ROBERT A. RAPOZA ASSOCIATES

Matthew Josephs
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CDFI Fund
601 13th St NW, Suite 200 South
Washington DC, 20005

Dear Mr. Josephs,

Re: Request for Public Comment – Capital Magnet Fund

Thank you for the opportunity to provide comments on the Capital Magnet Fund ("CMF"). We recently met with a group of non-profit affordable housing developers, managers, service providers, some of whom are, or are affiliated with, CDFIs. Collectively they were pleased with the legislation and proposed two areas of focus for the draft regulations: that the CMF should target distressed areas or low income people without being limited to low income census tracts; and that the CMF should allow for adequate flexibility to promote mixed income/mixed use communities with needed community and economic development that allow leveraging of existing financing tools. We believe that affordable housing developers, managers and service providers share program goals with CDFIs, albeit CDFIs lend to third parties, while affordable housing entities will utilize the capital tools offered by the program to support lending and investment to projects with which they are related.

The need for affordable housing with compatible community and economic development is the difference between simply putting roofs over peoples' heads and creating thriving communities that offer the quality of life middle and upper income Americans take for granted. As we address the need in some communities to purchase or construct housing targeted to lower income families, or to preserve existing affordable housing, and as we look at rehabilitating outdated, vacant or abandoned stock to create affordable and mixed income housing, we urge the CDFI Fund to adopt policies for use of the CMF resources to support the best thinking and affordable housing policy available.

In particular, we encourage the CDFI Fund, whose programs are largely tied to low income census tracts, to take the opportunity offered by the language of the Capital Magnet Fund statute to fund strategies that ameliorate "distress" without being limited to low income census tracts. As recently as April 23, Secretary Donovan commented that, "The evidence proves that the concentration of low-rent housing in small geographic areas, mostly inner city neighborhoods, has damaged the economic health and vitality of people and places." (Speech to the Urban Land Institute, April 23, 2009). The statute uses the language "stabilize or revitalize a low-income area or underserved rural area." "Area" need not be coterminous with "census tract." See, for example, the CDBG regulations at 24 CFR 570.208. In addition, low income persons are a "targeted population" in both the CDFI and NMTC programs. We recommend the Fund enable CMF grantees to similarly serve such populations regardless of location.

Since the 1937 Housing Act, affordable housing has been on the national agenda. Many of the groups we have worked with are some of the longest serving non-profit housing entities in the country. They strongly support the provision of quality housing affordable to every income level, including the homeless. However, policies between the 1950's and the 1980's in many cases resulted in the concentration of housing units for lower income people, effectively creating poverty ghettos through urban renewal, public housing policies and public-private partnerships which built thousands of HUD-insured Section 8 properties.

Over the past 20 years, numerous housing and community development policy attempts have been instituted to, in one way or another, create mixed-income and mixed use properties to improve the quality of life in low income neighborhoods or to create opportunities for lower income families to move to obtain a better quality of life. These include such efforts as Moving to Opportunity, Moving to Work, the Gautreaux Program, the use of inclusionary zoning, 80/20 requirements in tax-exempt bonds which finance multifamily housing, the Hope VI Program and the Low Income Housing Tax Credit program. Community planning generally has embraced the principles of Smart Growth and New Urbanism as well as spatial location policies such as Transit-Oriented Development. All of these policies and programs share an underlying belief that healthy sustainable communities must be based on mixed-income/mixed use concepts that bring needed services such as grocery stores, provide access to childcare and healthcare, and otherwise locate people near jobs. Thus, new programs such as the CMF, which aim to build better communities for even the poorest families, should be implemented in a manner that supports these national policy goals. The efforts in the nation's capital to bring income balance and a range of housing choices to Anacostia, in the poorest ward in the city, are emblematic of the efforts to create sustainable communities in which housing and income variety results in the types of community and economic development that leads to a higher standard of living and quality of community.

In addition to ensuring that the CMF program's policy goals are consistent with the most advanced community development policy, the program's funding must work with financing tools already being used. The CMF should not impose conflicting targeting goals or use conflicting definitions that act to narrow the housing and related economic development that CMF grant funding can support. This is a practical reality, in part because the anticipated size of any CMF awards will be relatively small in relation to total financing costs if viewed on a project level, and much smaller in the context of multiple projects with which a given affordable housing developer might be working. This is true even if the program is eventually funded through Fannie Mae and Freddie Mac, and certainly is true in the near term. Moreover, the statute contemplates that the CMF grants will leverage other funds by 10 to 1, which of necessity means that 90% of the funds must come from somewhere else, if considered at the project level. If used at the entity level, CMF grants may not be part of project financing at all, for example, CMF grants may be used to fund a loan loss reserve or another type of guarantee fund at the entity level that acts to reduce project costs, without being part of the project financing package. While affordable housing developers do not offer third party financing, they can nonetheless be evaluated in a manner similar to CDFIs, on the basis of the total financing for housing and related activities they have facilitated rather than on the basis of their lending and investment portfolio.

Regardless of the path taken to achieve leverage, it goes without saying that the primary funding for affordable housing today is a variety of existing federal, state and local funding programs. These programs have targeting requirements, including family size, income, poverty, joblessness, geographic location, which may be required under locally approved master plans, or other state or federally approved plans, such as those required by CDBG, State Housing Finance Agencies, the Neighborhood Stabilization Program and the Housing Trust Fund. CMF grant funds should be authorized to support efforts using the existing panoply of affordable housing finance tools and be allowed to work in conjunction with their program requirements.

In specific response to the Fund's questions:

<u>Eligible Uses</u>

The eligible uses are appropriately broad, and can offer affordable housing developers and managers new tools to carry out their missions. The ability to use CMF funding for "risk-sharing" loans should be clarified to permit the grantee, whether a non-profit affordable housing developer or CDFI, to use the funds as a source of guarantee or credit enhancement of project level financing.

Non-profits, like CDFIs, are likely to use a CMF grant at the entity level, for such uses as the suggested loan loss reserves or to capitalize a revolving loan fund that would be used across multiple affordable housing mixed-use developments which include community and economic components. The ability to use the funds at the entity level increases the ability to leverage the grant both initially, and through the long term revolving nature of the funds. Most affordable housing developers are likely to use the funds for smaller, shorter term loans that can be repaid relatively soon, and therefore be available for use multiple times, rather than to support long term financing. All awards under the CMF should be disbursed in a lump sum at the time the grantee enters into a grant agreement with the CDFI Fund.

Rather than imposing additional, or possibly conflicting income or other targeting on the development activity supported by CMF funds, applicants should describe their business plan in their applications, which may include approved development plans they are currently, or in future plan to be working in connection with, demonstrating how they will use CMF financial support to further particular aspects of those plans. The applicant's description of such plans can be used to determine whether the activities are in conjunction with or in concert with affordable housing. The terms "in conjunction with" or "in concert with" could be defined with regard to overall community approved or government approved plans that include a component of affordable housing for the very low income levels addressed by CMF, not based on strict physical relationships between the uses.

This is especially so because CMF grants cannot be used to support the operational subsidies needed for extremely low, very low, and low income rental or homeownership properties. CMF may leverage funding that enables grantees to preserve, purchase, rehabilitate, acquire for preservation or construct housing or related community and economic development activity, however, it the CMF is not a source of rental or operational subsidy to make up the difference between what a tenant can afford and the operational costs of a rental property, or what a purchaser can afford and the cost of a house plus downpayment requirements and attendant closing costs for low income homebuyers. While the Fund might inquire, as part of the competitive application process, how or whether long term affordability is part of a larger development plan, it should not independently set use restrictions requiring operating subsidies it cannot fund.

The definitions of income levels, rehabilitation, and preservation, should be linked to those of the other local, state or federal programs in conjunction with which the financing supported by CMF grants will work to support an eligible use. The definitions used in the Housing Trust Fund should be used for Extremely Low-Income and Very Low-Income families. Low-Income should be defined as families having incomes above 50% up to 80% of area median income. Affordable housing could be defined as housing meeting low income definitions in established HUD programs as they relate to income. In addition, the CDFI Fund should consider, especially in high cost areas where affordable housing is out of reach even for families with income over 80%, (often referred to as "workforce housing") whether a local index of housing cost burden to income through which families spend no more than 30% of income for an average area housing payment, whether rental or home ownership is appropriate.

The term "primarily" should be read to require that a minimum of 50% of the units in the housing component(s) of a larger development plan meet one or more of the levels of affordability unless the projects related to the CMF grants have lower targeting requirements, such as tax-exempt bond financing.

Thus, the CMF grant could be used as a loan loss reserve at the entity level of a non-profit affordable housing developer to guarantee timely payment on, for example, the construction loan of a grocery store that is part of an overall development plan for a community that includes affordable housing. The competitive application process would sort through which entities have the strongest business plans to have the most impact benefiting low income families.

The Fund should not place artificial restrictions on the level of community and economic development that can be financed with the support of CMF grants. There are many neighborhoods which have previously developed low income housing that may make a compelling case to a non-profit developer for using CMF funding to add the community and economic development features that housing finance programs such as Hope VI and LIHTC could not fund.

Eligible Grantees

Eligible Grantees include both CDFIs and non-profit affordable housing organizations under the CMF statute. Both should be judged in the competitive application process on their experience with affordable housing and economic development activities. A non-profit organization needs to have "as one of its principal purposes" the development or management of affordable housing, however, this should not be read narrowly as a requirement that it be an organization's sole or primary purpose. It could either be one of the named purposes of the organization in its by-laws or other controlling documents, or an activity that uses 20% or more of its time or resources. Many non-profit affordable housing entities are involved in resident services or community services in addition to the creation of affordable housing and related community and economic development, and they would not want the percentage of the resident services activity to preclude them from participating in the CMF if they are a full service non profit entity that includes affordable housing among its significant activities. Newer non-profit organizations, if staffed with highly qualified professionals, ought to be able to participate in the program as well as organizations which alone, or together with affiliates, have an established track record.

Application

There are aspects of both the CDFI FA and NMTC applications that offer a good application model, either from the standpoint of the information requested or the way in which the application is reviewed and scored. The NMTC approach is similar in program goals: to attract private capital for and investment in certain type of activities where there is a market gap. The NMTC application also presents a good model because it asks strategic questions which allows the applicant to be judged on the housing, economic and community development impacts the entity would target. The CDFI application is a good model because it requires applicants to set forth their business plan and product offerings. Such elements as management capacity, track record , business strategy, ability to leverage, and impact for affordable housing residents, and in particular the lower income levels addressed by the CMF, would be sound elements for the application. As noted elsewhere, targeting activities to certain census tracts, as used for the most part in the CDFI and NMTC programs should not be used for CMF. Rather, the applicant should describe how its activities will serve to bring capital to affordable housing related developments or how its plan will address and/or improve existing elements of economic distress, meeting an "area" test or a "targeted populations" type test. In the end, it is the low income families served, not the location of the development, that is most important.

The priority factors should be built into the application questions and scoring, rather than be the subject of distinct priority points. The Fund should have an annual competitive grant application. Initially, we do not see a need to distinguish between applicant types as the program is designed to attract capital for certain purposes and multiple types of entities may demonstrate the ability to meet this programmatic goal.

Geographic Diversity

We recommend that the Fund collect information through the application process and later, through reporting regarding the location (metropolitan, rural, suburban and urban in every state) and income levels of the persons served by the activities that the applicant supports with CMF financing. Given the fact that the headquarters of an entity can be in one location, while the area where it carries out its activities or services might include a multi-state area, there is little practical way the Fund can ensure a fair distribution of awards to every state that ensures that financing activities occur in that state. More highly qualified applicants should not be passed over to meet such goals. If, after experience with the program, there are areas that are not being served by successful applicants, the Fund can consider program changes to address the matter. Training and technical assistance to potential applicants who might work in those areas could be made available if needed.

With respect to the indicators of economic distress, there are relevant standards for such criteria, including in particular the New Markets Tax Credit Program and the CDBG regulations. The Fund should consider permitting applicants to adhere to existing local, state or federal program definitions that suit the activity being supported instead of creating unique CMF definitions. With respect to rural areas, we recommend using that projects eligible under USDA Rural Housing Services be eligible for the CMF. Section 520 of the Housing Act of 1949, as amended, reads:

> The term or "any rural area" is defined as any open country, or any place, town, village or city which is not part of or associated with an urban area and which has 1) a population not in excess of 2,500 inhabitants, or 2) a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or 3) a population in excess of 10,000 but not in excess of 20,000 and is not contained with a standard metropolitan statistical area and 4) median family income does not exceed 85% of statewide median income.

In the implementation of distress criteria, the Fund should ensure that the indicators include but do not limit the CMF- related financing solely to areas experiencing blight and disinvestment. Thus, for example, poverty should be assessed on the basis of the families or residents that will be served in proposed business plans, or on the poverty level of a census tract, or counties, particularly in rural areas. The same approach should be taken with income. With regard to joblessness, the goal should be to demonstrate jobs will be created, for example in transit-oriented developments that include affordable housing components and economic development activities that produces jobs for low income residents in the surrounding area. As noted previously, however, CMF grants should not be limited to supporting development only in areas where high unemployment is occurring. Blight and disinvestment are, on the other hand, place-based and investment in such locations is highly merited.

Leverage

We believe the 10 to 1 ratio is achievable in one of several ways: 1) by using the CMF grant as a revolving pre-development loan fund at the entity level, which given the ratio of such loans to overall typical development costs would easily surpass the 10 to 1 ratio; 2) as a capital or loan loss reserve at the entity level which would enable the developer to reduce or eliminate the need for project level reserves, or enable the project to qualify for lower interest rates or other improved terms which would be effective leverage of the CMF funds to total project costs of at least 10 to 1; or 3) by measuring the 10 to one leverage requirement through the total amount of project level financing facilitated by an affordable housing developer looking across its entire portfolio on an annual basis, not simply in connection with the particular transaction which might benefit from support through the CMF grant.

Commitment for Use Deadline

Using funds in a timely way is an important goal. Timely use should be balanced against the need to use CMF funds wisely to support well-thought out plans for affordable housing and community and economic development components of an overall plan. Accordingly the requirement that 100% of funds be committed within two years should be based on some type of a binding agreements to commence utilizing the funds to support qualified activities, which demonstrate that under the terms of the agreement, an amount equal to the CMF grant will be expended over time.

Prohibited uses

There are no additional prohibited uses suggested. The Fund should collect information regarding the level and nature of fees charged and determine, based on actual experience, whether and what types of guidance might be called for. With respect to operating funds, 5% of the grant amount should be a permissible administrative charge.

Accountability of Recipients and Grantees

To the extent possible, the Community Investment Impact System, already in use by the CDFI Fund, should be used to report data relating to elements of investments made with the support of CMF grants and impact data. Full documentation that validates data supplied in annual reports to the Fund, including documentation of such things as completion and funding, should be retained in an awardee's files for compliance reviews by the CDFI Fund staff at appropriate intervals. Job creation, improved commercial, community facility and retail space metrics, and affordability levels of units of housing as well as whether they are rental or for sale would be among the primary data.

If it would be beneficial in designing its program implementation plan, we encourage the CDFI Fund to hold a public forum to give interested CDFIs and non-profit affordable housing developers and managers, including but not limited to those which submit comments, an opportunity to discuss the most important elements of the program and implementation issues.

Sincerely,

Charlotte-Mecklenburg Housing Partnership, Inc.
Eden Housing, Inc.
Federation of Appalacian Housing Enterprises (FAHE)
Kentucky Highlands Investment Corporation
National Development Council
NCB Capital Impact
Pathstone
Robert A. Rapoza Associates
The ReznickGroup
Settlement Housing Fund
Stewards of Affordable Housing for the Future
TELACU

Texas Inter-Faith Portfolio Resident Services
The Community Builders, Inc.
Volunteers of America