COMMUNITY DEVELOPMENT BANKERS ASSOCIATION

1201 15th NW Suite 200
Washington, DC 20005
cdbanks.org
202.689.8935

August 26, 2024

Via Electronic Submission

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

RE: Capital Magnet Fund, Federal Register Vol. 89, No. 122, Tuesday, June 25, 2024 RIN 1559–AA03

Dear Mr. Schlack:

On behalf of the members of the Community Development Bankers Association (CDBA), we respectfully submit the enclosed comments on the Notice for Public Comment published on June 25, 2024 by the Community Development Financial Institutions (CDFI) Fund seeking comments on the Interim Rule implementing the Capital Magnet Fund (CMF).

CDBA is the national trade association of Federal and State chartered banks, thrifts, and their holding companies that are certified by the CDFI Fund. Today there are 196 CDFI certified banks and thrifts and 160 certified bank holding companies. Many of our members are also minority depository institutions (MDIs). These mission-focused financial institutions are a specialized niche within the banking industry, and are active contributors to efforts to ensure sustained housing affordability within low- and moderate income (LMI) communities.

General Comments

We commend the CDFI Fund for proposing meaningful reforms to the CMF program in the recently released Interim Rule. Many of these reforms recognize priorities identified by CDBA members in our September 5, 2023 comments in response to the CDFI Fund's July 7, 2023, Request for Information.

To ensure these reforms achieve the maximum desired impact, we urge the CDFI Fund to apply important reforms from the 2024 Interim Rule retroactively to outstanding CMF awards with uncommitted funds. The urgency of the current housing crisis requires that these changes not be limited to future rounds.

Specific Comments

A. Concept of Presumptive Compliance

CDBA strongly supports the CDFI Fund's introduction of a standard for "Presumptive Compliance" in the Interim Rule. This reform addresses CDBA's recommendation from 2023 that the CDFI Fund "improve cross-applicability between CMF and other affordable housing programs, such as the Low-Income

Housing Tax Credit (LIHTC) program administered by the Department of Housing and Urban Development's (HUD)." As stated in the Interim Rule:

> "Certain CMF Affordable Housing projects that are also funded under other designated Federal housing programs and subject to certain rules and restrictions that are similar to those under the CMF program . . . *would be presumed to meet certain CMF rules and requirements, as long as those projects are deemed compliant under applicable designated Federal housing programs.*" (Emphasis CDBA).

We believe this reform will yield multiple benefits including lower costs and improved responsiveness to community needs. Where possible, this reform should be applied retroactively to outstanding awards with uncommitted funds.

B. Definition of Very Low-Income

CDBA strongly supports the increase in the very-low income threshold for financed rental units from 50% to 60% AMI. This change is crucial for the Interim Rule to remain consistent with the principles underlying the concept of Presumptive Compliance. Specifically, the change in definition aligns the CMF with the Low Income Housing Tax Credit (LIHTC) compliance thresholds, as well as other federal and state programs. This change will noticeably increase the number of affordable units that can leverage CMF grant dollars. Where possible, this reform should also be applied retroactively to outstanding awards with uncommitted funds.

C. Tenant Income Recertification

CDBA strongly supports the change whereby annual tenant income recertification will no longer be required for projects where 100% of the units are subject to CMF affordability restrictions. This change aligns CMF with standards under the Housing and Economic Recovery Act (HERA). The change is likely to result in a meaningful impact on the CMF program by reducing unnecessary administrative overhead, and increasing participation in the CMF among regulated CDFIs. As above, this reform should be applied retroactively to outstanding awards with uncommitted funds.

D. Commitment Deadline

CDBA strongly supports the Interim Rule change adding an additional year to the CMF Project Commitment Deadline. This reform will allow CMF participants valuable time to source qualified projects during the investment period. The new "two-step" approach, (A two-year "Committed for Use" window and a three-year "Project Commitment" window) will help lenders adapt to market conditions in which projects have long lead times, compounded by surging construction costs and other complexities. As above, this reform should be applied retroactively to outstanding awards with uncommitted funds.

E. Secondary Market Mortgages

Mortgage Sales

CDBA supports reforms to address the lack of a secondary market for CMF assisted loans. The lack of demand for CMF loans on the secondary market hinders some lenders. CDBA members suggest the absence of demand comes from a lack of buy side awareness, as the market demonstrates comfort with other forms of subsidy, such as Federal Home Loan Bank grants. We continue to recommend that the

CDFI Fund establish a recurring series of education/information programs with appropriate agencies to publicize CMF and its role as a source of down payment assistance, in order to encourage the development of a secondary market.

Mortgage Purchases

We welcome the originality of the CDFI Fund's proposal for a mechanism that deems Secondary Market Purchases allowable for CMF grantees under the definition of "Affordable Housing Activities." There is merit in the idea that CMF can facilitate the purchase of nonconforming, affordable housing mortgages from third party originators. However, it is not clear how the proposal will advance CMF program goals. In order for this proposal to align with CMF goals, there must be a mechanism to ensure that liquidity on the balance sheets of third parties selling mortgages to CMF grantees will result in more financing for affordable housing.

While it is possible that increased liquidity at third party originators will result in new affordable housing, this is not certain, because the transfer of an individual mortgage between the originator and the CMF grantee is not explicitly tied to new originations of affordable housing. We are concerned that under this policy, an important goal of CMF (new affordable housing) would be decoupled from the mortgage sale. Importantly, the Interim Final Rule appears to attempt to reconcile this challenge by requiring purchased mortgages to "not have been originated *but for* the Recipient's purchase." (Emphasis CDBA).

Unfortunately, it not clear how the "but for" can be practically established. CMF grantees will need to understand how to establish compliance with the "but for" in the context of:

1) The origination of the loan by an independent third party,
2) Supply and demand in local markets, and
3) Alternative opportunities to deploy CMF funds.

The "but for" provision appears to presume a scenario in which a CMF grantee and a third party can substitute for a liquid market based on a narrow, forward-looking two-party agreement. However, for this to meet the "but for" standard, both parties require a degree of certainty that is very difficult to establish. As one example, to establish the "but for," CMF grantees will require certainty that the third party is *both* capable of reliably originating CMF compliant loans *and* equally reliably and consistently in need of the CMF grantee's purchasing power. The third party lender will likewise require certainty that the CMF grantee is consistently ready, willing and able to purchase any loan that the third party would not otherwise have originated.

We are concerned the level of certainty required for these transactions may be too impractical. While we support the idea in principle, we believe this proposal requires further consideration before being finalized.

F. CMF Economic Development Activities Compliance Requirements

CDBA supports the proposal to require a minimum period for CMF grantees who use CMF awards for allowable Economic Development Activities. We acknowledge the CDFI Fund's adoption of three year minimum period in this proposal. However, we urge the CDFI to go further.

In our September 2023 letter, CDBA recommended that the CDFI Fund establish a minimum period for Economic Development Activities to run *at least* concurrent with the housing's formal affordability period. We urge the CDFI Fund to revise this proposal in the Interim Rule, so that the minimum period for Economic Development Activities matches the minimum affordability period, rather than a potentially unrelated three year period.

G. __Leverage Requirement and Calculation Rules__

Eligible Project Costs - Administrative Expenses

CDBA supports practical changes to the Leverage Requirement and Calculation rule that improve the appropriate calculation of leverage. Unfortunately, one provision is not practical. In the Interim Rule Subpart E, Section 1807.500 (a) now defines Eligible Project Costs, for the purpose of calculating project leverage, to exclude:

> "Both the total amount of Direct Administrative Expenses and Feasibility Determination Expenses."

While this is a welcome attempt to ensure precision in the calculation of CMF leverage, it is not clear how lenders can comply. Specifically, CDFI banks do not allocate administrative costs, however defined, in a way that will allow costs to be segregated out for the leverage calculation. At banks, administrative costs occur at the bank (enterprise) level. We urge the CDFI Fund to clarify and provide guidance instructions for CMF grantees on how banks can calculate, track and assign expenses to projects in a manner that is consistent with their operations.

Leveraged capital

CDBA supports the removal of the Reinvestment-level Leverage calculation. The change was contemplated in the CDFI Fund's July 2023 RFI. Unfortunately, the 2024 Interim Rule does not specify how the CDFI Fund engaged with comments on this question. It appears that the Reinvestment-level leverage requirement is still in place, with a subtle change to the terminology defining the calculation. Specifically, Subpart E, Section 1807.500 (b), now includes a reference to a "required multiplier" of Leveraged Capital, which replaces the term "percentage."

We still believe that the Enterprise- and Project-level calculations should be sufficient to demonstrate minimum leverage requirements without the complexity of calculating overall leverage. The Reinvestment-Level Leverage introduces additional and unnecessary complexity when calculating overall leverage and it is difficult to predict repayment and re-deployment with accuracy.

__CMF Program Income (PI) Rules__

CDBA strongly supports the revision of the requirements for reinvesting PI. PI reinvestment should be encouraged by expanding the scope of eligible projects. This could possibly also allow lenders to expand into new eligible activities. In particular, we support expanding eligible activities for PI reinvestment *that would not otherwise be eligible under the program*. This would allow the CDFI Fund to test "pilot" activities, without compromising the direct use of CMF grants. In response to a proposal within the CDFI Fund's 2023 RFI, we wrote:

> "CDFI banks are more likely to be able to identify a project for timely PI reinvestment if the rules are expanded to include all CMF eligible activities. *Current reinvestment requirements are too*

> *restrictive. . . An expanded requirement that allows PI to be used for any CMF eligible activity would help CMF achieve its goals."* (Emphasis added)

One example proposed by a CDBA member is a pilot for housing for first generation college students from low-income families. While an expansion of eligible activities for PI is not contemplated in the Interim Rule, we urge the CDFI will consider such an expansion.

Completion Deadline

In the 2023 RFI, the CDFI Fund asked:

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

The Interim Rule is unclear if, or how, the CDFI Fund considered responses to this question. We continue to recommend that the CDFI Fund reconsider the 36-month completion deadline as it relates to the use of PI. CDBA members recommend the CDFI Fund consider an extension to at least 60 months (five years) which would have the joint-benefit of aligning with the requirement for the underlying CMF proceeds.

The question of whether to modify the requirement that any PI in excess of $100,000 be committed to a project by the following year (also posed by the CDFI Fund in 2023) continues to deserve consideration. While the current standard is not unreasonable, modifying the requirement would be consistent with simplification of the program requirements.

Regarding the 10-year affordability period required for projects funded with PI, the Interim Rule has redefined the term in section 1807.503(b) to include a period that "could be extended to more than 10 years." A 10-year period for rental housing is generally, but not always, appropriate and consistent with the original reward term and the purposes of the program, and we appreciate the CDFI Fund's recognition of the need for flexibility.

H. Loan Loss Reserves (LLRs) and Loan Guarantees (LGs)

As we wrote in 2023, CDBA members do not report recently applying CMF funds for LLR. As we stated, "this may be partially explained by a need for clarification on acceptable practices for setting aside CMF funds for that purpose." We are grateful that the CDFI Fund has taken steps in the Interim Rule to address these concerns. The 2024 RFI includes definitions of eligible uses that address some of the questions about how CMF Funds may be used for this purpose:

> "*Loan Loss Reserves* means proceeds from the CMF Award that the Recipient will set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable for Affordable Housing Activities and/or Economic Development Activities, or for related purposes that the CDFI Fund deems appropriate;"

However, it will be important to raise awareness of this change, and to provide clear and detailed guidance on how to appropriately and efficiency apply, and report on, LLRs and LGs.

I. CMF Affordable Homeownership Purchase Price Limitation Rules

CDBA applauds the CDFI Fund for addressing critical issues within the Purchase Price Limitation Rules. In the current environment, it is crucial that the CDFI Fund reconsider how price limits are calculated. The

Interim Rule acknowledges the challenge of steeply increased housing costs, and makes an effective adjustment:

> "The redesignated § 1807.402(a)(1)(ii) is revised by replacing the Single-family housing purchase price limits of '95 percent of the median purchase price for the area as used in the HOME Program' with the purchase price limits for the area under the HUD FHA Section 203(b) Mortgage Insurance Program, or any other index as designated by the CDFI Fund."

This change will raise the purchase price limits to 125% of area median purchase price (Under Section 203(b)), an increase of 32% over the 95% purchase price limit set by HOME. This is a very positive adjustment.

We hope that the CDFI Fund will consider the further opportunity to be flexible afforded in the Interim Rule language allowing "any other index as designated by the CDFI Fund." While a better standard for CMF than HOME, the Section 203(b) standard is still limited in that it calculates the affordability of housing relative to area median purchase price. Area median costs will continue to be calculated on a lag, and affordability means something very different to a low-income multi-person household vs. a single person household.

The Housing Expense Ratio is just one example of how CMF grantees could leverage the CDFI Fund's new flexibility to accommodate individual borrower circumstances by considering different measures of affordability. The Housing Expense Ratio also has precedent in at least one complementary program.

An example of the application of the Housing Expense Ratio in an affordable housing program is the Homebuyer Equity Leverage Program (HELP) grants offered by the Federal Home Loan Bank of Dallas. The FHLB Dallas requires a Housing Expense Ratio of less than 40% in implementing the grant. If the Housing Expense Ratio is greater than 40%, the FHLB requires a statement justifying why the higher ratio should be allowed. Possible exceptions include property taxes that do not factor in a homestead exemption (which would lower the PITI), a borrower's track record of successfully paying rent at a level equal to the expected loan payment, or a documentable future salary increase.

Conclusion

Thank you for the opportunity to provide comments on this important issue. More importantly, thank you for your careful consideration of the needs of the low-income communities served by banks participating in the CMF program. If you have questions, please contact Brian Blake, Chief Public Policy Officer at (202) 689-8935 ext. 225, or blakeb@pcgloanfund.org.

Sincerely,

Brian Blake
Chief Public Policy Officer