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May 5, 2009

**Delivery by E-Mail**

Deputy Director of Policy and Programs  
CDFI Fund  
U.S. Department of the Treasury  
601 13<sup>th</sup> Street, NW Suite 20 South  
Washington, D.C. 20005

Re: Comments on Capital Magnet Fund

Dear Deputy Director:

We are writing in response to the Federal Register Notice, 74 Fed. Reg. 9868, dated March 6, 2009 soliciting comments on the design, implementation, and administration of the of the Capital Magnet Fund. The deadline for comments is May 5, 2009. I am writing on behalf of attorneys at the law firm Ballard Spahr Andrews & Ingersoll, LLP. We provide legal services to a variety of public and private entities, including but not limited to public housing authorities, for-profit and non-profit developers, community development corporations, lenders, equity providers and others, on the use of various sources of financing used to develop affordable housing and related community facilities and economic development projects, including but not limited to public housing operating and capital funds, low-income housing tax credits, bond financing, new markets tax credits, community development block grants, HOME funds, neighborhood stabilization funds, and other sources of federal and state financing. Based upon our experience with a wide range of clients, projects, and financing sources, we our answers to the questions in the Federal Register Notice are intended to shape the Capital Magnet Fund into a program that could be easily used for a wide range of projects.

The questions from the Federal Register Notice are included in this letter in plain text, and our responses are provided in bold italics.

What definition should the CDFI Fund use to assess what constitutes “affordable housing?” What affordability thresholds or restrictions (if any) should the Fund require, and for how long a period should these be in place?

***The Capital Magnet Fund should be able to work in concert with other funding sources. If the CMF includes fewer targeting requirements, it will be easier to combine with a variety of other sources. We suggest that the targeting be limited to serving households at 80 percent or below of Area Median Income (“AMI”), with an effort to a portion of households at or below 50 percent of AMI.***

***We note that many states and localities have created “workforce housing” programs, generally intended to target housing programs for households of moderate income. The Capital Magnet Fund could serve households above 80 percent of AMI to support existing state or local programs targeted to workforce housing or specific populations, including but not limited to artists, teachers, fire fighters, and police officers. Up to 10 percent of the affordable housing funds may be used for these programs.***

(a) How should “primarily” be defined, as such term is used in Section 1339(c)(1)? What are the appropriate minimum levels of targeting that each project should be required to achieve (e.g., 50 percent of housing units are affordable to low-income persons, 20 percent of housing units are available to extremely low-income persons, etc.)?

***“Primarily” should apply to the allocation of funding, and not affordability requirements. At least 80% of the funds allocated to CMF in any fiscal year shall be used to support affordable housing projects, while not more than 20% of the funds allocated to CMF in any fiscal year shall be used to support non-housing projects. Affordable housing projects and non-housing projects should be funded separately.***

***We suggest that, of the funds allocated to affordable housing, at least 90 percent must be used to house households at or below 80 percent of AMI. Up to 10% may fund households up to 120 percent of AMI to support locally-created workforce housing programs, or similar programs targeting specific populations. The funds may be attached to specific units. There should be no maximum or minimum number of subsidized units in the project***

(b) How should “preservation” be defined, as such term is used in Section 1339(c)(1)? Should it include the re-financing of single- or multi-family mortgages as eligible activities?

(c) How should “rehabilitation” be defined, as such term is used in Section 1339(c)(1)?

(d) Capital Magnet Fund grants may be used to finance economic development activities and/or community service facilities “in conjunction with affordable housing activities.”

(i) What restrictions (if any) should the CDFI Fund place on the percentage of award dollars that an awardee may apply towards economic development activities and/or community service facilities (e.g., no more than 20 percent of a total award)?

*We recommend that no more than 20% of the national allocation (rather than dividing by award) be applied to non-housing projects. Usually affordable housing projects and ancillary non-housing projects are developed separately, so it is likely to be easier for municipalities and developers to focus on these types of projects separately.*

(ii) Should the CDFI Fund support economic development activities and/or community service facilities in conjunction with affordable housing activities financed by sources other than Capital Magnet Fund grants (e.g., Low-Income Housing Tax Credits; HOPE VI; or private sources) or solely in conjunction with Capital Magnet Fund grants?

*We strongly urge CDFI to fund economic development activities and/or community service facilities in conjunction with affordable housing activities financed by sources other than Capital Magnet Fund grants.*

(iii) How should the CDFI Fund define “in conjunction with”? For example, does this mean on the same premises, in a separate property adjoining the premises, contiguous to or within the census tract where the premises is located, or within a certain distance from the premises?

*Generally this should be interpreted to mean on the same premises, adjacent to, or within a few blocks of affordable housing. However, if the economic development project or community facility can reasonably be expected to serve residents of affordable housing, then this would be an acceptable use. “Reasonably be expected to serve residents of the affordable housing” can mean that the facility is within walking distance of affordable housing, public transit, or van service. Residents of affordable housing should be a significant portion of the population that will benefit from the services of the new facility.*

(iv) How should the CDFI Fund define “concerted strategy”?

*“Concerted strategy” can mean that the facility is included in a planning document describing the neighborhood revitalization strategy for the area, including but not limited to a consolidated plan, redevelopment plan, or other local or regional planning document. The facility should be intended to serve residents of the affordable housing in the area, and the facility should be part of an over-all strategy to provide a full range of neighborhood services to residents of the targeted affordable housing. The definition of concerted strategy should be written in a way that does not exclude plans by rural*

*communities, towns, or neighborhood that do not have formal plans. CDFI should consider accepting plans developed in response to Capital Magnet Fund funding requests, if the plan demonstrates a concerted strategy to provide housing and other needs to affordable housing residents.*

### **Eligible Grantees**

Section 1339(c) of the Act states that Capital Magnet Fund grants may only be made to: (a) A CDFI that has been certified by the CDFI Fund; or (b) a nonprofit organization having as one of its principal purposes the development or management of affordable housing. How should the CDFI Fund define “principal purpose,” with respect to determining whether one of an entity's principal purposes is the development or management of affordable housing?

*The principal purpose may be included in the incorporation documents or by-laws, in application for tax exempt status to the Internal Revenue Service, or may be demonstrated by the work of the organization. We note that a 501(c)(3) whose principal purpose is development or management of affordable housing may be considered to violate its primary purpose if it participates in the development or operation of certain non-housing facilities. In addition, there may be an organization whose purpose in its incorporation documents is economic development, but that also develops and manages affordable housing, and these organizations should be eligible recipients of funds.*

### **Applications**

The CDFI Fund welcomes comments pertaining to the content of the application materials, the timing of award rounds, and the application scoring and review protocols particularly with respect to the following questions:

Are there other competitive award programs, Federal or otherwise, upon which the CDFI Fund should model the Capital Magnet Fund's application scoring and review protocols?

(e) Should the CDFI Fund divide applicants among different pools so that they compete only among organizations at the same capacity level (similar to the Core and SECA designations for the CDFI Program)?

(f) Should the CDFI Fund accept applications on an annual basis or more often (e.g., twice a year)?

(g) Section 1339(j)(2)(D)(ii) requires “a prioritization of funding based upon:

The ability to use such funds to generate additional investments;

*The statute only allows an award of 10 percent of total development costs. Especially considering that the funds are intended to target affordable housing and services*

*for affordable housing, it is highly likely that additional subsidies will be needed. Therefore, there should be no limitations on the types of funds that can be combined with Capital Magnet Funds.*

2. Affordable housing need (taking into account the distinct needs of different regions of the country); and

*There are several different local planning documents that document the need for affordable housing and the local strategy for addressing that need, including but not limited to the local Consolidated Plan; public housing authority Moving to Work Plan/Five Year Plan, or Annual Plan, as applicable; Redevelopment Plan (for HOPE VI projects).*

3. Ability to obligate amounts and undertake activities so funded in a timely manner.” With respect to this particular requirement:

- (i) How should the CDFI Fund quantify each of the three priority factors? For each of the three factors, what should applicants be required to present and/or address as part of their application materials?

- (ii) Should this prioritization be incorporated into the standard scoring of the application (e.g., by weighting certain questions more heavily) or should there be separate “priority points” specific to each of the three criteria?

### **Geographic Diversity**

Section 1339(h)(2)(A) of the Act states: “The Secretary of the Treasury shall seek to fund activities in geographically diverse areas of economic distress, including metropolitan and undeserved rural areas in every State.” Section 1 339(h)(2)(B) provides that objective criteria of economic distress may include:

The percentage of low-income families or the extent of poverty;

4. The rate of unemployment or underemployment;
5. The extent of blight and disinvestment;
6. Projects that target extremely low-, very low-, and low-income families in or outside a designated economic distress area; or
7. Any other criteria designated by the Secretary of the Treasury.

The CDFI Fund welcomes comments on issues relating to geographic diversity, particularly with respect to the following questions:

- (a) What objective criteria of economic distress should the CDFI

Fund adopt?

If the percentage of low-income families is selected as an objective criterion of economic distress, what is the appropriate minimum level (e.g., census tracts where the median family income is at or below 80 percent of the applicable area median family income)?

8. If poverty rate is selected as an objective criterion of economic distress, what is the appropriate minimum level (e.g., census tracts with at least a 20 percent poverty rate)?
9. If unemployment or underemployment is selected as an objective criterion of economic distress, what is the appropriate minimum level (e.g., census tracts with an unemployment rate at least 1.5 times the national average)?
10. If “blight” or “disinvestment” is selected as an objective criterion of economic distress, how should they be defined?

*We would caution that “blight” is usually defined locally, but that definitions vary widely, and their application varies even more so.*

*A more objective definition could be a minimum percentage of houses in the targeted area that are vacant, demolished, or have been foreclosed upon.*

11. Are there additional criteria of distress, other than those specifically listed in Section 1339(h)(2)(B), that the CDFI Fund should consider? For example, is there a measure specific to housing that should be considered (e.g., the ratio of renters to homeowners in a community; percentage of vacant properties in a community; or percentage of substandard properties in a community)?

*A measure of the percentage of vacant properties should include demolished properties. Neighborhoods that have suffered long-term distress to the extent that most of the obligated properties have been demolished.*

*The percentage of rental properties does not seem to be a valid measure of distress. Many vibrant urban neighborhoods have a high percentage of rental units.*

12. Are there special populations facing economic distress or with high housing needs that the Fund should consider? Are there particular measures that should not be used because they may inadvertently disadvantage certain populations? If so, provide examples of particular households or communities that would not qualify under specific definitions.

How should the CDFI Fund define “rural areas”? For example, is a rural area any census tract that is not located in a metropolitan statistical area (MSA)? Respondents should

discuss how a particular definition would enable the program to best ensure funding to people in rural areas, and discuss whether there are particular measures that should not be used because they may inadvertently disadvantage certain populations (i.e., provide examples of particular households or communities that would not qualify under specific definitions).

(a) Should the CDFI Fund ensure that, in any given award round, there is a project located in every state? Should the CDFI Fund “skip over” otherwise higher rated applicants to ensure that this geographic diversity goal is met?

(b) Section 1339(j)(2)(D)(i) of the Act requires that “funds be fairly distributed to urban, suburban, and rural areas.” How can the CDFI Fund best achieve this outcome?

#### Leverage of Funds

Section 1339(h)(3) of the Act states: “Each grant from the Capital Magnet Fund awarded under this section shall be reasonably expected to result in eligible housing, or economic and community development projects that support or sustain an affordable housing project funded by a grant under this section whose aggregate costs total at least 10 times the grant amount.”

The CDFI Fund welcomes comments regarding how applicants would be able to demonstrate a leveraging ratio of 10:1 of “total aggregate costs,” particularly with respect to the following questions:

What documentation should be required to demonstrate a leveraging ratio of 10:1 of “total aggregate costs”?

***Total aggregate costs should include the total cost for development including acquisition and, infrastructure costs.***

(c) How should this 10:1 standard be measured (e.g., on a project-by-project basis for each project funded, or on a collective basis for all projects financed)?

***The 10 to 1 standard should be measured based upon each project funded.***

(d) Is there a timing consideration as to when the CDFI Fund should release its award dollars (e.g., not until all other sources of financing have been secured)?

***The CDFI Fund should release its award dollars at Financial Closing.***

#### Commitment for Use Deadline

Section 1339(h)(4) of the Act states: “Amounts made available for grants under this section shall be committed for use within 2 years of the date of such allocation.” The CDFI Fund

welcomes comments regarding how the term “committed” should be defined, and how it can be verified, for the purposes of this requirement.

### **Prohibited Uses**

Section 1339(h)(5)-(6) of the Act lists prohibited uses with respect to grants awarded under this program.

Are there any additional prohibitions or limitations that should be applied? For example, there are no stated limitations regarding the portions of Capital Magnet Fund grants that may be retained by the awardee to cover operating costs. Should the CDFI Fund permit a set portion of awards to cover operating costs? If so, what percentage of the funds should be allowed? Should awardees be restricted in the level of fees they charge to sub recipients/end-users?

***CDBG regulations limit administrative costs to 20 percent of the grant.***

### **Accountability of Recipients and Grantees**

Section 1339(h)(8) of the Act provides for accountability standards with respect to tracking the use of award dollars, as well as remedies in the event that an awardee misuses funds.

The CDFI Fund welcomes comments on how to administer awards and monitor the deployment of funds awarded under the Capital Magnet Fund, particularly with respect to the following questions:

What documentation should be required to demonstrate that funds awarded under the Capital Magnet Fund have been committed?

(e) What types of documentation should be required to demonstrate completion of projects?

***Certificate of Occupancy for structures; 95% percent occupancy for housing construction, and a check of the operation of the community facility/non-housing project one year after issuance of the certificate of occupancy. CDBG and New Markets Tax Credits have established measures for completion for a number of non-housing uses.***

(f) What types of documentation should be required to demonstrate satisfaction of the affordability requirement related to housing developed, preserved, rehabilitated, or purchased with the support of Capital Magnet Fund awards?

***The affordability requirement can be documented by a deed restriction and/or a covenant running with the land.***

(g) What support, if any, would applicants and awardees like to see from the CDFI Fund at the post-award stage?

(h) What specific industry standards for impact measures (units produced, percentage of units affordable to low-income persons; time to complete; etc.) should the CDFI Fund adopt for evaluating and monitoring projects funded under the Capital Magnet Fund?

- *For affordable Housing, units produced and confirmed affordable standards.*
- *For Economic Development or Community Facilities, the number of people served, and estimates of income or people. CDBG and New Markets Tax Credit programs have a number of different measures of compliance with economic development and elimination of blight, and these may be useful for some of the non-housing uses to be funded by the Capital Magnet Fund.*

### **General Comments**

The Fund is interested in comments regarding the types of affordable housing projects or activities for which applicants anticipate applying under the Capital Magnet Fund. Please detail the specific activity (development, preservation, rehabilitation, purchase, etc.), the populations served by this activity, the applicant's role in the activity, the sources of finance used to complete each activity, and the preferred time frame of grants received under the Capital Magnet Fund.

*We understand that this legislation was drafted at a time that the program was conceived as a magnet for additional funding – a source of funds to get a project started. At this particular time, these funds could also be used to fund gaps in projects that cannot complete their financing packages. We have suggested funding for workforce housing programs.*

*We believe that the Capital Magnet Fund should be permitted for a wide range of uses related to affordable housing, including land or building acquisition, preservation, or development.*

*Permitting Capital Magnet funds to be used for various types of financing mechanisms that leverage additional funds would make the funds a more powerful tool in the development of affordable housing and related facilities. Section 1339(f) of the Act states that grant amounts awarded from the Capital Magnet Fund may be used in furtherance of the purposes above, including (1) to provide loan loss reserves, (2) to capitalize a revolving loan fund, (3) to capitalize an affordable housing fund, (4) to capitalize a fund to support economic development activities or community service facilities, as described in Section 1339(c)(2) of the Act, and (5) for risk-sharing loans. We would strongly support the use of Capital Magnet Funds as a revolving loan fund to capitalize operating funds adult day care centers and similar community-based health care centers.*

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***In addition, we encourage CDFI to be open to the types of projects that may be funded as “economic development activities and community service facilities” that act to revitalize a low-income area. In addition to health clinics including dental services, we encourage support of adult day centers, and other types of supportive services.***

We appreciate your solicitation of these comments on the design, implementation, and administration of the Capital Magnet Fund. If you wish to discuss any of our comments, please feel free to contact me at (202) 661-2218.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Wilson Géo', with a long horizontal flourish extending to the right.

Sharon Wilson Géo