

Mr. David Dworkin
Capital Magnet Fund Manager
CDFI Fund
601 13th St., NW, Suite 200 South
Washington, DC 20005

January 28, 2011

Dear Mr. Dworkin:

OFN appreciates the opportunity to comment on the Interim Rule for the Capital Magnet Fund.

We were pleased to see a number of changes in the Interim Rule that will improve CDFIs' ability to provide affordable housing and community development, and to use CMF funds flexibly. In particular, we are supportive of changes to the Proposed Rule that:

-  Provide for flexibility in meeting the ten-year affordability requirements
-  Allow for special circumstances that might delay an awardee's timeframe for committing and deploying awards

We offer the following suggestions for the Fund's consideration before finalizing the Interim Rule. We encourage the Fund to solicit formal and informal feedback on an ongoing basis from CMF awardees and applicants to ensure that the program is reaching the intended beneficiaries and that intermediaries can make the best use of this new program's resources.

In general, we recommend that the Fund model the CMF on the CDFI Financial Assistance (FA) program to the extent practicable. We recommend that the Fund ensure that awardees can use the funds as flexible seed capital to leverage additional private-sector investment, and to respond to market demand for affordable housing and economic development. Our comments focus on eligibility for the program; restrictions on use of funds; affordability requirements; deployment of funds to rural areas; and reporting requirements.

Eligibility

As OFN recommended in May 2010, the CDFI Fund should not rely exclusively on a set percentage of activities devoted to Affordable Housing to determine eligibility. The Fund should include an assessment of the mission of the applicant, similar to that reviewed in determining a CDFI's eligibility for certification. 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 administer and controls multiple sources of funds. In addition, the following CDFI certification requirements² should apply to nonprofit affordable housing developers:

- 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).

This approach would also protect the Fund against supporting predatory lending activities with CMF funds.

Restrictions on Use of Funds

OFN maintains its position that there are no statutory provisions limiting the amount of CMF funds that an awardee can devote to a particular use, and so the Fund should not set caps on the proportion of awards that can be used for Operations or for related Economic Development and Community Services Activities.

Instead of setting caps on use of funds for these purposes, the Fund could obligate awardees to a deployment goal for affordable housing activities similar to the one used in the Financial Assistance (FA) program that requires an awardee to deploy an amount equal to 85 percent of its award. The Fund could also use the leveraging provisions of the program to prioritize particular financing activities, or otherwise prioritize applications that devote funds to particular purposes. It should not, however, set a regulatory restriction on particular eligible uses of funds.

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

¹ See IRC 42(h)(5) for LIHTC.

² CDFI Fund Regulations: § 1805.201.



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 to avoid foreclosure or refinance predatory loans. Criteria for such uses should parallel those for other economic development activities to be “in conjunction with” and “part of a concerted strategy” around affordable housing, as those terms are defined in the interim regulations.

Affordability

A chief concern of OFN and its Members in considering the Proposed Rule was the imposition of a ten-year affordability requirement, which would have posed a particular barrier to the use of CMF awards for homeownership. We are pleased to see that the Fund has adopted a more flexible standard that allows awardees to redeploy funds to affordable housing, rather than tying the affordability requirement to a particular project, home, or tenant. We further suggest that this approach of viewing affordability through the use of funds rather than to a specific project or tenant be reflected in the awardee reporting obligations³, in particular that CMF reporting should:

- *Obligate CDFIs to report at the project level rather than the end-user level.* Rather than obligating CDFIs to track individual tenants and end users of projects, the Fund should permit CDFI awardees to certify annually statements from their borrowers that the projects meet affordability requirements. As lenders, CDFIs are several steps removed from the end users in affordable housing projects. They rely on their housing developer partners and other borrowers to comply with affordable housing obligations and track tenant income. CDFI financing has been provided and in many cases repaid before a housing project secures tenants.
- *Be no longer than five years.* If the Fund maintains the ten-year affordability requirement for CMF projects, reporting after year 5 should be limited to an annual certification that projects continue to met those affordability requirements.

Deploying Funds to Rural Areas

OFN urges the Fund to adopt the definition of “rural” used by the housing programs of the U.S. Department of Agriculture 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.

³ See OFN's letter of November 2010 for additional detail.



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.

Reporting

In addition to the comments on reporting related to affordability noted above, OFN makes the following recommendations as principles to guide the Fund's requirements for awardees' reporting and compliance:

- *Use information, particularly institution-level data, which Financial Assistance awardees already provide as a condition of assistance agreements in that program.* CMF reporting requirements should mirror requirements of the FA program as closely as is practicable. CDFIs should be able to combine submission of FA and CMF reporting, and provide reports on the same timetable and for the same fiscal year for both programs.

For reporting not easily transferable from FA awardee obligations, the Fund should use information generally reported to other resources for similar projects, such as for Low Income Housing Tax Credits.

- *Take into account the operational differences between CDFI and non-CDFI awardees.* As lenders, CDFIs have different recordkeeping systems and different relationships with end users of the funding than developers or housing finance agencies. The reporting instruments must not only incorporate the appropriate definitions and understanding of CDFIs; they must also reflect CDFIs' operational practices.

The Capital Magnet Fund Program capitalizes on what CDFIs and nonprofit affordable housing developers do best, which is to leverage a small federal investment with other funding; its funds are *not* permanent sources of capital in a project, but rather seed capital. Accordingly, CDFIs use investments such as the CMF to leverage additional funding and cannot always track the path of specific dollars into a particular project. In the specific case of this year's CMF awards, many CDFIs prepared their applications based on a pipeline of investments anticipated in early 2010. With disbursement of funds coming a year later, the CDFI may not invest the CMF award dollars in the same projects it identified at application. For reasons like these, it is critical that the Fund's reporting requirements for the CMF reflect the way CDFIs do business.

- *Categorize CMF awards as unrestricted net assets.* CDFIs use CMF in support of the non-profit activities of the organization. Classifying them as unrestricted net assets would result in improved balance-sheet equity for CDFIs and allow them to leverage the award dollars most effectively.



Conclusion

The Capital Magnet Fund is an important new initiative that has the potential to leverage billions of dollars in new private investment into affordable housing and economic development. It is important that CDFIs and other awardees be able to use the CMF flexibly. The final rule should build on the steps the Interim Rule takes toward ensuring that flexibility. OFN looks forward to working in partnership with the Fund to ensure the success of the CMF.

Sincerely,

Mark Pinsky
President and CEO