



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

COMMUNITY DEVELOPMENT
FINANCIAL INSTITUTIONS FUND

November 7, 2018

Via e-mail

Dear FY 2016 and FY 2017 Capital Magnet Fund Award Recipients:

The purpose of this letter is to advise you that the Community Development Financial Institutions Fund (CDFI Fund) issued a general waiver of 12 C.F.R. §1807.501(b) under limited circumstances, as published in Section VIII of the FY 2018 Capital Magnet Fund (CMF) Notice of Funding Availability (NOFA). The waiver is effective as of the date the FY 2018 NOFA was published in the Federal Register: July 20, 2018. This waiver applies to all awards, including FY 2016 and FY 2017 Awards.

As background, the CMF Interim Rule 12 C.F.R. §1807.501(a) requires CMF Recipients to issue Commitments for use of their Award within two years of the Effective Date of the Assistance Agreement. 12 C.F.R. §1807.501(b) requires that the Commitment be a written, legally binding agreement to a qualifying Family, developer, or project sponsor for each specific Project. A legally binding agreement means that the Recipient must have a counterparty to which it can issue the Commitment. In certain cases, this definition and requirement for a counterparty effectively precludes CMF Award Recipients from Committing CMF Award dollars to an activity where the Recipient itself is the developer, direct lender, or provides Loan Loss Reserves for its own loans; and where there is not a counterparty to effectuate a legally binding agreement.

The waiver allows Recipients, in limited circumstances, to evidence a Commitment via a Resolution of the Recipient's Board of Directors for an identified Project, in lieu of a legally binding written agreement with a counterparty. The resolution will be required to be in the form and substance acceptable to the CDFI Fund in its sole discretion. Guidance on the form and substance of the Board Resolution is provided in the Appendix to this letter.

The waiver is applicable only in the following scenarios:

- (1) the CMF Award Recipient serves in the role as the developer for the Project and the Project is not owned, sponsored, or being developed by a limited partnership or limited liability company or any other separate legal entity.
- (2) the CMF Award Recipient is financing and/or supporting a Project for Purchase (i.e. a Homeownership Purchase Program, such as mortgage lending or down-payment assistance) and that Project is not owned/sponsored by a limited partnership, limited liability company, or other separate entity.
- (3) the CMF Award Recipient is Committing its CMF Award to a Loan Loss Reserve made by the Recipient, where the reserve is not pledged to a third party or separate legal entity affiliated with the Recipient, but is used to reserve against losses from loans directly made by the Recipient.

Further information on the waiver may also be found in the FY 2018 Application Frequently Asked Questions (as updated August 28, 2018), which can be found on the CDFI Fund's website at www.cdfifund.gov/cmfi under "How to Apply Step 2: Apply." If you have specific questions or would like guidance on whether the waiver is applicable in a specific circumstance, submit a Service Request using the request type "CMF Program Compliance," via your organization's AMIS account.

Regards,

The Capital Magnet Fund Team
CDFI Fund

Appendix

Guidance Related to Requirements to Make a Commitment of CMF Funds by a Resolution of the Board of Directors pursuant to the Waiver of General Applicability

On July 18, 2018, the CDFI Fund issued a general waiver of 12 C.F.R. 1807.501(b), via the FY 2018 NOFA (83 FR 34685), applicable in cases where the CMF Award Recipient serves in the role as the developer for the Project or is financing and/or supporting a Project for Purchase and the Project is not owned, sponsored, or being developed by a limited partnership or limited liability company or other separate legal entity. Additionally, the CDFI Fund issued a general waiver of 12 C.F.R. 1807.501(b) in cases where the Recipient is committing its CMF Award to a Loan Loss Reserve made by the Recipient, where the reserve is not pledged to a third party or separate entity affiliated with the Recipient, but is used to reserve against losses from loans directly made by the Recipient.

In such cases as described above, because there is no counterparty for purposes of Commitment, in lieu of a legally binding written agreement, such Recipients will be able to evidence a Commitment via a resolution (Resolution) of the Board of Directors for an identified Project. The requirements of that Resolution are outlined below:

The Board of Directors of the Recipient shall adopt a Resolution which shall include the following:

- The Resolution shall cite the regulatory requirement and waiver, and shall state it is being adopted to satisfy the evidence of Commitment under 12 C.F.R. Section 1807.501(b) of the Capital Magnet Fund Interim Rule, per the waiver of general applicability as published in the Federal Register on July 18, 2018. The CMF Award number should be cited.
- The Resolution shall be binding. The Resolution must be approved on or before the Commitment for Use date (Commitment Date) listed in Section 3.2(h) of the Assistance Agreement. The Board may amend the Commitment until the Commitment Date listed in the Assistance Agreement. Thereafter, any changes require written notification to and approval by the CDFI Fund, and shall be so stated in the Resolution.
- The Resolution must be retained in the Project file, along with evidence of its formal approval by the Board and date of approval, and available for inspection at the request of the CDFI Fund.

Additional requirements for specific types of Affordable Housing Activities are listed below:

A. PURCHASE (HOMEOWNERSHIP MORTGAGE/PURCHASE ASSISTANCE PROGRAMS)

1. Recipients providing mortgage/purchase assistance financing (Purchase) directly to eligible Families may evidence Commitment by establishing an Affordable Homeownership Purchase Program by Board Resolution. The Affordable

- Homeownership Purchase Program is comprised of the entire portfolio of Homeownership loans financed and/or supported with the Recipient's CMF Award for Purchase, which shall be deemed a Project;
2. By Resolution, the Board of Directors shall make a Commitment of its CMF Award to finance, fund or support the Affordable Homeownership Purchase Program;
 3. The Resolution shall state that the Affordable Homeownership Purchase Program is established solely for the purpose of providing mortgage financing and/or purchase assistance to Eligible-Income Families;
 4. The Resolution shall state the targeted income levels for homebuyers in the required percentages per the Assistance Agreement;
 5. The Resolution shall describe the Service Area the Affordable Homeownership Purchase Program will serve; and
 6. The Resolution must commit the Recipient to ensuring that all properties financed under the Affordable Homeownership Purchase Program fully comply with all CMF requirements (C.F.R. § 1807.402).

B. HOMEOWNERSHIP DEVELOPMENT, REHABILITATION AND PRESERVATION

1. Recipients using a CMF Award, to directly build, develop, rehabilitate, or acquire to preserve properties for the purpose of providing affordable Homeownership to Eligible-Income Families, may evidence a Commitment through a Board Resolution;
2. The Resolution must commit a specific dollar amount of its CMF Award to an identified Project (or property) for a specified Affordable Housing Activity;
3. The Resolution must identify the Project by property address or lot/parcel number, including the city and state;
4. The Resolution must state that a legally binding Commitment to a third party is not possible;
5. The Resolution must indicate the targeted income level of the homebuyer(s) in the required percentages per the Assistance Agreement; and
6. The Resolution must commit the Recipient to ensuring full compliance with all CMF requirements.

C. RENTAL HOUSING DEVELOPMENT, REHABILITATION AND PRESERVATION

1. Recipients using a CMF Award, to build, develop, rehabilitate, or acquire to preserve a rental housing Project and who are serving in the role as the developer and/or owner for the Project, may evidence Commitment through a Board Resolution;
2. The Resolution must commit a specific dollar amount of its CMF Award to an identified Project;
3. The Resolution must identify the Project by address or lot/parcel number, including the city and state;

4. The Resolution must state that the Project is not owned, sponsored or being developed by a limited partnership or limited liability company or other separate legal entity; and
5. The Resolution must state that a legally binding Commitment to a third party is not possible;
6. The Resolution must indicate the targeted income level of tenants in the required percentages per the Assistance Agreement; and
7. The Resolution must commit the Recipient to ensuring full compliance with all CMF requirements.

D. LOAN LOSS RESERVE

1. Recipients using its CMF Award to fund a Loan Loss Reserve (LLR) to reserve against losses from loans directly made by the Recipient that meet the requirements of the CMF Interim Rule and Assistance Agreement, may evidence Commitment through a Board Resolution establishing a Loan Loss Reserve;
2. The Resolution must commit a specific dollar amount of its CMF Award to identified loans (Projects) or to a Board-approved Affordable Homeownership Purchase Program;
3. The Resolution must identify the Project by address or lot/parcel number, including the city and state;
4. The Resolution must state that the LLR is not pledged to a third party or separate legal entity affiliated with the Recipient;
5. The Resolution must state that a legally binding Commitment to a third party is not possible;
6. The Resolution must indicate the targeted income level to be served in the required percentages per the Assistance Agreement; and
7. The Resolution must commit the Recipient to ensuring full compliance with all CMF requirements.