pay rent governed by section 42. Tenants who no longer qualify as Low-Income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood.

§ 1807.402 Affordable Housing—Homeownership.

(a) *Acquisition with or without rehabilitation.* Housing that is for Homeownership purchase must meet the affordability requirements of this subsection.

(1) The housing must be Single-family housing;

(2) The housing must meet the following standards:

(i) Housing costs should fall within a front-end ratio of 28 percent of household income and a back-end ratio of 36 percent of household income. The front-end ratio is a percentage comparing a Low-Income borrower's total monthly cost to buy a property (mortgage principal and interest, insurance, and real estate taxes) to the borrower's monthly income before deductions. The back-end ratio is a percentage comparing a Low-Income borrower's total monthly debt payments (mortgage, real estate taxes and insurance, car loans, and other consumer loans) to the borrower's gross monthly income; or

(ii) 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.

(3) The housing must be purchased by a qualifying family as set forth in § 1807.400. The housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section.

(4) *Periods of Affordability.* Housing under this subsection must meet the affordability requirements for at least 10 years at the time of purchase by the homeowner.

(5) *Resale.* To ensure affordability, resale requirements must be imposed by the owner of the housing. Resale requirements must ensure that, if the housing does not continue to be the principal residence of the original qualifying family for the duration of the period of affordability, the housing is made available for subsequent purchase only to a buyer whose family meets the requirements in § 1807.400 and who will use the property as their principal residence. The resale requirement must also ensure that the price at resale provides the original CMF-funded owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of qualifying families. Deed restrictions, covenants running with the land, or other similar mechanisms must be used as the mechanism to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA-insured mortgage to HUD. The Awardee may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

(b) *Rehabilitation not involving acquisition.* Housing that is currently owned by a qualifying family, as set forth in § 1807.400, qualifies as Affordable Housing if it meets the requirements of this subsection.

(1) The housing is as follows:

(i) The estimated value of the housing, after Rehabilitation, 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; or

(ii) Housing costs should fall within a front-end ratio of 28 percent of household income and a back-end ratio of 36 percent of household income. The front-end ratio is a percentage comparing a Low-Income borrower's total monthly cost to buy a property (mortgage principal and interest, insurance, and real estate taxes) to the borrower's monthly income before deductions. The back-end ratio is a percentage comparing the Low-Income borrower's total monthly debt payments (mortgage, real estate taxes and insurance, car loans, and other consumer loans) to the borrower's gross monthly income.

(2) The housing is the principal residence of a qualifying family as set forth in § 1807.400, at the time that CMF funding is Committed to the housing.

(3) Housing under this subsection must meet the affordability requirements for at least 10 years after Rehabilitation is completed.

(c) *Ownership interest.* The ownership in the housing assisted under this section must meet the definition of "Homeownership" as defined in § 1807.104(x).

(d) *New construction without acquisition.* Newly constructed housing that is built on property currently owned by a family which will occupy the housing upon completion, qualifies as Affordable Housing if it meets the requirements under paragraph (a) of this section.

(e) *Converting rental units to Homeownership units for existing tenants.* CMF-funded rental units may be converted to Homeownership units by selling, donating, or otherwise conveying the units to the existing tenants to enable the tenants to become homeowners in accordance with the requirements of § 1807.402. The Homeownership units are subject to a minimum period of affordability equal to the remaining affordability period.

Subpart E—Leveraging and Commitment Requirement

1807.500 Leveraged costs—general.

(a) Each CMF grant is expected to result in Eligible Project Costs that total at least 10 times the grant amount. Such costs may be for activities that include Affordable Housing Activities, Economic Development Activities, or Community Service Facilities. Thus, an Awardee shall demonstrate that it leveraged its CMF award at least 10 times the CMF grant amount or some other standard established by the CDFI Fund in the Awardee's Assistance Agreement. Leveraged Costs are costs that exceed the dollar amount of the Awardee's CMF contribution to each CMF-funded activity. However, the applicable NOFA may set forth a required percentage of Leveraged Costs that must be attributable to non-governmental sources. An Awardee may report to the CDFI Fund all Leveraged Costs, with the following limitations:

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

(2) No costs attributable to prohibited uses as identified in § 1807.302(a) and (c) may be reported as Leveraged Costs.

(3) All costs attributable to Affordable Housing Activities reported as Leveraged Costs must be for housing units that qualify as Affordable Housing under § 1807.401 or § 1807.402 for families whose annual income does not exceed 120 percent of the median income for the area, as determined by HUD.

(b) Awardees shall self-report leveraging information through forms or electronic systems developed by the CDFI Fund, subject to audit requirements set forth herein. Consequently, Awardees shall maintain appropriate documentation, such as audited financial statements, wire transfers documents, pro-formas, and other relevant records, to support its reports.

§ 1807.501 Commitment for use.

(a) CMF awards shall be Committed for use within two years of the effective date of the Awardee's Assistance Agreement. An Awardee shall demonstrate that its CMF award is Committed by having executed a written, legally binding agreement under which CMF assistance will be provided to the developer or project sponsor for an identifiable project under which:

(1) Construction can reasonably be expected to start within 12 months of the agreement date; or

(2) Property title will be transferred within six months of the agreement date.

(b) An Awardee shall make an initial disbursement of its CMF award for Affordable Housing Activities, Economic Development Activities or Community Service Facilities within three years of the effective date of its Assistance Agreement.

§ 1807.502 Assistance limits.

An eligible Applicant and its Subsidiaries and Affiliates may not be awarded more than 15 percent of the aggregate funds available for CMF grants during any funding year.

§ 1807.503 Project completion.

Once a CMF-funded project has been *completed, it* must be placed into service within five years of the effective date of an Awardee's Assistance Agreement. Project Completion occurs, as determined by the CDFI Fund, when:

(a) All necessary title transfer requirements and construction work have been performed;

(b) The project complies with the requirements of this part, including the following property standards (these property standards must be complied with at the time of Project Completion and maintained for a period of at least 10 years thereafter):

(1) Housing that is constructed or rehabilitated with CMF funding must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, such housing must meet, as applicable: One of three model codes (Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI)); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(2) The housing must meet the accessibility requirements at 24 CFR part 8, which implement Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601–3619).

(3) Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing. The installation of all manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using CMF funds must meet the requirements set out in paragraph (b)(1) of this section; and

(c) The final drawdown has been disbursed for the project.

Subpart F—Tracking Requirements

§ 1807.600 Tracking funds—general.

An Awardee receiving a CMF award shall develop and maintain a system to ensure that its CMF award is used in accordance with this part, the Act, its Assistance Agreement, and any requirements or conditions under which such amounts were awarded. Thus, an Awardee may create a separate account or accounting code for CMF activities.

§ 1807.601 Nature of funds.

A CMF award shall be considered Federal financial assistance in regards to applying Federal civil rights laws.

Subpart G—Applications for Assistance

§ 1807.700 Notice of Funds Availability.

Each Applicant shall submit an application for funding under this part in accordance with the regulations in this Subpart. The applicable NOFA will advise potential Applicants on how to obtain and complete an application and will establish deadlines and other requirements. The NOFA will specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the CDFI Fund may request clarifying or technical information on the materials submitted as part of such application.

Subpart H—Evaluation and Selection of Applications

§ 1807.800 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the CDFI Fund, to receive assistance based on a review process that may include an interview(s) and/or site visit(s) intended to:

(a) Ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner;

(b) Ensure that each Awardee can successfully meet its leveraging goals and achieve Affordable Housing Activity, Community Service Facility and/or Economic Development Activity impacts;

(c) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas and Underserved Rural Areas across the United States that meet criteria of economic distress, which may include:

(1) The percentage of Low-Income Families or the extent of poverty;

(2) The rate of unemployment or underemployment;

(3) The extent of blight and disinvestment;

(4) Economic Development Activities or Community Service Facilities that target Extremely Low-Income, Very Low-Income, and Low-Income families within the Awardee's Service Area; or

(5) Any other criteria the CDFI Fund shall set forth in the applicable NOFA; and

(d) Take into consideration other factors as described in the applicable NOFA.

§ 1807.801 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive a CMF award if it fails to meet the eligibility requirements described in § 1807.200 and in the applicable NOFA, or if the Applicant has not submitted complete application materials. For the purposes of this paragraph (a), the CDFI Fund reserves the right to request additional information from the Applicant, if the CDFI Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the CDFI Fund will evaluate the Applicant's likelihood of success in meeting the factors set forth in the applicable NOFA, including but not limited to:

(1) The Applicant's ability to use CMF funding to generate additional investments;

(2) The need for affordable housing in the Applicant's market; and

(3) The ability of the Applicant to obligate amounts and undertake activities in a timely manner. In the case of an Applicant that has previously received assistance under any CDFI Fund program, the CDFI Fund will also consider the Applicant's level of success in meeting its performance goals, reporting requirements, and other requirements contained in the previously negotiated and executed assistance, allocation or award agreement(s) with the CDFI Fund, any undisbursed balance of assistance, and compliance with applicable federal laws. The CDFI Fund may consider any other factors, as it deems appropriate, in reviewing an application, as set forth in the applicable NOFA.

(c) *Consultation with appropriate regulatory agencies.* In the case of an Applicant that is a federally regulated financial institution, the CDFI Fund may consult with the Appropriate Federal Banking Agency or Appropriate State Agency prior to making a final award decision and prior to entering into an Assistance Agreement.

(d) *Awardee selection.* The CDFI Fund will select CMF Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable NOFA.

Subpart I—Terms and Conditions of Assistance

§ 1807.900 Assistance Agreement.

(a) Each Applicant that is selected to receive a CMF award must enter into an Assistance Agreement with the CDFI Fund. The Assistance Agreement will set forth certain required terms and conditions of the Assistance Agreement which may include, but are not limited to, the following:

(1) The amount of the award;

(2) The approved uses of the award;

(3) The approved Service Area in which the award may be used; (4) the time period by which the award proceeds must be Committed;

(5) The required documentation to evidence Project Completion; and

(6) Performance goals that have been established by the CDFI Fund based upon the Awardee's application.

(b) The Assistance Agreement shall provide that in the event of fraud, mismanagement, noncompliance with the Act or the CDFI Fund's regulations; or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee; the CDFI Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Revoke approval of the Awardee's Application;

(3) Reduce or terminate the Awardee's assistance;

(4) Require repayment of any assistance that has been distributed to the Awardee;

(5) Bar the Awardee from reapplying for any assistance from the CDFI Fund; or

(6) Take such other actions as the CDFI Fund deems appropriate or as set forth in the Assistance Agreement.

(c) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the CDFI Fund shall, to the maximum extent practicable, provide the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1807.901 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or in some other manner, as determined appropriate by the CDFI Fund. The CDFI Fund shall not provide any assistance under this part until an

Awardee has satisfied all conditions set forth in the applicable NOFA and Assistance Agreement.

§ 1807.902 Data collection and reporting.

(a) *Data—General.* An Awardee shall maintain such records as may be prescribed by the CDFI Fund that are necessary to:

(1) Disclose the manner in which CMF funding is used, including providing documentation to demonstrate Project Completion;

(2) Demonstrate compliance with the requirements of this part and the Assistance Agreement; and

(3) Evaluate the impact of CMF funding.

(b) *Customer profiles.* An Awardee shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the CDFI Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of the Awardee's Service Area are adequately served and to evaluate the impact of CMF funding.

(c) *Access to records.* An Awardee must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the CDFI Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of CMF funding. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate and audit or provide for an audit at least annually. The CDFI Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Data collection and reporting.* (1) Financial Reporting: (i) All Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements that have been 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 by a time set forth in the applicable Notice of Funding Availability or Assistance Agreement (audited financial statements can be provided by the due date in lieu of reviewed statements, if available). Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) 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 A–133 audited financial statements by a time set forth in the applicable NOFA or Assistance Agreement. Non-Profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) 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 submit to the CDFI Fund a statement signed by the Awardee's authorized representative or certified public accountant, asserting that the Awardee is not required to have a single audit pursuant OMB Circular A–133.

(ii) For-profit Awardees (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public by a time set forth in the applicable NOFA or Assistance Agreement.

(iii) Insured CDFIs are not required to submit financial statements to the CDFI Fund. The CDFI Fund will obtain the necessary information from publicly available sources. State-Insured Credit Unions must submit to the CDFI Fund copies of the financial statements that they submit to the Appropriate State Agency.

(2) Performance Goal Reporting: Performance goals and measures that are specific to the Awardee's application for funding shall be met as set forth in its Assistance Agreement. Awardees shall submit data and information to the CDFI Fund regarding achievement of these Performance Goals as described in the Assistance Agreement.

(f) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (*http://www.whitehouse.gov/omb/grants_circulars/*); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

§ 1807.903 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

1807.904 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee 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.

1807.905 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds is applicable to all Awardees and Insiders.

§ 1807.906 CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

1807.907 Limitation on liability.

The liability of the CDFI Fund and the United States Government arising out of any assistance to an Awardee in accordance with this part shall be limited to the amount of the investment in the Awardee. The CDFI 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 in this section shall affect the application of any Federal tax law.

§ 1807.908 Fraud, waste, and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: March 4, 2010.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

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