May 5, 2009

Deputy Director of Policy and Programs
CDFI Fund
U.S. Department of the Treasury
601 13th Street, NW
Suite 200 South
Washington, DC 20005

RE: Request for Comment on Capital Magnet Fund Program

Dear Mr. Josephs,

Opportunity Finance Network[1] (OFN) appreciates the chance to comment on the CDFI Fund's Request for Comments published in the *Federal Register* on March 6, 2009 regarding the Capital Magnet Fund Program.

The opportunity finance industry, including the 170 community development financial institutions that are Members of OFN, is committed to identifying and investing in opportunities to benefit low-income and low-wealth people across the country. As you know, our financing delivers both sound financial returns and real changes for people and communities.

This comment letter will address all questions posed by the CDFI Fund regarding the Capital Magnet Fund Program. OFN along with Members of Congress created the concept for this program based on the experience of the various subsidy programs at the U.S. Department of Housing and Urban Development (HUD) and the CDFI Program. Congress decided to house the Capital Magnet Fund Program at the CDFI Fund rather than HUD because of the CDFI Fund's approach to providing institutional-based rather than project-based funding. The core concept underlying the Capital Magnet Fund Program is to provide capital at the institutional level, rather than directly into real estate projects. This successful approach allows federal grants to be deployed more effectively and flexibly to leverage private capital and to achieve larger-scale impact. The answers below provide concrete recommendations on how to implement the Capital Magnet Fund Program to fulfill this Congressional intent.

In general, OFN urges the CDFI Fund to use definitions and criteria from existing programs and regulations, such as its own CDFI Program, when possible. Use of existing guidelines will reduce confusion and burden for the organizations that will be recipients of Capital Magnet Fund Program grants. Where no program, regulation, or statute is referenced, our answers draw on the understanding of CDFIs and nonprofit affordable housing developers with decades of experience providing affordable housing opportunities.

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[1] Opportunity Finance Network, the national network of more than 170 financial institutions creates growth that is good for communities, investors, individuals, and the economy. Its members include Community Development Financial Institutions (CDFIs) and other opportunity finance institutions that work just outside the margins of conventional finance to bring those markets into the economic mainstream and to help the economic mainstream flow into those markets. CDFI financing has resulted in significant numbers of new jobs, jobs preserved, quality, affordable housing units, and new commercial and community facility space in all 50 states. Over the past 30 years, the Opportunity Finance industry has provided more than $30 billion in financing that would not otherwise have happened in markets that conventional finance would not otherwise reach.

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Background

The Capital Magnet Fund Program was authorized by Congress through the Housing and Economic Recovery Act of 2008 and provides a source of funding for CDFIs and nonprofit affordable housing developers to finance affordable housing in low-income areas and for extremely low-, very low-, and low-income families and "economic development activities or community service facilities, …which in conjunction with affordable housing activities implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area" (hereafter, concerted community revitalization).

Unlike other federal programs, such as the HUD's Block Grant Program and Housing Trust Fund, the Capital Magnet Fund Program is ***not*** a block grant or project-based program. 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.

While it is based on the CDFI Program (financial assistance and technical assistance), the Capital Magnet Fund Program is different from other programs currently housed at the U.S. Treasury's CDFI Fund:

- The Capital Magnet Fund Program is for affordable housing and concerted community revitalization. The CDFI Fund's CDFI Program supports all CDFI funding including small business, microenterprise, and consumer financial services such as car loans and checking accounts for the previously unbanked. The Capital Magnet Fund Program will allow CDFIs that focus on affordable housing and concerted community revitalization to better target these needs and free up the CDFI Program to reach deeper to fund other worthy programs.
- The CDFI Fund's primary grant program is open only to certified CDFIs. The Capital Magnet Fund Program expands this to include nonprofit affordable housing developers with a primary mission of development or management of affordable housing. Together, CDFIs and community builders are the experts in affordable housing production and often combine resources for these types of projects.
- The CDFI Program awards are typically much smaller than what is needed and expected for the Capital Magnet Fund Program. In 2008, the CDFI Fund awarded $52.2 million to 89 organizations through the CDFI Program. The average award size was $608,784: the largest award was $1.1 million; the smallest award was $22,808. CDFIs and nonprofit affordable housing developers need much higher awards to make a difference in affordable housing. For example, the average microloan is $13,000; the average cost for just one affordable housing unit is $100,000.
- The CDFI Program already receives nearly six times more applications than funding available. There simply is not room in the program to address the Capital Magnet Fund's purposes.
- The New Markets Tax Credit is not limited to mission-driven CDFIs and nonprofit affordable housing developers and allows nonprofit organizations that are under the control or a subsidiary of a for-profit entity. It is not well suited to provide the seed capital that CDFIs and nonprofit affordable housing developers need or to finance affordable housing, and it does not require economic development and service facilities to contribute to a concerted community revitalization strategy.

Eligible Uses of Funds

What definition should the CDFI Fund use to assess what constitutes affordable housing?

In creating the Capital Magnet Fund Program, OFN and Members of Congress looked to current law to provide definitions. In the case of "affordable housing," existing law provides clear guidance. Housing units should meet the income, rent, or purchase price term requirements of either the Low Income Housing Tax Credit[2] (LIHTC) for rental properties or the HUD HOME Housing Partnerships Program[3] for

[2] In general, 26 USC § 42.

rental and ownership. These policies are well established and are workable for the Capital Magnet Fund Program.

Pursuant to 42 USC 12745, the qualifications for affordable housing are defined in the HOME Program's Section 215—Qualification as affordable housing. These regulations define "affordable housing" as:

- Rental housing includes rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area.
- Home ownership opportunities, including new construction, also constitutes affordable housing. Among other criteria, current law states, "has an initial purchase price that does not exceed 95 percent of the median purchase price for the area, as determined by the Secretary with such adjustments for differences in structure, including whether the housing is single-family or multifamily, and for new and old housing as the Secretary determines to be appropriate."

What affordability thresholds or restrictions (if any) should the Fund require, and for how long a period should these be in place?

The CDFI Fund should look to the eligible uses for the Capital Magnet Fund Program[4] (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.

How should "primarily" be defined? What are the appropriate minimum levels of targeting that each project should be required to achieve?

Mixed-income housing should be supported subject to the following principles of flexibility and rigor:

1) 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,[5] tax credits are available only on low-income units, and under HOME[6], HOME funding cannot exceed the cost attributable to HOME eligible units.
2) For purposes of measuring Capital Magnet Fund leverage, all non-Capital Magnet Fund financing sources[7] 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.
3) At least 20 percent of each housing project should be "affordable," consistent with the LIHTC and tax-exempt multifamily bonds.[8] The two previous principles should provide sufficient rigor to accommodate this flexibility without risk of abuse.

[3] In general, 24 CFR PART 92—Home Investment Partnerships Program.
[4] 12 USC 4569, Section 1339.
[5] Id at 1.
[6] Id at 2.
[7] For the purpose of leverage and leverage reporting, non-Capital Magnet Fund financing sources should include both federal and non-federal sources of capital.
[8] In general, 26 USC § 141.

While reporting can and should be done on the project level, we again stress that the Capital Magnet Fund Program is ***not*** a project-based program. Instead, it follows the principles of the CDFI Program and provides funding based on a comprehensive business plan for activity. We do not expect funding to be disbursed based on a project strategy, but rather as is currently provided for in the CDFI regulations for the CDFI Fund programs.[9]

How should "preservation" be defined and should it include the refinancing of single- or multi-family mortgages as eligible activities?

Affordable housing preservation should include restoration of deteriorated properties, creation of more responsive property management, and prevention of troubled properties from going into default, as well as refinancing of single- or multi-family mortgages. This includes preserving "expiring-use properties."[10] The transaction should materially reduce the cost to residents (including weatherization or other energy efficient modifications), extend the term of affordability, or extend the expected life of the physical property. This includes both owner occupied and unoccupied rental property and applies to existing housing structures or the adaptive use of other buildings that can be modified for affordable housing.

How should "rehabilitation" be defined?

Rehabilitation improves the living environment for affordable housing through capital improvements to existing housing. An additional objective is to revitalize affordable housing and contribute to the improvement of the surrounding neighborhood.

Rehabilitation includes capital improvements made to foreclosed properties as well as residential properties in relation to housing safety, quality, and habitability in order to sell, rent, or redevelop such homes and properties. Rehabilitation may include improvements to increase the energy efficiency or conservation, or provide a renewable energy source or sources for such homes and properties. Finally, rehabilitation also includes the demolition of blighted or obsolete structures and the redevelopment of demolished or vacant lots. Substantial rehabilitation exceeds $6,000 per unit of affordable housing or 20 percent of building acquisition costs.[11]

What restrictions (if any) should the CDFI Fund place on the percentage of award dollars that an awardee may apply toward economic development activities and/or community service facilities?

The CDFI Fund should support what the law clearly states, "economic development activities or community service facilities, such as day care centers, workforce development centers, and health care clinics, which *in conjunction with affordable housing activities* implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area."[12] There is nothing in the statute to support a restriction of such activities and certainly nothing that allows an arbitrary percentage of the total award.

The law makes it clear that economic development activities and community service facilities must be linked to affordable housing through a concerted community revitalization strategy. To ensure this linkage, the CDFI Fund could require that a grantee has previously supported or is simultaneously supporting affordable housing activities in a given community under such concerted strategy if it is to support Capital Magnet Fund assisted economic development or community services facilities. It was the intent of Congress that non-residential developments complement or support affordable housing, recognizing that low-income families and communities have needs in addition to housing. Because of this,

[9] CDFI Fund Regulations: § 1805.803.
[10] § 221(d) 3 BMIR and § 236.
[11] 12 USC 1, § 3003.
[12] Id at 3.

the Capital Magnet Fund statute authorizes the use of funding to go to concerted community revitalization activities that support/complement affordable housing.

Should the CDFI Fund support economic development activities/community service facilities in conjunction with affordable housing activities financed by sources other than Capital Magnet Fund grants or solely in conjunction with Capital Magnet Fund grants?

Again, any economic development/community service facilities must complement and support affordable housing under a concerted community revitalization strategy. In the many cases where other resources are available for affordable housing, it would be inefficient, burdensome, and unnecessary to require that Capital Magnet Fund grants support the housing. As a practical matter, we believe that the majority of total Capital Magnet Fund grant dollars will in fact support affordable housing because of resource availability, marketability, and grantee capacity. However, if an applicant's concerted business strategy and local community strategies accommodate affordable housing through other sources, then the Capital Magnet Fund Program should accommodate that.

How should the CDFI Fund define "in conjunction with?"

In grammar, a "conjunction" is a part of speech that connects two words, phrases, or clauses together; the same meaning applies for the Capital Magnet Fund Program. As it relates to community development activities or community service facilities, *in conjunction with* means that the activity should be proximate and reasonably available (but not restricted) to the residents in the affordable housing. For example, a childcare center or family health clinic near family-oriented housing and designed to be affordable to the residents would be appropriate, but use of the childcare center or health clinic should not be restricted to residents of the housing. Proximity would depend on context. For example, in an urban neighborhood, the housing should be located within the primary market area for a retail business (e.g., supermarket) or service facility, and location in the same or a contiguous census tract could be a safe harbor. However, more flexibility may be appropriate in a low-density rural context.

How should the CDFI Fund define "concerted strategy?"

A concerted strategy to stabilize or revitalize a low-income area or underserved rural area should:

1) Be a written plan adopted by either a state or local governmental agency or a nonprofit community based organization with significant input from community residents and stakeholders.
2) Describe community conditions, strengths, weaknesses, and needs including the needs of low-income residents.
3) Establish focused and coherent strategies to address priority needs, including at minimum, affordable housing and either economic development or community services.
4) Identify at least some specific project/program opportunities to implement such strategies.

Eligible Grantees

How should the CDFI Fund define "principal purpose" with respect to determining one of an entity's principal purposes is the development or management of affordable housing?

The Capital Magnet Fund statute allows, in addition to certified CDFIs, "a nonprofit organization having as 1 of its principal purposes the development or management of affordable housing to apply for grants under this program." 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,[13] 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[14] 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).

Applications

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?

As stated previously, the Capital Magnet Fund Program is based on the CDFI Program so the CDFI Fund should apply its current application scoring and review protocols to the Capital Magnet Fund Program. The CDFI Program is unique among federal housing and community development programs because it supports institutions and strategies, ***not*** projects; the Capital Magnet Fund statute was based on this principle.

For rural applicants, the CDFI Fund should consider that smaller projects may be financed and these projects may take more time to complete, as well as leveraging the grant with other funding sources may be challenging.

Should the CDFI Fund divide applicants among different pools so that they compete only among organizations at the same capacity level?

The CDFI Fund should ***not*** create different pools of applicants for this program. Only the highest scoring and best-qualified applications should be funded. CDFIs and nonprofit affordable housing developers need much larger awards than typically provided through other CDFI Fund programs to make a difference in affordable housing. This is why the grant limitation for the Capital Magnet Fund Program is significantly larger than the CDFI Program, "Any 1 eligible grantee and its subsidiaries and affiliates may not be awarded more than 15 percent of the aggregate funds available for grants during any year from the Capital Magnet Fund."

Should the CDFI Fund accept applications on an annual basis or more often?

When the Capital Magnet Fund Program is fully funded, we encourage the CDFI Fund to accept applications and award grants on a semi-annual basis; until that time, if smaller appropriations are allocated to the program, one annual round of applications and awards is appropriate. More importantly, since we expect the CDFI Fund to award larger grants and thus fewer awards, it is completely

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[13] See IRC 42(h)(5) for LIHTC.
[14] CDFI Fund Regulations: § 1805.201.

appropriate to expect the CDFI Fund to turn around these awards, assistance agreements, etc. on a more accelerated timetable than the current CDFI Fund programs.

The law requires a prioritization of funding based upon: 1) the ability to use such funds to generate additional investments; 2) affordable housing need (taking into account the distinct needs of different regions of the country); and 3) ability to obligate amounts and undertake activities so funded in a timely manner. 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? Should this prioritization be incorporated into the standard scoring of the application or should there be separate "priority points" specific to each of the three criteria?

The CDFI Fund should create a threshold score for each of the three factors. Applicants not meeting these thresholds should be disqualified. As far as application materials, the three factors should be detailed in the applicant's concerted community revitalization strategy or comprehensive business plan. OFN considers the *affordable housing need* to be the top priority.

Geographic Diversity

What objective criteria of economic distress should the CDFI Fund adopt?

The CDFI Fund should base its objective criteria of economic distress on its current regulations.[15] It should be noted that the Capital Magnet Fund statute states, "For purposes of this paragraph, geographic diversity includes those areas that meet objective criteria of economic distress developed by the Secretary of the Treasury, *which may include*…." The following list was not meant to be all-inclusive, but rather examples for consideration. Capital Magnet Fund grants should not be limited to areas of economic distress since the priorities of the program are extremely low-, very low-, and low-income *families*. This means that housing costs and housing affordability are also key criteria of economic distress.

1) *If the percentage of low-income families is selected as an objective criterion of economic distress, what is the appropriate minimum level?*
   An area of economic distress has 70 percent of low-income families at or below 80 percent of the area median income.[16]

2) *If poverty rate is selected as an objective criterion of economic distress, what is the appropriate minimum level?*
   Pursuant to current CDFI Fund regulations, the percentage of the population living in poverty is at least 20 percent.[17]

3) *If unemployment or underemployment is selected as an objective criterion of economic distress, what is the appropriate minimum level?*
   Pursuant to current CDFI Fund regulations, the unemployment rate is at least 1.5 times the national average.[18]

4) *If "blight" or "disinvestment" is selected as an objective criterion of economic distress, how should they be defined?*
   Any area should be considered blighted if it meets a definition of a slum, blighted, deteriorated, or deteriorating area under state or local law; the same applies for disinvestment. Consistent with Community Development Block Grant rules,[19] an area should be considered blighted (disinvestment) if **either**:

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[15] CDFI Fund Regulations: § 1805.201(D).
[16] Known as Area of Chronic Economic Distress under tax-exempt homeownership bonds.
[17] CDFI Fund Regulations: § 1805.201(D)(1).
[18] CDFI Fund Regulations: § 1805.201(D)(3).
[19] 24 CFR 570.208(b)(1)(A) and (B).

a. At least 25 percent of the properties experience one or more of the following conditions:

i. Physical deterioration;

ii. Abandonment;

iii. Chronic high turnover or vacancy rates in residential, commercial, or industrial buildings;

iv. Significant declines in property values or abnormally low property values relative to the broader area;

v. Known or suspected environmental contamination; **or**

b. The public improvements throughout the area are in a general state of deterioration.

5) *Are there additional criteria of distress, other than those specifically listed in Section 1339(h)(2)(B) that the CDFI Fund should consider?*
Again, the CDFI Fund should use its current distress criteria, which includes county population loss and county net migration loss.[20]

Are there special populations facing economic distress or with high housing needs that the Fund should consider?

The statute clearly defines the populations and areas the program is intended to serve: extremely low-, very low-, low-income families and low-income areas. The CDFI Fund does not need to consider additional populations.

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.

If the CDFI Fund uses the purpose of the Capital Magnet Fund Program as defined in the law, which is to serve extremely low-, very low-, and low-income ***families*** as well as low-income areas, and does ***not*** try to turn the Capital Magnet Fund Program into a project-based initiative, then this question should not be relevant.

How should the CDFI Fund define "rural areas?"

Median family income in rural areas is 25 percent less than in metropolitan areas and the poverty rate for rural communities is 28 percent higher, which is why Congress included "underserved rural areas" in the statute. To ensure compatibility with USDA rural housing services, the rural definition for those programs under Section 520 of the Housing Act of 1949 should apply. These areas are both rigorous and flexible, and are well known and workable. The CDFI Fund should follow the USDA Economic Research Service data drawn from the 2000 Census and *seek* to fund 21 percent of the awards to non-metropolitan markets.[21]

It is important to note the substantial difference between "rural" and "nonmetropolitan." Many genuinely "rural" areas are within "metropolitan areas," so applying a "nonmetropolitan" definition would needlessly frustrate efforts to serve many rural areas. The location of the CDFI is far less important than the ability to reach rural service areas and the dollar amount of funding to the service areas. OFN does not believe

[20] CDFI Fund Regulations: § 1805.201(D)(4) and (5).
[21] Most counties, whether metropolitan or non-metropolitan, contain a combination of urban and rural populations. According to the USDA's computer system that measures clusters of populations, "rural areas consist of all territory located outside of organized areas and urban clusters. The U.S. rural population was 59 million (21 percent) in 2000." www.ers.usda.gov/Briefing/Rurality/WhatisRural/.

there is a need for the CDFI Fund to advance lower scoring applicants to achieve a proportionate share of award dollars for rural areas. Instead, the CDFI Fund should seek to fund these areas with high-qualified applications.

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?

The statute clearly states, "The Secretary of the Treasury shall ***seek*** to fund activities in geographically diverse areas of economic distress, including metropolitan and underserved rural areas in every State." The CDFI Fund should make every reasonable attempt to ensure that all CDFIs and nonprofit affordable housing developers serving all 50 states are notified of funds available, but grants should be awarded based on its current competitive grant process for scoring and review protocols, with the highest qualified applicants receiving Capital Magnet Fund awards. The CDFI Fund should conduct an outreach program similar to the one mandated for its CDFI Program to ensure applicants from a broad geographic base. Again, the ability to serve geographically diverse areas is more important than the location of a given grantee. Since the Capital Magnet Fund Program should make relatively large awards, the number of awards will necessarily be limited. It would therefore be impractical to fund grantees in each state.

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?

The CDFI Fund should follow its current regulations to achieve this outcome. In § 1805.700(d), the regulations state: "Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States."

Leverage of Funds

What documentation should be required to demonstrate a leveraging ratio of 10:1 of "total aggregate costs?" How should this 10:1 standard be measured?

Leverage should be measured in aggregate for all projects assisted by the award. Documentation should include total project cost (acquisition plus development) of all projects leveraged by the award divided by the award amount. The documentation of the total project costs should be certified by the chief executive officer of the CDFI or nonprofit affordable housing developer receiving the award.[22] It is important to note that ALL monies should be counted for leverage. This includes both nonfederal and other federal sources of funding.

Again, the CDFI Fund should follow current regulations for the CDFI Program that clearly advises that the program is ***not*** project based, "Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services."[23] While project data will be necessary to calculate aggregate leverage, no minimum leverage requirement should be set for a given project. "Grants are awarded based on merit and documentation should be part of the Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received."[24]

In most cases, it will not be possible or practical to know all the sources of leverage at the time applications are submitted. In many cases, a grantee will make financing products available after

[22] A similar certification requirement is included in the Sarbanes-Oxley Act of 2002 (PL 107-204).
[23] CDFI Fund Regulations: § 1805.101.
[24] Ibid.

receiving awards, and these financing products will provide only a portion of the total financing for projects. The specific projects (and other financing sources) will be determined only after that point.

Accordingly, the CDFI Fund should consider:

1) The track record of applicants in financing activities that have attracted financing from other sources;
2) The financing products the applicant proposes to offer;
3) The types of projects it expects to support;
4) The likely sources (or types of sources) of other financing; and
5) Any pipeline of identified potential projects.

Is there a timing consideration as to when the CDFI Fund should release its award dollars?

The CDFI Fund should follow current protocol for awarding grants as it does with the CDFI Program, after the assistance agreement is complete. No other consideration or delay is needed, as achieving leverage prior to awarding the grant is not a requirement, but rather a reporting function. The CDFI Fund should make every attempt to release funds as soon as the assistance agreement is signed.

It should be noted that since the purpose of the Capital Magnet Fund Program is to award grants for loan loss reserves, revolving loan funds, and risk-sharing loans, etc., which are not seasonal, timing should be based on approval of the assistance agreement.

Commitment for Use Deadlines

How should the term "committed" be defined, and how can it be verified, for the purposes of this requirement?

The term "committed for use" in the context of the Capital Magnet Fund Program is the same as the term is used in the HUD's HOME Investment Partnerships Program, meaning that the grantee has executed a legally binding agreement with a recipient, a subrecipient, or a contractor to use a specific amount of grant funds to produce affordable housing.[25] That program uses the term to mean:

- If funds are used for rehabilitation or new construction (with or without acquisition) the grantee and project owner have executed a written legally binding agreement under which assistance will be provided to the owner for an identifiable project under which construction can reasonably be expected to start within 12 months of the agreement date.
- If funds are used for the acquisition of a property and the grantee is acquiring the property with Capital Magnet Fund Program assisted funds, the grantee and the property owner have executed a legally binding contract for sale of an identifiable property and the property title will be transferred to the grantee within six months of the date of the contract.
- If funds are used for the acquisition of a property and the grantee is providing Capital Magnet Fund Program assisted funds to a family to acquire single family housing for homeownership or to a purchaser to acquire a property, the grantee and the family or purchaser have executed a written agreement under which assistance will be provided for the purchase of the property and the property title will be transferred to the family or purchaser within six months of the agreement date.

At a minimum, the written agreement should include the following provisions:

[25] Id. at 2.

1) The agreement shall include a description of any property to be acquired and any work to be performed, a schedule for completing the work, and a budget.
2) The recipient shall specify in the agreement the particular records that must be maintained and the particular reports that must be submitted in order to assist the grantee in meeting its recordkeeping and reporting requirements.
3) The agreement shall require all parties to carry out each activity in compliance with all federal laws and regulations as appropriate.
4) The agreement shall specify that suspension or termination may occur if either party materially fails to comply with any term of the agreement.
5) The agreement shall include any other provisions that the grantee determines is necessary.

Prohibited Uses

Are there any additional prohibitions or limitations that should be applied?

The prohibitions and limitations provided in the statute are sufficient.

Should the CDFI Fund permit a set portion of awards to cover operating costs? If so, what percentage of the funds should be allowed?

Since the statute does not prohibit the use of funds for operating costs, the CDFI Fund should look to its own guidance for deployment goals that it has used in recent CDFI Program rounds, most recently stated in the 2009 CDFI Program application:

> "Note: Applicants should be aware that successful awardees will be required to demonstrate that an amount equal to at least 85 percent of the total Financial Assistance award amount has been deployed to its Target Market in Financial Products, Financial Services, and/or Development Services over the three year reporting period."[26]

Should awardees be restricted in the level of fees they charge to sub recipients/end-users?

No. This is not applicable given the requirements of the program.

Accountability of Recipients and Grantees

What documentation should be required to demonstrate that funds awarded under the Capital Magnet Fund have been committed? What types of documentation should be required to demonstrate completion of projects? 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? What specific industry standards for impact measures should the CDFI Fund adopt for evaluating and monitoring projects funded under the Capital Magnet Fund?

Documentation requirements should closely follow current CDFI Fund Data collection and reporting requirements[27] eliminating § 1805.804(v), (vi), and (3) as they do not apply. Section 1805.804(4) should be revised to report leveraging as follows:

> (4) Uses of Grant and Leverage of Funds Report: This report describes the Awardee's use of its award and provides supporting documentation to determine the level at which the grant was leveraged during its preceding fiscal year.

[26] FY 2009 CDFI Program, "Combined Application for Financial Assistance and/or Technical Assistance," page 4.
[27] CDFI Fund Regulations: § 1805.804.

As current reporting regulations require, applicants should report on both the institution and transaction level. For completion of projects, the CDFI Fund should require a certificate of occupancy for development; purchase of property would require a transfer of title; and financing would require financing closing documentation.

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

As stated previously, the CDFI Fund should only award grants to the highest scoring and best qualified applicants so no post-award support is necessary.

Conclusion

When low-income families with children have high housing expenses (more than 50 percent of income), they spend 30 percent less for food, 50 percent less for clothes, and nearly 70 percent less for healthcare than their counterparts with low housing outlays.[28] It is projected that 2.4 million foreclosures are expected in 2009 and 8.1 million foreclosures over the next four years.[29] The needs of low-income communities and their residents are similarly acute.

The Capital Magnet Fund Program, which provides enough flexible funding to support a wide variety of housing and concerted community revitalization options and encourages significant leveraging of federal dollars, is likely to be one of the best tools available to help our lowest-income people and neighborhoods survive this economic emergency.

Thank you for the opportunity to comment. Please do not hesitate to contact me at 215.320.4304 or mpinsky@opportunityfinance.net if you have questions or need additional clarification. I encourage you to finalize regulations for this program as soon as possible.

Sincerely,

Mark Pinsky

Mark Pinsky
President and CEO

[28] "The State of the Nation's Housing 2007: Housing Challenges," Joint Center for Housing Studies, http://www.jchs.harvard.edu/publications/markets/son2007/son2007.pdf (accessed April 22, 2008).

[29] Eric Stein, "Straightening Out the Mortgage Mess: How Can We Protect Home Ownership and Provide Relief to Consumers in Financial Distress," testimony before the U.S. House Judiciary Committee Subcommittee on Commercial and Administrative Law, http://www.responsiblelending.org/pdfs/stein-testimony-on-subprime.pdf (September 25, 2007).