James Yagley
Capital Magnet Fund Manager
Community Development Financial Institutions Fund
Department of the Treasury
601 13th Street, NW, Suite 200 South
Washington, DC 20005

May 13, 2010

Dear Mr. Yagley:

Opportunity Finance Network appreciates the opportunity to comment on the proposed regulations for the Capital Magnet Fund (CMF), in response to RIN 1559–AA00. As you know, OFN was a driving force behind the creation of the CMF and counts in its network many of the CDFIs that will compete for and deploy CMF monies. We commend the Fund on the timely implementation of the program and look forward to the exciting news of award announcements this fall.

OFN provided extensive comment on the proposed regulations in a letter dated May 5, 2009**.** Positions we advocated in that letter are reiterated here where relevant, and the Fund should presume that OFN continues to support those recommendations. In these comments, as well as our letter of May 2009, OFN's positions stem from the premise that CMF monies are not project-based funding, but rather seed funding to support institutions' financing of affordable housing and related development.

As these comments come during the inaugural round of the program, it is likely that OFN and its Members will have other thoughts as funding decisions are made and projects financed. CDFIs reported that Fund staff were generally helpful and responsive in resolving questions and issues that arose during the application process, and we very much appreciate the effort and assistance put forth by the staff to help CDFIs navigate this important new program. We hope to have the opportunity to discuss any future concerns formally and informally.

OFN's responses to the questions the Fund posed follow; we also highlight other areas in which the Fund could improve the application process. As the CMF is a new program, we encourage the Fund to maintain flexibility in its implementation.

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?*

As the CMF statute and proposed regulations recognize, affordable housing development is often part of a comprehensive strategy for community revitalization. That strategy often includes business development—for example, a mixed-use housing project with retail on a first floor and housing above. Working capital loans to such businesses, and similar businesses providing goods and services for residents of the affordable housing and the neighborhood, should be permissible uses. Refinancing should also be an eligible use as CDFIs take a role in assisting families avoid foreclosure or refinance predatory loans. Criteria for such financing should parallel those for other

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economic development activities to be “in conjunction with” and “part of a concerted strategy” around affordable housing, as those terms are defined in the proposed regulations.
We applaud the provisions of the proposed regulations that permit funding of economic development and community services facilities with CMF funds even in projects or strategies in which the affordable housing component is financed with other, non-CMF sources.

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?*

The requirements that economic development and community service facilities activities be undertaken in conjunction with affordable housing activities to implement a concerted strategy are sufficient.

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?*

To ensure that CMF monies are directed to their intended purpose, OFN argued last year that certain CDFI certification criteria also be applied as eligibility screens for non-CDFI applicants. Demonstration of a commitment to community development is as important for CMF users as is the specific proportion of assets used for affordable housing. We urge the Fund to adopt the recommendations we made then concerning applicant eligibility:

> A nonprofit affordable housing developer can be defined as a mission-driven 501(c)(3) organization that is not under the control or a subsidiary of a for-profit entity,[1] and is focused on developing, financing, and operating high quality affordable housing, and plans and implements other community and economic initiatives critical to low-income communities. The organization must have a demonstrated capacity for development implementation and proper financial management of funds, including the ability to execute high-impact affordable housing, achieve appropriate leverage, and responsibly administers and controls multiple sources of funds. In addition, the following CDFI certification requirements[2] should apply to nonprofit affordable housing developers:
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> - Have a primary mission of promoting community development;
> - Primarily serve one or more target markets, which could be a specific geography in the case of a local or regional organization, multiple geographies in the case of a multi-state organization, or a specific community development sector in the case of a national organization;
> - Provide development services in conjunction with its financing activities; and
> - Maintain accountability to its defined target market(s).

[1] See IRC 42(h)(5) for LIHTC.

[2] CDFI Fund Regulations: § 1805.201.

4. *The proposed rule in 12 CFR1807.302 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?*

In our May 2009 comments on the proposed regulations, OFN suggested that the proportion of an award used for Economic Development Activities and Community Service Facilities not be limited. We also argued against a cap on the amount of funding that could be used for Operations, as there are no statutory provisions for limiting the amount of CMF funds that an awardee can devote to a particular use. The Fund could use the leveraging provisions of the program to prioritize particular financing activities, or otherwise prioritize applications that devote funds to particular purposes, but should not set a cap on the amount of the funding an awardee can use for a particular eligible activity.

Restricting eligible applicants to mission-based institutions, as described above in our comments on Question 3, provides a significant safeguard against the use of CMF to finance predatory lending activities.

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?*

Generally, OFN agrees with this 20 percent minimum. We also refer you to our discussion of affordability in May 2009, in response to the Fund's question on defining "primarily" affordable:

> Mixed-income housing should be supported subject to the following principles of flexibility and rigor:
>
> Capital Magnet Fund-supported financing should not exceed the pro-rata project cost attributable to the low-income portion of the housing. For example, if a project is 75 percent low income, then Capital Magnet Fund supported financing cannot exceed 75 percent of total project costs. A project would be defined as one building or buildings on one or more adjoining sites with a common plan of sponsorship, development, and financing. This approach accommodates mixed-income rental housing and most mixed-income homeownership projects (e.g., condominiums or a subdivision), but not all scattered-site developments. Note similarly that under the LIHTC[3], tax credits are available only on low-income units, and under HOME[4],HOME funding cannot exceed the cost attributable to HOME eligible units.

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[3] In general, 26 USC § 42.

[4] In general, 24 CFR PART 92—Home Investment Partnerships Program.

For purposes of measuring Capital Magnet Fund leverage, all non-Capital Magnet Fund financing sources[5] should be recognized for housing if at least 50 percent of the units are "affordable." If less than 50 percent of the units are affordable, then the leverage amount should be the cost of the affordable portion of the project minus the Capital Magnet Fund monies associated with it.

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)?*

In our letter last year, OFN recommended in response to a similar question that:

> The CDFI Fund should look to the eligible uses for the Capital Magnet Fund Program[6] (e.g., loan loss reserves, revolving loan funds, risk-sharing loans, etc.) to understand that funds are ***not*** permanent sources of capital in a project, but rather seed capital; therefore, thresholds or restrictions are not applicable. If a grantee chooses to outline affordability thresholds and/or restrictions in the application process through its concerted community revitalization strategy, this could be taken into consideration in awarding grants, but the CDFI Fund should not mandate any such restrictions.

We were disappointed to see that the proposed regulations include a ten-year affordability requirement and disagree with the imposition of such a requirement. While we understand and appreciate the Fund's desire to help ensure extended affordability, the ten-year affordability requirement, as written, makes many important uses of funds virtually impossible. In particular it is a serious barrier to the use of CMF monies for homeownership, because attaching onerous resale covenants to a loan simply deters otherwise appropriate and qualified homeowners not willing to risk that they can resell their home to a similar buyer in the future. It also runs counter to the goal of helping new homeowners build their net worth.

Attaching affordability restrictions to specific loans runs counter to both the purposes of the CMF and awardees' efforts to foster homeownership assets. We ask that the Fund consider alternatives to this restriction, such as:

- Allowing CMF grantees to redeploy funds to new borrowers that meet the same affordability requirements laid out in the grantees application. For example, if a CMF grant applicant commits to doing 80% of home loans to borrowers below 80% of AMI, then if any loans are paid off with-in ten years then the CMF grant applicant agrees to relend recouped funds to similar new borrowers and maintain that 80% of loans are to borrowers at 80% of AMI. This alternative would effectively limit any systemic abuse of funds while ensuring borrowers are not harmed by an affordability covenant that discourages them from taking out the loan in the first place.

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[5] For the purpose of leverage and leverage reporting, non-Capital Magnet Fund financing sources should include both federal and non-federal sources of capital.

[6] 12 USC 4569, Section 1339.

- Requiring awardees to deploy a proportion of their financing in support of affordable housing that would qualify for CMF support during the term of the assistance agreement, similar to the "deployment goals" strategy in place for the Fund's CDFI Financial Assistance program;

- Exploring "shared equity" arrangements that place the deed restriction on value of a home rather than on the income of a secondary purchaser. (See[7]

In addition to this ten-year timeframe for affordability, CMF regulations require that funded projects be put into service within five years. While OFN generally agrees that the CMF should be deployed quickly, there may be circumstances under which CMF money is used to seed an appropriate project with a longer timeframe. For example, predevelopment and acquisition financing is the hardest for affordable housing developers to secure, along with the lack of subsidy in the market, developers may sit on acquired properties or land for a period of time. For these cases, 5 years can be aggressive. Additionally, as more developers become focused on preserving affordable housing near transit oriented developments, acquisition holding periods could exceed the 5 years. We urge the Fund to be flexible in considering such potential projects.

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.*

OFN suggests that, as CMF projects must be in service within five years, that the reporting period be no longer than five years. The Fund should also clarify the point at which an awardee may classify CMF awards as unrestricted funds.

Other Comments

OFN offers the following additional proposals for additional changes or clarifications to the regulations and application process:

Deploying Funds in Rural Areas

OFN urges the Fund to adopt the definition of "rural" used by the housing programs of the U.S. Department of Agriculture of the under Section 520 of the Housing Act of 1949. These areas are both rigorous and flexible, and are well known to and workable for CDFI and affordable housing practitioners. Adoption of this definition would allow compatibility with USDA programs and facilitate the use of CMF by institutions familiar with USDA resources.

The 2010 program called for successful applicants to have a strategy to reduce concentrations of poverty. As rural regions are more sparsely populated and poverty less concentrated in them, such a priority may disadvantage rural applicants. The Fund should take care that strategies to serve rural areas without concentrated poverty are considered equitably in the review process.

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[7] NCB Capital Impact details one example of such an approach at http://www.ncbcapitalimpact.org/default.aspx?id=1666.

OFN approves of the Fund's strategy to achieve geographic diversity by CMF-funded projects (not necessarily of awardees), and to ensure that 20 percent of activities (collectively, across all applicants) occur in non-metropolitan areas.

Definitions and Clarifications

The Fund could provide applicants with clarity on several aspects of the application process to ensure that applications reflect the best strategies and that awardees are those that meet CMF goals and priorities. Such clarifications include:

- Generally, ensuring that definitions are consistent across application materials, regulations, and Notices of Funding Availability. For example, in the 2010 round, a key definition—the definition of "Affordable Housing"—was different in the regulation and in the NOFA. Consistent definitions are critical to help applicants prepare complete, eligible, and competitive applications.

- Better defining "preinvestment" leverage, including confirming that an applicant's existing capital can be counted as preinvestment funds and that preinvestment funding is not limited to funds secured during the short application timeframe.

- Clarifying or defining "credit enhancement." The application includes "credit enhancement" as a permissible use, but the term is not defined elsewhere. A CDFI hoping to use CMF monies to provide such a product would be assured that its activity was eligible.

- Making clear the process the Fund uses to determine that applicants will "score more favorably" on each application section; for example, whether the Fund is awarding priority points for specific activities or criteria, or is relying on more subjective methods.

We appreciate your consideration of these comments and look forward to the success of the Capital Magnet Fund. Please do not hesitate to contact me if you have questions or concerns about these recommendations.

Sincerely,

Mark Pinsky

Mark Pinsky
President and CEO