



DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Capital Magnet Fund (CMF)

ACTION: Notice and request for information.

SUMMARY: The Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury requests comments from the public regarding methods by which it can enhance and improve the impact of the Capital Magnet Fund; streamline or minimize the administrative burden on Capital Magnet Fund applicants and award recipients; as well as safeguard public funds. Information provided in response to this Request will allow the CDFI Fund to consider the development of policies and programs that better support and expand Capital Magnet Fund activities to spur investment in affordable housing and related economic development efforts that serve low-income families and communities.

DATES: Written comments must be received on or before September 5, 2023.

ADDRESSES: You may submit comments via the Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the website for submitting comments. In general, all comments will be available for inspection at www.regulations.gov.

Comments, including attachments and other supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

For further information, contact Andrew Schlack, Program Manager, Capital Magnet Fund, CDFI Fund, 1500 Pennsylvania Avenue NW, Washington, DC 20220, or by email at cmf@cdfi.treas.gov, and include “CMF RFI” in the subject line of the email.

Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund website at *www.cdfifund.gov*.

Note: Capitalized terms not defined in this Notice are defined in the CMF Interim Rule (as amended February 8, 2016; 12 CFR part 1807).¹

SUPPLEMENTARY INFORMATION:

I. Background

The Capital Magnet Fund (CMF) was established through the Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110-289, section 1131. Per the statute, the allocations to the Capital Magnet Fund are to be used to carry out a competitive grant program administered by the CDFI Fund.

HERA requires Fannie Mae and Freddie Mac to set aside an amount equal to 4.2 basis points for each dollar of their unpaid principal balances of total new business purchases to be allocated to the Housing Trust Fund (administered by the Department of Housing and Urban Development) and the Capital Magnet Fund.

Through CMF, the CDFI Fund is authorized to make 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 Awards must be used to attract private financing for and increase investment in: 1) the Development, Preservation, Rehabilitation, and Purchase of Affordable Housing for primarily Extremely Low-, Very Low-, and Low-Income Families; and 2) Economic Development Activities which, In Conjunction with Affordable Housing Activities, will implement a Concerted Strategy to stabilize or revitalize a Low-Income or Underserved Rural Area.

¹ <https://www.cdfifund.gov/sites/cdfi/files/documents/interim-rule-fr-2016-02132.pdf>

II. Purpose of this Request for Information

The purpose of this Request for Information (RFI) is to solicit public input related to CMF. Specifically, the goals of this RFI are: 1) to clarify terms, concepts, and requirements of the CMF program to improve CMF Recipients' understanding of their obligations and requirements under the program; 2) to ensure the CMF Program requirements adequately address activities and current business practices in the affordable housing industry; 3) to identify opportunities to reduce the burden of administering CMF Awards for CMF Recipients while ensuring accountability; 4) to identify opportunities to better align the CMF program with the rules, terms, practices, and definitions of other significant federal funding sources for affordable housing, as a way to facilitate compatibility and reduce CMF Recipient burden; and 5) to determine how the CMF Program can better promote and incorporate policy priorities such as economic development in conjunction with affordable housing and affordable homeownership.

III. Specific Information Requested

A. Facilitate CMF Alignment with Other Federal Affordable Housing Programs: With respect to the financing of affordable housing, CMF is often an integral part of project financing (the capital stack), along with capital generated or received through other federal programs. To help reduce Recipient reporting burden and to ease the administration of CMF Awards, the CDFI Fund is soliciting public input on areas where CMF can better align with other federal programs.

1. Using CMF with other federal programs in the same project(s): The CDFI Fund is considering an approach where certain CMF Affordable Housing projects (funded under designated federal housing programs and subject to certain rules and restrictions similar to those under the CMF Program) could be categorically presumed as eligible Affordable Housing Activities and be deemed as meeting CMF rules and requirements for Affordable Housing. For example, under this approach, projects funded with both CMF

and the Low-Income Housing Tax Credit (LIHTC), and meeting all LIHTC requirements, could be assumed to meet all CMF requirements such as affordability or rent requirements.

a) Should the CDFI Fund consider this approach as a way to align the CMF program with other significant federal affordable housing programs?

b) What are the potential benefits and concerns in utilizing this approach for CMF?

c) What federal programs are sources of capital frequently used in conjunction with CMF that should be considered if this approach were to be adopted, particularly those related to rental, homeownership, and/or rural housing?

d) What, if any, affordability, and property standards requirements currently in place for the CMF program would not be covered by using this approach, and should they be retained?

2. *CMF income limit definitions:* The definitions of Low-Income, Very Low-Income, or Extremely Low-Income in the CMF Interim Rule differ from some other federal housing programs.

a) Are such differences impactful to the financing or management of CMF projects, and if so, how?

b) Should the CDFI Fund change the definition of income groups to better align with other federal housing programs? If so, how should the CDFI Fund define income limits? Which definitions of income groups should be changed, and which programs should the CMF program align with?

3. *CMF income certification for LIHTC projects:* HERA addresses and provides guidance regarding the requirement for annual recertification of tenant incomes for properties financed under the LIHTC Program. Under this guidance, properties that are 100% low-income rent-restricted are no longer required to undertake ongoing recertification. See Housing and Economic Recovery Act of 2008, Pub. L. 110-289 (7/30/2008), 122 Stat.

2888, section 3010(a) (2007-2008)(codified at Pub. L. 110-289, 122 Stat. 2654 (2008)).

The CMF Interim Rule at 12 CFR 1807.401(f) requires annual re-examination of tenant income.

a) Would adopting a similar approach as outlined in IRC sec. 142(d)(3)(A) with respect to LIHTC income determinations result in a meaningful impact on the administration of the CMF program?

b) If so, how can this approach be balanced against the possible risk of leasing a unit to a non-qualified Family and noncompliance with tenant income determination requirements (12 CFR 1807.401(f)) and over-income tenants (12 CFR 1807(g))?

B. CMF Commitment Deadline: Section 1339(c) of HERA stipulates that grants under the program must be Committed for use within two years after the allocation of the Award.

As a way to ensure that funds are used in a timely manner, the CMF Interim Rule applies a two-year commitment of any Award to specific projects and further specifies that the commitment must be made in a written, legally binding agreement. The CDFI Fund is requesting input on alternate approaches.

One possible approach may be that the commitment deadline would be satisfied if, within two years, a Recipient committed the Award to one of the six Eligible Activities (*i.e.*, capitalize a Loan Loss Reserve, Revolving Loan Fund, Affordable Housing Fund or a fund for Economic Development Activities; or make Risk-Sharing Loans; or provide Loan Guarantees), coupled with a new requirement that a commitment to a specific project must be made within three years after the Effective Date of the Assistance Agreement.

1. What are some of the difficulties, if any, of meeting the current two-year commitment deadline under the CMF Interim Rule and why are they difficult?

2. In what way(s) would the proposed two-step approach make it easier for CMF Recipients to meet the Commitment Deadline?

3. What are some concerns or issues with this two-step approach?
4. Are there other alternative approaches to commitment that would satisfy the statutory two-year commitment deadline?

C. CMF Leverage Requirements and Calculation Rules: Leveraging the CMF Award to attract private and other public capital is an important component of the program. At a minimum, the CMF statute under HERA requires that the Award be leveraged ten times. There are three types of leverage under CMF: (a) Enterprise-Level, (b) Project-Level, and (c) Reinvestment-Level. CMF defines (a) Enterprise-Level as capital earned, borrowed, or raised by the Recipient or its Affiliates, which is designated for use and ultimately used to pay for Leveraged Costs but is not initially restricted for use for specific properties at the time it is earned, borrowed or raised; (b) Project-Level as capital used to pay Leveraged Costs that is restricted to a specific project when it is raised; and (c) Reinvestment-Level as the reallocation of repaid CMF Award and/or Enterprise-Level Capital into new eligible activities within the established Investment Period.

1. Should Reinvestment-Level leverage, which measures the reinvestment of both a CMF Award and Enterprise-Level leverage, be removed and only Enterprise-Level leverage and Project-Level leverage be considered to simplify the calculation of Leveraged Costs? Please explain the rationale for your answer.

2. If the Reinvestment-Level leverage is retained, should the calculation be changed to a multiplier and based only on the Award amount (*i.e.*, number of times the Award amount is repaid and reinvested in excess of the original Award amount), rather than a calculation of the reinvestment of a combination of the Program Income from the Award plus new Enterprise-Level leverage? Please explain the rationale for your answer.

3. What are some concerns or issues with either of these approaches discussed in items 1 and 2 above?

4. Are there any other ways the CDFI Fund might consider simplifying the calculation of how Recipients leverage their CMF Award? If yes, please describe.

D. CMF Program Income (PI) Rules: The nature of CMF as a financing program often results in Recipients earning Program Income (PI) from the repayment of loans and returns on equity investments. PI generated during the first five years of the CMF Award (the Investment Period) from the repayment of CMF funds from loans or equity must be reinvested under certain requirements specified in the Recipient's Assistance Agreement. Note that the questions below refer to the PI earned during the Investment Period and not PI earned thereafter, which is treated differently per the Assistance Agreement.

1. Currently, the Recipient's Assistance Agreement requires that PI be expended only on specified eligible activities in the Agreement. Should the use of PI earned on the CMF Award be expanded to include all CMF eligible activities as outlined at 12 CFR 1807.301? Please explain the rationale for your answer.

2. Should adding eligible activities specific only to PI, and not otherwise eligible under the program, be allowed? If yes, what additional eligible activities should be contemplated for the use of PI and why? If no, please explain the rationale for your answer.

3. 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.

4. Should the CDFI Fund modify the requirement that any PI in excess of \$100,000 be Committed to a project the following year? Please explain the rationale for your answer. If yes, what time period or threshold amount should be considered and why?

5. Under the CMF Assistance Agreement, CMF's 10-year affordability period applies to projects funded with PI.

a) Should the long-term affordability period for projects funded with PI be shortened?

Please explain the rationale for your answer.

b) If yes, what period of time would be reasonable, balancing both the goals of increasing affordability and reducing administrative burden, and why?

E. CMF Clarification of Rules on Loan Loss Reserves and Loan Guarantees: Under CMF, Recipients may use their Award to establish Loan Loss Reserves or Loan Guarantees. Currently, CMF requirements related to Loan Loss Reserves and Loan Guarantees are limited. In order to ensure that these uses are properly addressed under the program:

1. What additional guidance and rules would be useful to Recipients and why?
2. Should there be a requirement for the establishment of escrows or restricted accounts for Loan Loss Reserves or Loan Guarantees? Please provide the rationale for your answer.
3. What coverage limits (*i.e.*, percentage of loan covered in the event of borrower default) would be considered sound and reasonable and why?
4. What factors should be considered for proper and effective use of Loan Loss Reserves or Loan Guarantees and why?

F. CMF Manufactured Housing Affordability Rules: Under CMF, manufactured housing that meets the federal Manufactured Home Construction and Safety Standards may be financed. Under the CMF Interim Rule at 12 CFR 1807.104, manufactured housing is defined as Single-family housing consisting of a combination of the manufactured housing and the lot, or a manufactured housing lot. Given the hybrid nature of manufactured housing Homeownership – where the unit is typically owned by an individual or Family, but the lot it sits on may be rented – the CDFI Fund is requesting input as to how best to measure the affordability of both the cost of the unit and the rental of the manufactured housing lot.

1. Currently, CMF only measures the cost of buying the manufactured housing unit. Should the cost of renting the lot also be considered as it relates to affordability? Please provide the rationale for your answer.
2. What are some ways to measure the affordability of both the price of the unit and the cost of renting the manufactured housing lot?
3. What additional guidance and rules would be useful as it relates to resident-owned manufactured housing communities?
4. Are there additional points of clarification related to manufactured housing that should be considered? If yes, please describe them.

G. CMF Funding for Assisted Living Facilities: CMF is a flexible program that affords Recipients the opportunity to finance a range of affordable housing types. As it relates to rental housing, projects are subject to a variety of regulatory requirements, including tenant income determinations and rent limitations. While affordable assisted living projects are eligible uses of the Award under the CMF Interim Rule, the hybrid nature of assisted living – where rent generally includes both the cost of housing and services – often conflicts with the existing CMF limitations and restrictions. For example, the combination of the cost of rent and the services that are typical in assisted living projects may result in rent levels that do not meet the affordability requirements under the CMF regulations.

1. What challenges currently exist in using CMF Award funding to finance and/or develop assisted living facilities?
2. If there are challenges, describe how CMF Program requirements may be modified to better accommodate the development of assisted living projects, while ensuring that projects remain targeted and affordable to those with incomes that are Low-Income and below? Are there other federal or state programs that could provide an example of best

practices in this area? If yes, please describe them. For example, could the cost of housing be separated from the cost of services, to accommodate CMF requirements?

3. What additional guidance and rules related to separating costs would be useful?

4. What is the demand to fund this type of housing with CMF Awards?

5. Are there additional points of clarification related to funding affordable assisted living facilities that should be considered? If yes, please describe them.

H. CMF Affordable Homeownership Purchase Price Limitation Rules: The CMF Interim Rule sets the purchase price limitation for a Single-family home at 95% of the median purchase price for the area, as used in the HOME program (12 CFR 1807.402(a)(2)).

1. Should the CDFI Fund use a different index or indices to set purchase price limits for affordable owner-occupied housing? If yes, please identify and describe them.

2. Should utilizing underwriting criteria rather than sales price limits be an alternative? Please describe the rationale for your answer.

3. Are there any other specific barriers or limitations that may inadvertently discourage organizations from using CMF to support Homeownership activities? If yes, please describe them.

4. What are other changes to the CMF program that could foster greater use of CMF to support Homeownership activities?

I. CMF Economic Development Activities Compliance Requirements: CMF allows Recipients to use up to 30% of their Award for Economic Development Activities (EDA) in conjunction with Affordable Housing Activities (12 CFR 1807.302 (c)). These activities may include the development of community facilities, as well as the development/revitalization of commercial space. Under the current CMF Interim Rule, Economic Development Activities, unlike Affordable Housing, do not have a specific requirement that the EDA retain its eligible use for a minimum period. To ensure

accountability, the CDFI Fund is considering requiring that EDA financed under a CMF Award maintain its eligible use for a minimum period of time.

1. Should CMF establish a minimum period of time that the EDA financed under a CMF Award maintain its eligible use? Please describe the rationale for your answer.

2. If yes, what would be a reasonable period of time, considering the Affordability Period for Affordable Housing is 10 years? Please describe the rationale for your answer.

J. Participation of Regulated CDFIs in the CMF Program: Regulated CDFIs including banks, credit unions, and cooperatives are eligible to apply under CMF. The CDFI Fund is seeking input on how to foster greater participation by these regulated financial institutions.

1. Are there any specific barriers or limitations that may inadvertently discourage regulated CDFIs' participation in CMF? If yes, please describe them.

2. What changes to CMF could foster greater participation from regulated CDFIs?

3. Should fostering greater participation from regulated CDFIs be a goal of CMF? Please describe the rationale for your answer.

Authority: 12 CFR 1807; Public Law No. 110-289.

Marcia Sigal,

Acting Director, Community Development Financial Institutions Fund.

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