

**CMF Coalition**  
Capital Magnet Fund Coalition



August 26, 2024

Ms. Pravina Raghavan  
Director  
U.S. Department of the Treasury  
Community Development Financial Institutions Fund  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Re: Capital Magnet Fund Program Interim Rule

Dear Director Raghavan:

On behalf of the Capital Magnet Fund Coalition (CMF Coalition), we are pleased to submit the following comments in response to the June 25, 2024 Interim Rule submitted by the Community Development Financial Institutions (CDFI) Fund. The CMF Coalition was pleased to have submitted comprehensive comments to the July 7, 2023 Request for Information that informed the pending Interim Rule, and appreciate the work of the CDFI Fund to incorporate those comments into the current regulation. As always, we thank the CDFI Fund for its ongoing commitment to administering and improving the Capital Magnet Fund (CMF) program.

The CMF program, created in 2008, has had a substantial impact on furthering the availability of affordable housing. To date, the CMF program has awarded \$1.1 billion dollars through eight funding rounds. Over 150 CDFIs and non-profit organizations have received CMF awards, and have used the funding to leverage over \$40 billion for affordable housing and economic development projects. In the most recent Fiscal Year 2023 award round, awardees estimated that they will develop 32,700 affordable homes. Earlier rounds of awards, which are now completing affordable housing projects, have also supported the creation of tens of thousands of jobs.

In 2019, the CMF Coalition was formed by over 50 of the program's awardees and other interested organizations seeking to amplify the success of the CMF program while advocating for administrative changes to make the program even more impactful. While the CMF program has produced incredible results, there had been no unified voice advocating for the program before Congress and key federal agencies, including the CDFI Fund, the Department of the Treasury, and the Federal Housing Finance Agency.

We appreciate the CDFI Fund's continued commitment to advancing reforms to the CMF program. In prior years, the CDFI Fund utilized the periodic Paperwork Reduction Act review to make critical programmatic adjustments. For example, several prior recommendations made by

the CMF Coalition were implemented, such as broadening the Service Area definition to include up to 15 states, allowing 15 percent of the award to be utilized outside of Service Areas, relaxing Program Income requirements by allowing reinvested dollars to be deployed outside of an established Service Area, and expanding application preferences to include high opportunity areas. These regulatory improvements are all productive steps to ensure that affordable housing funds are used to the greatest effect. The substantial programmatic changes made through the current interim rule greatly expand the scope of reforms, although per our prior comments, much more remains to be addressed in order to make the Capital Magnet Fund the flexible affordable housing program that was envisioned by Congress in 2008.

The CMF Coalition strongly believes that the CDFI Fund should significantly overhaul its guidance documents to generally encourage more flexibility, innovation and usage. The administrative complexity of the program lowers application demand and is inconsistent with the Biden Administration's Housing Supply Action Plan, which is focused on increasing federal support for affordable housing supply and preservation, including by simplifying and aligning federal housing requirements. There are too few federal affordable housing resources, and we collectively need each to work as effectively as possible by reducing transaction costs and duplications, while accelerating development. While the Interim Rule makes strides to realize this goal, we believe much of the administrative streamlining will ultimately take place through sub-regulatory changes to funding notices, assistance agreements, and guidance documents, which are not subject to public comment requirements. We strongly encourage the CDFI Fund to work with stakeholders so awardees and the public can provide feedback on those efforts.

Similar to the recommendations we submitted alongside our response to the July 7, 2023 RFI request, please find below a list of additional actions the CMF Coalition strongly believes will make the CMF program more accessible to affordable housing providers. These proposed actions are a mixture of regulatory and sub-regulatory practices. While we worked diligently to answer each question posed under the original RFI, and have addressed a significant number of policies adopted under this Interim Rule in our continued comments below, we would insist that a broader review of existing restrictive administrative policies be considered beyond the limited scope of questions posed by the CDFI Fund. We look forward to working with the CDFI Fund in partnership on these programmatic improvements.

### **Comments on Reforms in the Interim Rule**

#### ***Facilitate CMF Alignment with Other Federal Affordable Housing Programs***

The CMF Coalition supports the initiative in the Interim Rule to align federal affordable housing programs under a new "Presumptively Complaint" metric that would deem eligibility for projects that fully comply with other sources of funding. This new standard for eliminating duplicative reporting enhances and encourages the blending of funding within the capital stack in order to broadly support affordable housing development.

As mentioned in our introductory remarks, President Biden's Housing Supply Action Plan commits that "to reduce transaction costs and duplication, and to speed development, the

Administration will make changes to harmonize federal requirements across programs as much as possible...”.

The CMF Coalition looks forward to receiving additional guidance from the CDFI Fund on the federal housing programs that will meet the standards for compliance. We would encourage the CDFI Fund to establish a process whereby federal affordable housing program compliance can also be determined at the request of awardees if that subsidy program is not on the CDFI Fund’s forthcoming guidance. Further, all federal affordable housing programs that have been determined to be “Presumptively Compliant” should be displayed publicly so that the streamlined reporting requirements can be utilized by all CMF program awardees immediately.

In continued discussions with CMF Coalition members, the federal housing programs most frequently identified are LIHTC (Treasury), the HOME Investment Partnerships Program (HUD), Section 8 Project-Based Vouchers (HUD), Project-Based Rental Assistance (HUD), and rural housing and rental assistance programs (USDA). We believe that the CDFI Fund should initially review these programs for compliance.

### ***CMF Affordable Homeownership Purchase Price Limitation Rules***

The CMF Coalition strongly supports the transition for homeownership applicants to the FHA Section 203(b) standard. The artificial restrictions on single family housing prices used by the CDFI Fund through the HOME price limits standard amounted to redlining that vastly reduced the opportunity for low-income families to utilize resources in high income neighborhoods. We expect that the new FHA standard will allow for more equitable use of CMF homeownership funding.

Furthermore, the regular review of the FHA purchase price limits establishes a market-reactive metric that was severely lacking in the prior standard, allowing for a more accurate accounting of median home prices. The CMF Coalition believes that subsidy, leverage and income limits are more than sufficient to prevent abuse of CMF dollars.

As stated in our prior comments to the RFI, the CMF Coalition believes it is important to differentiate leveraging expectations for single-family activity where projects cannot be reasonably expected to leverage as high as other types of projects. The CMF Coalition requests the creation of differentiated application evaluation standards for single family and multifamily applicants. Having standards specific to affordable housing type will ensure that application proposals are not disadvantaged due to their proposed use of CMF funding.

We also continue to recommend additional guidance throughout the application materials that reflects differences between CDFIs and nonprofit developers. Our members have noted that the application materials appear to largely assume a use of funds for the development or financing of multifamily housing units. The CMF Coalition is concerned about the viability of applications for homeownership housing, especially because nearly 90 percent of the units funded to date have been rental units.

We urge the CDFI Fund to utilize differentiated evaluation standards so that homeownership proposals are competitive. Despite a CDFI Fund response to the contrary as part of the 2016 Interim Rule, the Secretary has broad discretion to establish grants and determine eligible grantees under the Act.

### ***CMF Affordable Housing Homeownership***

The CMF Coalition is encouraged by the continued changes to the restrictions regarding recoupment and replacement of single family housing when there is a resale to an unqualified buyer. However, in years six through 10 of the affordability period, we recommend adding as much flexibility as possible by allowing for replacement as an alternative to proportional recoupment.

The CDFI Fund must balance the pressing need for affordable homeownership options with the effects of the 10-year resale restriction, which adversely impacts the ability for homeowners to create equity. The use of CMF funding for homeownership is already properly restricted by program restrictions on subsidies, leverage requirements and income limits.

### ***CMF Income Limit Definitions***

The CMF Coalition appreciates the efforts in the Interim Rule to adjust the Very Low-Income standard from 50% of area median income (AMI) to the 60% AMI level associated with LIHTC. This alignment will ease the deployment of funding by allowing more units to be considered Very Low-Income for the purposes of the CMF program.

### ***CMF Commitment for Use Deadline***

The CMF Coalition generally supports the change in the Interim Rule to allow an awardee to Commit for Use awarded funds to an Eligible Use within two years, in compliance with the statute, while requiring project-level commitment within three years of award. However, we are not aware of specific instances where this flexibility has been requested by prior awardees.

Coalition members report that the timelines imposed by the CDFI Fund via sub-regulation create the most challenges. The CDFI Fund has previously implemented the 3-year initial disbursement deadline, 5-year project completion deadline, the additional six-month period for projects being placed into service, the additional 12-month period for initial occupancy following project completion, and the 5-year reinvestment timeframe through regulation and annual funding notices, all of which are subsequently enforced through awardee Assistance Agreements.

In the experience of the awardees represented in the coalition, the 5-year project completion deadline has generated the most frequent concern given the recent, persistent uncertainty in the housing and construction sectors. As we noted in our comments to the RFI, since 2020, project completion timelines have fluctuated drastically due to the COVID-19 pandemic, the resulting supply chain crisis, and more recently rising interest rates and housing market uncertainty. We appreciate the CDFI Fund's willingness to seemingly create flexibility in the singular statutory deadline, but the arbitrary nature of the litany of non-statutory deadlines is significantly more

impactful and disruptive. The constant threat that awardees could be deemed “non-compliant” for all CDFI Fund programs, including the CDFI-FA program, through no fault of their own represents the most significant barrier to attracting additional CMF program applicants.

### ***CMF Affordability Period***

The Interim Rule seeks to expand the application of Affordability Periods across numerous existing eligible use categories. The financial relationships that CMF awardees maintain with lenders is predicated on the consistency of the 10-year Affordability Period following the project completion date.

The CMF Coalition is concerned that the CDFI Fund appears to be giving itself unprecedented flexibility to require longer Affordability Periods in future NOFAs. Doing so could reduce the number of CMF program applicants, constrict the number of lenders and project developers willing to work with awardees and remove standardization of timelines that have been long-established by the CDFI Fund. Further justification for such a change should be included in future guidance from the CDFI Fund.

### ***CMF Preservation***

The CMF Coalition is particularly concerned with the expansion of affordability periods pertaining to Preservation projects, as outlined by the Interim Rule. In an effort to gain further clarity, we request that the CDFI Fund provide additional guidance on the use of awards for Preservation, including further definition of the expansion of the affordability period beyond the standard ten-year period for projects where there are no rent restrictions or the rent restrictions are set to expire during the Investment period.

Furthermore, the new definition appears to imply that funds should not be used for Preservation where rent restrictions have not expired, or are not set to imminently expire. This contraction of Preservation funding capabilities would represent a new and unique barrier on the acquisition, refinancing and recapitalization of existing multi-family or single-family affordable housing. Such a change would prevent the use of Preservation to refinance and rehabilitate LIHTC properties that are still well within their 30-year affordability period. We strongly request that the CDFI Fund provide immediate guidance to clarify the difference between the preamble text and the Interim Rule so as not to lose this important function of CMF program funding.

### ***CMF Service Areas***

The CMF Coalition greatly appreciates the inclusion of a national Service Area for Rural Areas in the Interim Rule. For many years, the CMF Coalition has been calling for Service Area flexibility in order to better address underserved rural areas where projects can be difficult to identify. The broader Service Area definition will entice more CMF program applicants to seek rural projects. We are, however, interested in a further dialogue with the CDFI Fund to identify additional national Service Area designations that could be designated through future NOFAs.

### ***CMF Program Income***

The CMF Coalition was pleased to respond to the significant issues with PI that were queried in the RFI. While the CDFI Fund chose to not address PI in the Interim Rule, we stand ready to collaborate on changes that can be made within future Assistance Agreements to lessen the burden that expanded reinvestment windows, high funding thresholds and restrictive eligible uses have CMF program awardees.

The CMF Coalition strongly believes that one of the most substantial burdens imposed by the CMF program is the CDFI Fund's treatment of Program Income (PI). PI earned in the form of principal and equity payments must be used by the Recipient for the approved, eligible CMF award uses as set forth in the Assistance Agreement (AA) during the Investment Period. The requirements are triggered when the cumulative balance of PI earned equals \$100,000 or greater. The CDFI Fund increased the compliance burden in Fiscal Year 2018 by increasing the reinvestment window from four years to five years.

The CMF Coalition believes requiring reinvestment consistent with statutorily allowable uses is appropriate. However, the CDFI Fund currently requires that reinvested funds must also meet specific affordability and compliance reporting requirements contained in the AA, which we believe is burdensome and counter-productive if an awardee has already met all leveraging and performance requirements. The reinvestment requirements go beyond those demanded by the Office of Management and Budget and similar government programs, including those currently administered by the CDFI Fund. Most troubling, the requirements are a primary source of non-compliance by awardees due to the need to find additional affordable housing projects similar to ones that were initially applied to the primary investment. CMF awardees are committed to requirements that fairly prioritize the reinvestment in additional affordable housing without onerous project selection criteria that can be unnecessary and punitive.

### ***CMF Funding for Secondary Market Purchases***

While financing Secondary Market Purchases is not commonplace among our members, the CMF Coalition would like to comment on revisions in the Interim Rule that may limit awardee flexibility to work with a variety of lending partners. Current CMF awardees have agreements in place with high-capacity lenders to purchase mortgages that both meet the "but-for" requirement and are not exclusively organized around the sale of CMF-eligible loans. These lenders have geographic footprints and operational structures are complex enough that inserting language requiring them to screen for CMF-eligibility before origination would represent an undue administrative burden and likely result in cost inefficiencies that would negatively impact borrowers. Accordingly, the CMF Coalition proposes that it would be sufficient to demonstrate that CMF Awardees have a purchase agreement with a third-party lender to purchase mortgages that would not otherwise have been originated without expressly committing CMF Award proceeds to a specific subset of loans.

In addition, CMF Coalition members have successfully advanced housing affordability by leveraging CMF Awards to purchase small pools of high-impact ("charitable") loans from mission lenders. Many of these lenders face liquidity constraints because their loans do not meet

the purchasing criteria of Fannie Mae and Freddie Mac, obligating them to keep these loans in portfolio, while constraining their ability to originate additional high-impact mortgages. We strongly recommend that the CDFI Fund indicate flexibility in future guidance to the Interim Rule to allow for a purchase agreement that documented a commitment to redeploy proceeds to originate additional, predominantly CMF-eligible charitable loans during a prescribed period.

### **Other Issues Not Addressed by the Interim Rule**

#### ***Application Category for Small Applicants***

The CMF Coalition suggests that the CDFI Fund create a separate application category for smaller applicants and allocate no less than 10 percent of that year's assessment to these groups. There is precedent for this activity since the CDFI Program has previously included a smaller applicant set-aside for many years, which helps ensure award funds reach these organizations. By creating a separate application stream, smaller entities under this set-aside should still have to meet all programmatic requirements but would importantly only compete against each other, rather than against larger applicants.

#### ***Provide Training and Technical Assistance on the CMF Program***

To further support CMF award recipients, including smaller organizations, we recommend that the CDFI Fund utilize Congressionally-appropriated funding for its Capacity Building Initiative. The Department of Housing and Urban Development (HUD) regularly provides such assistance on its federal housing programs, which allows award recipients to build their understanding of program requirements and ultimately achieve greater impact in their communities. Dedicated and ongoing CMF training and technical assistance may also grow the application pool, since potential award recipients will know there will be support provided as program and compliance questions arise.

### **Outstanding CMF Administrative Requests**

The CMF Coalition would be remiss if we did not reiterate the importance of a strong dialogue between the CDFI Fund and program applicants. Given the complex regulatory and reporting structure of the CMF Program, it is expected that questions from applicants will arise frequently. We believe that the CDFI Fund must prioritize communication with applicants, grant writers, industry coalitions and governmental entities, such as Members of Congress and Congressional Committees to ensure that the program is effectively administered, while promoting the consistent successes of the most flexible and effective affordable housing program in the federal government. To that end, the CMF Coalition continues to recommend the CDFI Fund undertake the following efforts:

- 1. Regular Timeline for Issuance of Annual Application and Award Functions** – While the CMF Coalition recognizes that the COVID-19 pandemic has necessarily altered the annual award processes for programs directed by the CDFI Fund, we encourage the resumption and long-term commitment to a regular annual schedule for solicitation of project applications and awards. Doing so will allow potential CMF applicants to properly

manage upcoming projects. The CMF Coalition suggests that a standard June (NOFA) to December (Award) timeline be utilized.

- 2. Publicly-Released Annual Reporting** – The CMF Coalition suggests that the CDFI Fund make compliance information on the program available publicly on an annual basis. The CMF program has very rigorous reporting requirements, and we believe this information should be released so that policymakers, CMF stakeholders, and the general public can fully understand the program’s impact. We note that the CDFI Fund releases these data on an annual basis for most of its other administered programs.

We also request that the CDFI Fund release a report to the public which provides annual application summary statistics so stakeholders can understand if applicants are being funded in proportion to their representation in the application pool. For instance, the lack of publicly available information on CMF evaluation criteria coupled with a low percentage of recipients receiving awards for affordable homeownership makes it challenging to know if the current evaluation framework is treating all proposals fairly.

- 3. Public Comment Period for Annual Changes to the CMF Assistance Agreement** - The CMF Assistance Agreement (AA) is the primary document governing the award’s compliance requirements. The Interim Rule places even greater emphasis on this document by directing that a significant number of the regulatory changes to be implemented are to be individually outlined in Assistance Agreements. The CDFI Fund does not provide a comment period for the public to review and suggest changes to the CMF AA. Our members believe the CMF AA can be improved by simplifying certain sections (most notably Program Income), which would increase awardee awareness and lessen compliance risk from confusion on compliance requirements. While we greatly appreciate this Interim Rule, the CMF Coalition notes that the structural changes to the CMF program are governed by Assistance Agreements, and we strongly recommend that the CDFI Fund provide an annual public comment period on any proposed changes before the CDFI Fund finalizes and sends the document to awardees.
- 4. Completion Deadline/Timeline Delay Request Process** – The CMF Coalition recommends that the CDFI Fund create and publish timing standards for making determinations on AA modifications such as timeline delay requests. Since the onset of the COVID-19 pandemic, the CDFI Fund has executed timeline delay requests on a case-by-case basis, which has led to confusion. The practice of requesting temporary delays or changes for non-statutory deadlines, such as the Completion Deadline have become more typical amongst awardees given the uncertainty with interest rates and rising prices, and we believe the prevalence demands established policies. The frequent delays are a specific concern for those awardees which fund pre-development financing. The CMF Coalition is aware that this uncertainty is artificially reducing the number applicants to the CMF Program as non-compliance with non-statutory deadlines that have been artificially adopted by the CDFI Fund risk participation in other programs, such as CDFI FA.
- 5. Limits on Annual Changes to the CMF NOFA, Compliance, and Overall Administration Practices and Conform New Changes to Previous Awards** - The CMF



NOFA, Assistance Agreement, and compliance practices have changed year-to-year, which increases administrative burden on applicants and award recipients. The CMF Coalition recommends the CDFI Fund make comprehensive updates based on stakeholder concerns and then try to limit changes in immediate subsequent years. In addition, to the extent changes are made to provide more awardee flexibility, such changes should also be made retroactively to prior awardees through blanket amendments to prior year Assistance Agreements.

6. **Require a Post-Award Debrief** – The CMF Coalition believes that the CDFI Fund should be required to provide a post-award debrief to those organizations not selected in annual funding rounds. This communication should, at a minimum, include reviewer comments so that those who were not awarded funds will know the associated reasoning. While we are not expecting the CDFI Fund to reveal all information related to the deficiencies of an application, nor compare that application to successful peers, it is critical to strengthen the program in future years by providing guidance on areas of application and project improvement.

## **Conclusion**

Thank you for the opportunity to provide these comments. The CMF Coalition welcomes the ability to explore these and other possible improvements to the CMF program. We share the goal of meeting our nation's affordable housing needs through innovative programs, especially the Capital Magnet Fund.

The CMF Coalition stands ready to provide additional details on our recommendations and we are available at your convenience to discuss them. Please contact Towner French ([tfrench@cozen.com](mailto:tfrench@cozen.com)) if you need additional clarification or follow up on any of the recommendations provided in this Interim Rule response.

Sincerely,

The Capital Magnet Fund Coalition

CC: Mr. Andrew Schlack, Program Manager, Capital Magnet Fund