September 5, 2023

Mr. Andrew Schlack
Program Manager, Capital Magnet Fund
Community Development Financial Institutions (CDFI) Fund
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

RE: Capital Magnet Fund Program Request for Information

Dear Mr. Schlack:

The Local Initiatives Support Corporation (LISC) thanks the CDFI Fund for the opportunity to provide feedback on proposals to improve the Capital Magnet Fund (CMF).

Established in 1979, LISC is a national nonprofit housing and community development organization and community development financial institution (CDFI) dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice and opportunity. LISC mobilizes corporate, government, and philanthropic support to provide local community development organizations with loans, grants, and equity investments; as well as technical and management assistance. Our organization has a nationwide footprint, with local offices in 38 cities. In 2022, LISC invested approximately $2.8 billion in these communities. Our work covers a wide range of activities, including housing, economic development, building family wealth and incomes, education, and creating healthy communities.

I) General Comments

Before we address specific questions posed in the Federal Register Notice, we have some general comments about the Capital Magnet Fund.

We generally believe the CMF program works well and appreciate the time and effort Treasury has put into administering and improving the program over time. The key component of the CMF's program success, and what makes it distinct from other federal affordable housing programs, is the enterprise level nature of the funds. This structure allows the deep leveraging and flexibility to respond to local housing market needs. CMF funds have been utilized throughout the country, leveraging public and private funds to develop, preserve, rehabilitate, or purchase affordable housing, as well as related economic development activities such as day care centers, community health clinics, and workforce development centers. As the CDFI Fund works to improve the program, we encourage Treasury to keep the funding as flexible as possible, while ensuring awards are utilized as proposed by Applicants. Imposing excessive administrative and compliance requirements on a program which is often a small but crucial component of total affordable housing development costs will ultimately make the program less viable and less attractive to potential applicants, thereby decreasing its impact.

We believe that the current administrative complexity of the CMF program often leads it to being underutilized by CDFIs and nonprofit housing organizations. For instance, the CMF program is open to all CDFIs engaged in housing lending, local governmental housing finance agencies, and most nonprofit housing organizations. However, the CDFI Fund receives only approximately 140 applications per award around, and the numbers have been decreasing over time. We believe that certain elements of program design and compliance requirements that have been instituted by the CDFI Fund through regulatory and sub-regulatory guidance has dampened demand for the funding and also limited the ability of the CDFI Fund to allocate these resources for sorely needed affordable housing projects.

We also believe this is a contributing factor to the CDFI Fund's decision to not fully award all the funding in each year's funding round. LISC does not support holding back award funding if there are qualified applications available and we believe this is inconsistent with the Administration's Housing Supply Action Plan, which seeks to maximize federal housing programs to address our nation's affordable housing crisis.

To ensure that all organizations are able to compete for funding, we suggest that the CDFI Fund create a separate application category for smaller applicants and allocate no less than 10 percent of that year's assessment for these groups. There's precedent for this activity since the CDFI Program has included a smaller applicant set-aside for many years, which helps ensure award funds reach these organizations. Applicants under this set-aside should still have to meet all programmatic requirements although would importantly compete against each other versus larger organizations.

To further support CMF award recipients, including smaller organizations, we recommend that the CDFI Fund utilize appropriations for its Capacity Building Initiative to provide training and technical assistance on the CMF Program. 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 community. 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.

Lasty, we continue to recommend reforms to the CMF program's Service Area to broaden the reach of these resources into rural communities. Currently, CMF applicants can commit a percentage of their award for projects in rural communities in a 15 state Service Area. If awarded, Recipients are held to those commitments, and with rural projects in particular, it may be difficult to find projects meeting specific CMF requirements in a limited geographic area. LISC therefore recommends the CDFI Fund allow a national rural Service Area, which would allow for the use of CMF subsidy in any rural defined place, allowing awardees additional flexibility. This could be structured as an individual Service Area within the overall 15 state limit or any rural place, regardless of a Recipient's Service Area. To further support the reach of CMF resources in smaller communities, LISC recommends that low-income census tracts adjacent to rural qualifying tracts qualify as rural. There is precedent at the CDFI Fund for allowing adjacent economically distressed tracts to qualify for award deployment purposes, since this is permitted in the Healthy Food Financing Initiative – Financial Assistance program.

This is important since it's difficult for applicants to know at the time of application where they will get rural deals years down the road. And for groups with large rural footprints, this would spur more rural lending since those applicants would be more confident in serving broader geographies instead of winnowing rural activity to the current subset of a 15 state Service Area.

II) Specific Comments

LISC offers the following specific recommendations to the questions listed in the CMF program reform request for information.

A. Facilitate CMF Alignment with Other Federal Affordable Housing Programs:

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

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

Yes. LISC recommends that wherever practicable, the CDFI Fund should provide safe harbors with respect to compliance practices for investments in properties that are financed with, or will be taken out by LIHTC investments. These projects are already heavily regulated and monitored by state housing finance agencies, and in all circumstances, have a much longer extended use period than is required under the CMF Program.

Recipients that utilize CMF awards in LIHTC properties should be assumed to meet affordability and rent requirements and categorized as Affordable Housing Activities. This is important since the compliance monitoring of LIHTC properties with program requirements (health and safety standards, rent ceilings, income limits, and tenant qualifications) are already overseen by the state housing finance agencies. We note that the CMF rent requirements in 1807.401(a) are already set at LIHTC rent limits. Projects which receive CMF are subject to 10 year affordability requirements and should be presumed to meet that requirement if it's a property with Housing Credits or other subsidies which already include a use restriction longer than that term.

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

CMF awards are a vital although often small percentage of total development costs. Duplicative or discrete administrative requirements increases burden to award recipients and ultimately increases costs for projects with limited other subsidies. In addition, streamlining federal housing programs is in line with the Administration's Housing Supply Action Plan, which calls for agencies to lessen duplication between federal housing programs.

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

The CDFI Fund does not release data on how CMF resources are utilized, unlike other award programs administered by the Fund. This doesn't allow stakeholders to understand what other capital sources are utilized in CMF supported projects or the impact of the program. We recommend the CDFI Fund release the most granular CMF compliance data possible, with unique identifiers included where there are privacy concerns, so the public understands where and how these subsidies are being utilized.

Based on our usage of CMF awards, we know that many affordable rental housing priorities we finance also have federal funding through LIHTCs, HOME Investment Partnership Program, and operating resources through Section 8 Project Based-Vouchers and Project-Based Rental Assistance.

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

As noted above, LIHTC properties have long term use restrictions with respect to income limits and rent caps and should be deemed to meet CMF requirements for those two elements. Similarly, with respect to property standards, state Housing Finance Agencies engage in rigorous oversight over the condition of LIHTC properties, such that LIHTC investments should also be given a proxy consideration for satisfying physical property conditions.

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

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

Capital Magnet Fund income limits differ from LIHTC standards. CMF utilizes 50 percent of area median income (AMI) for Very Low-Income, while Housing Credit properties require at least 20 percent of tenants at 50 percent AMI or 40 percent at 60 percent AMI. CMF applicants commit at the time of application to financing a certain percentage of affordable housing units for Very Low-Income families (which is inclusive of Extremely Low-Income households) and are held to this in their Assistance Agreement. LISC recommends that the CMF program income limits align with the LIHTC standards and utilize the 60% AMI threshold for Very Low-Income.

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

Yes. See above.

3. CMF income certification for LIHTC projects. HERA addresses and provides guidance regarding the requirement for annual recertification of tenant incomes for properties financed under the LIHTC Program. Under this guidance, properties that are 100% low-income rent-restricted are no longer required to undertake ongoing recertification. See Housing and Economic Recovery Act of 2008, Public Law 110–289 (7/30/2008), 122 Stat. 2888, section 3010(a) (2007– 2008)(codified at Public Law 110–289, 122 Stat. 2654 (2008)). The CMF Interim Rule at 12 CFR 1807.401(f) requires annual re-examination of tenant income.

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

LISC supports efforts to reduce burden associated with reporting tenant income while ensuring only income qualified families occupy CMF supported units. Currently, tenant income is re-examined annually to determine if the family remains income eligible in accordance with 12 CFR 1807.401(f).

Tenant income requirements differ by federal programs for affordable housing production and preservation and rental assistance programs, such as Section 8. This is since production and preservation programs like LIHTC and CMF conduct checks for compliance purposes versus setting subsidy levels for Section 8 rental assistance. LISC supports exempting 100% low-income rent restricted LIHTC buildings from annual tenant income recertifications. In addition, we support it more broadly for any LIHTC supported unit since that data is already being collected and submitted to the state allocating agency.

We understand that the CDFI Fund needs assurance that award Recipients are meeting the income targeting they proposed in their application and which flow to the CMF Assistance Agreement. Recipients should attest to that in their reporting during the Investment Period although not be required to report on *an ongoing 10 year basis if the units are supported by LIHTC or another subsidy program (such as Section 8) with similar income targeting requirements, since this is duplicative.*

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

Tenant incomes are established prior to move-in and the LIHTC program generally allows "grandfathering" for tenants without rental assistance whose income has increased since their initial LIHTC qualification. The CMF regulations at 12 CFR 1807(g) generally allow an over-income tenant to stay in their unit if their income is above the stated limits and pay 30 percent of the family's annual income towards rent. Recipients may designate another unit within the project as a replacement unit that meets the affordability qualifications for the same income category or if that's not available, fill the first available vacancy with an income qualified tenant. LISC believes the current regulations already mitigate any risk.

<u>B. CMF Commitment Deadline.</u> Section 1339(c) of HERA stipulates that grants under the program must be Committed for use within two years after the allocation of the Award. As a way to ensure that funds are used in a timely manner, the CMF Interim Rule applies a two-year commitment of any Award to specific projects and further specifies that the commitment must be made in a written, legally binding agreement. The CDFI Fund is requesting input on alternate approaches.

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

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

LISC supports efforts to reduce award recipient burdens imposed by the two year commitment deadline and notes that Congress annually waives a similar requirement for the HOME Program. We are supportive of allowing a commitment to a CMF Eligible Activity to suffice although believe the bigger challenges for Recipients are with the other compliance milestones. These are not based in statute or regulation and instead are a construct of the annual funding notices and Assistance Agreements.

The current CMF program design requires Recipients to commit funds within 2 years; have an initial disbursement within 3 years; complete projects within 5 years; and place projects into service no later than six months after project completion, with initial occupancy within 12 months of completion. This structure, specifically the project completion and placed-in-service requirements, make using CMF for early-stage predevelopment and acquisition lending difficult, especially in areas where LIHTC is oversubscribed, and it can take years to secure all necessary project funding.

LISC recommends that the CDFI Fund update these requirements so construction has to commence within five years of the award date, rather than require project completion by that time period. Under this structure, affordability covenants would be recorded within the five year compliance period, confirming that units were in production, with a very high likelihood of project completion. Current placed-in-service deadlines push recipients to lend at later stages with lower leverage, since many put in higher loan *amounts for construction and permanent debt. A CMF subsidy would be more valuable as early stage lending where it is difficult to find conventional sources than later stage financing.*

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

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

As the CDFI Fund notes, leveraging the CMF Award is a statutory requirement and key part of the program. Applicants are asked to categorize the amount of leveraged funds into three categories: (i) Enterprise-Level Leverage, (ii) Re-investment Leverage, and (iii) Project-Level Leverage. The CDFI Fund, when scoring applications, gives greater weight to Enterprise-Level and Reinvestment leverage, presumably to dissuade applicants from simply satisfying the 10:1 leveraging requirement at the project levels. However, giving too much weight to Enterprise-Level and Reinvestment Leverage can have a detrimental impact on the actual product being offered, to the extent CMF subsidy is not being utilized to subsidize the loan product. For example, an entity that commits to using $1 million of CMF award as a loan loss reserve against $10 million in private financing would likely be scored outstanding in the leverage section of the application. But in this scenario, none of the CMF subsidy is being blended into the loan product, so presumably the organization is not being able to transfer any value to the project level financing. By contrast, another applicant may propose to use a $300,000 of a $1 million CMF award as loan loss reserves to secure $3 million in private capital, and the other $700,000 of the CMF award to blend down the rate of the loans. This strategy may be even more impactful for the community, but the applicant may not even make it through a preliminary application review because it failed to meet an Enterprise-Level Leveraging metric.

LISC supports a balanced approach to leverage considerations in the application scoring, and while we have no issues with the CDFI Fund expressing a preference for Enterprise-Level Leveraging or Reinvestment Leveraging, it is vital that the leveraging strategy be viewed holistically in the context of the lending product and that applicants be provided with ample opportunities to justify their specific strategy. We recommend that the CDFI Fund provide as much guidance to Applicants on how each leverage component is evaluated and scored.

The key challenge with Reinvestment-Level Leverage is the CMF's Program Income requirements, which we believe are excessive compared to other federal affordable housing programs and ultimately increase compliance risk and lessen application demand. We've included recommendations below on ways the CDFI Fund can streamline these requirements.

D. CMF Program Income (PI) Rules: The nature of CMF as a financing program often results in Recipients earning Program Income (PI) from the repayment of loans and returns on equity investments. PI generated during the first five years of the CMF Award (the Investment Period) from the repayment of CMF funds from loans or equity must be reinvested under certain requirements specified in the

Recipient's Assistance Agreement. Note that the questions below refer to the PI earned during the Investment Period and not PI earned thereafter, which is treated differently per the Assistance Agreement.

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

Some of the biggest burdens imposed on CMF program Recipients stem from the CDFI Fund's treatment of Program Income (PI). PI earned in the form of principal and equity payments must be currently 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 requirement's burden in fiscal year 2018 by imposing it for five years instead of four. LISC believes requiring reinvestment requirements consistent with statutorily allowable uses is appropriate. However, the CDFI Fund currently requires that reinvested funds must also meet certain specific project targeting requirements contained in the AA, which we believe is burdensome and poor policy if an award Recipient has already met all leveraging and performance requirements. Currently, Program Income requirements include:

1. *with limited exceptions, any Program Income earned in the form of equity or principal repayments of the CMF award during the first five years of the award agreement must be reinvested in other eligible affordable housing activities, and to a limited extent in economic development activities (unless a recipient has already used 30% of its CMF award for economic development activities);*
2. *the reinvested proceeds must be invested in activities that also meet <u>each</u> of the specific requirements specified in Section 3.8 of the AA (e.g., with respect to targeting low, very low, and extremely low income families; <u>and</u> achieving minimal levels of private sector leveraging); and*
3. *projects funded with the reinvested Program Income must satisfy affordability requirements for an additional 10 years after such projects are placed in service.*

LISC has no objection with item #1 above. We appreciate the flexibility that the CMF award dollars offer, and recognize that with this flexibility, there is also an obligation to ensure that returned funds flow to additional eligible housing or economic development activities. This is consistent with the leveraging concepts inherent in the CMF statute, and also with like federal programs.

However, we believe that, in instances where the awardee has already satisfied through its initial investments the requirements contained in the AAs, the obligations imposed through items #2 and #3 above are not only unnecessary from a programmatic standpoint, but:

1. *are excessive in their scope when compared with other CDFI Fund programs, as well as with OMB requirements and community development programs at other federal agencies;*
2. *may unduly heighten incidences of non-compliance, since the awardee will be: (1) required to line up the perfect mix of projects (with respect to income targeting, leveraging, etc.) in a compressed reinvestment period, and (2) subjected to an extended compliance period of ten years beyond the placed in service date of the newly financed projects, which could in theory extend the life of the award agreement by an additional nine years; and*
3. *may cause awardees to modify investment behavior in a non-productive manner in order to minimize risks of non-compliance (e.g., by artificially lengthening the term of initial investments; or by selecting projects based on readiness more than subsidy need).*

The compliance concerns for many awardees extend beyond the CMF program. Many CMF awardees are CDFIs that are also applicants for CDFI Program awards, NMTC allocations, and CDFI Bond Guarantee financing. Because non-compliance in any one CDFI Fund award program can disqualify an applicant from receiving funding under another program, it is quite possible that an issue as simple as the timing of a CMF reinvestment could prevent a CDFI from receiving other awards from the CDFI Fund.

We appreciate that in FY 2021 the CDFI Fund allowed PI to be utilized outside of a Recipient's Service Area. LISC supports that flexibility and also recommends modifying items #2 and #3 for award Recipients who have met their Schedule 1 performance goals in their AA. The CDFI Fund should allow these Recipients to utilize CMF resources for any eligible use within the five year compliance period and any activity consistent with their mission after the Investment Period ends. In addition, the CDFI Fund should revert to only requiring Program Income requirements until year 4. While OMB requires Program Income requirements as a part of its Uniform Administrative Guidance regulation, Treasury has discretion on how it's implemented programmatically. This is evident by how the CDFI Fund utilizes a PI definition for the CMF Program that is different than the OMB 2 CFR 200 regulation.

3. Currently, projects funded with PI must be completed within 12 months of being Committed. Should the CDFI Fund modify the 36-month completion deadline as it relates to the use of PI? If so, what deadline if any, should be established? Please explain the rationale for your answer.

As noted above, we recommend that the CMF compliance milestones be modified so all construction has to commence within five years of the award date, rather than require project completion by that time period. Under this structure, affordability covenants would be recorded within the Investment Period, confirming that units were in production, with a very high likelihood of project completion. This change would allow the funding to be utilized with more flexibility, while increasing leverage.

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

As noted above, we recommend that Program Income requirements only apply to the first four years of the award versus the current five years. Requiring all five years often results in PI coming in during the last year (even when all performance goals have been met) and then needing to redoployed, even though the CDFI Fund doesn't track this data for compliance purposes. This greatly increases compliance risk for award recipients. We also recommend a threshold of $500,000 since it's better reflective of the amount of CMF subsidy utilized for projects.

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

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

We recommend removing the single-family price limit because beneficiaries of CMF purchase assistance are low-income households. CMF award summary materials indicate Recipients utilizing these resources for purchase assistance are targeting households at 80 percent or less of area median income. The price limit regulations at 1807.402 restrict the single-family housing price to no more than 95 percent of the *median purchase price for the area, as used in the HOME Program and as determined by HUD and the applicable participating jurisdiction. Supporting homeownership opportunities for low-income households in higher opportunity areas is often financially infeasible if the purchase price limit is limited to this amount. In addition, HOME price limits do not adequately account for actual median values, since they rely on Federal Housing Administration data only, creating a significant difference in the median home price published by the National Realtors Association, as compared to the HOME limit. We believe there is sufficient federal precedent for this proposal, since single family projects assisted with Community Development Block Grants are not subject to price limitations. Lastly, we are aware that HUD is planning to update these HOME limits so Treasury should remove them too since they are not required by statute and have unintended impacts of restricting housing choice for low-income families.*

If the CDFI Fund feels it must have an index, we recommend a home purchase price standard equal to four times the area median income, a level broadly affordable to families well within the CMF's Eligible Income cap of 120% of AMI. This is same purchase price ceiling for the proposed Neighborhood Homes Investment Act (S. 657 and H.R. 3940), a bipartisan, bicameral bill supported by the Administration that would build and substantially rehabilitate 500,000 ownership homes in distressed communities.

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

One of the strengths of the CMF is that it can serve all types of affordable housing, including rental and homeownership, in addition to related economic development activities. We have concerns about the ability of affordable homeownership proposals to compete for funding. The CDFI Fund has released very little data to date on the program's impact although around 90 percent of CMF Recipients have committed to using their awards for rental housing.

CMF proposals for rental housing and homeownership are distinctly different from one another and it's not clear how the CDFI Fund currently evaluates and scores different uses of funding. For instance, leverage expectations would differ greatly for an Applicant requesting CMF resources for home mortgage lending versus using it as a gap financing source in an affordable rental housing project. 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.

LISC recommends that the CDFI Fund release a report to the public which provides application summary statistics so stakeholders can understand if homeownership proposals are being funded in proportion to their representation in the application pool. In addition, we recommend the CDFI Fund release impact data from all previous CMF funding rounds, and release such data on an annual basis, similar to other CDFI Fund administered programs. LISC also recommends that the CDFI Fund create a separate CMF application for homeownership proposals, if those applications are currently disadvantaged, and score and rank them separately.

Lastly, we recommend that the CDFI Fund remove income targeting prioritization for homeownership applications. Currently, most CMF homeownership Recipients commit to using the award for families make 80 percent or less of area median income, which works in some communities, although not as well for moderate to higher income places. This dampens demand and contributes to the challenge of developing affordable homeownership opportunities. Instead, we encourage the CDFI Fund to look more qualitatively at the overall application, such as strategies that link financing with referrals from housing counseling agencies and to downpayment assistance programs, will score more favorably.

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

We support the National Association of Affordable Housing Lender's recommendations that a 10-year resale restriction is unnecessarily burdensome and should be removed or significantly modified as described below. Once a home is sold to an eligible homebuyer (or an existing owner's home is rehabilitated), the CMF Recipient has no effective control of the property or the ability of the reselling owner's ability to repay. Resale restrictions – especially for 10 years – may be confusing for homebuyers/owners, and especially first-time homeowners barraged by an avalanche of paperwork associated with the purchase and financing. Moreover, excessive restrictions may discourage prospective buyers seeking to enjoy the usual unrestricted benefits of homeownership.

The 10-year resale restriction is excessively burdensome for CMF Recipients. In particular, the rule states that: "in the event the qualifying homeowner sells the Housing before the end of the 10-year affordability period and the new homeowner does not meet the affordability qualifications set forth in § 1807.400, an amount equal to the amount of the CMF Award investment in the Housing, whether recouped or not, is used to finance additional Affordable Housing Activities for a qualifying Family in the same income category for Affordable Housing Homeownership…." [emphasis added] There are many reasons why recoupment may not be possible – or even desirable or appropriate - especially if development costs exceed the home's resale value, as may often be the case in Low Income Areas. In any case, it is not reasonable – and discouraging to prospective Applicants – that a Recipient should assume the uncertain and incalculable risk that it might have to reach into its own pocket if it cannot recoup funds that may not even be available.

A better alternative would be to apply the standard included in the previously noted Neighborhood Homes Investment Act. In this structure, an owner selling within five years of acquiring the home must repay a declining portion of their "gain"1 (profit). The repayment obligation equals 50% of gain within the first year and phases out linearly over five years. The repayment obligation would be recorded as a lien, so it will be identified in a standard title search and satisfied at the point of resale. This approach protects against flipping, while also ensuring that homeowners will always have positive home equity, which is important to wealth-building. It also protects mortgage lenders, who want owners to have equity so they will maintain and improve their homes. In a CMF context, this repayment should be treated as PI.

Finally, applications for homeownership should not be disadvantaged because they may serve Eligible Income Families that may not be Low- Very Low- or Extremely Low-Income, provided of course that the Applicant's overall award will serve such Families.

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

[1] Under the tax code, the concept of gain reflects the resale price minus the sum of the initial purchase price, the cost of subsequent improvements, and selling costs.

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

We do not support requiring a minimum use period for EDA since these projects change purposes if they experience financial problems. For instance, utilizing CMF for the development of a commercial space for a grocery store near a CMF supported project is a valuable use of subsidy although a Recipient shouldn't require the owner to commit to a minimum use period since the property may change uses if it closes. We note that the CDFI Fund doesn't impose such requirements on it's other award programs, including the Healthy Food Financing Initiative – Financial Assistance Program or CDFI Program. Including this as a requirement will ultimately lessen the use of CMF resources for EDA.

We thank the CDFI Fund for the opportunity to offer suggestions and welcome opportunities to explore these and other possible improvements to the Capital Magnet Fund Program. Please contact Mark Kudlowitz (mkudlowitz@lisc.org), LISC Senior Director of Policy, if you need additional clarification or follow up on any of the recommendations provided in this letter.

Sincerely,

Matt Josephs
Senior Vice President for Policy