



## DEPARTMENT OF THE TREASURY

## Community Development Financial Institutions Fund

12 CFR Part 1807

RIN 1559-AA03

## Capital Magnet Fund

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Interim rule with request for public comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Capital Magnet Fund (CMF), administered by the Community Development Financial Institutions Fund (CDFI Fund). This revised interim rule incorporates, among other things: revisions to certain definitions and CMF program requirements to improve the public's understanding and streamline the administration of CMF program requirements; revisions to project level requirements to better align CMF with other Federal housing programs; programmatic updates to address current business practices in the affordable housing industry; and consolidation of Economic Development Activities under a new section for a more comprehensive articulation of the criteria. This revised interim rule also reflects requirements set forth in a final rule, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, adopted by the Department of the Treasury on December 19, 2014 (hereafter referred to as the Uniform Administrative Requirements).

DATES: Effective date: June 25, 2024. All comments must be submitted on or before August 26, 2024. Comments can be submitted electronically via the e-Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov). The compliance date requirements for the collection of information in § 1807.902 is stayed indefinitely, pending Office of Management and Budget approval and assignment of an OMB control number.

ADDRESSES: You may submit comments concerning this revised interim rule via the Federal

e-Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Follow the instructions on the website for the submission of comments. In general, all comments will be available for inspection at [www.regulations.gov](http://www.regulations.gov). Comments, including attachments and other supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure. Information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at <http://www.cdfifund.gov>.

FOR FURTHER INFORMATION CONTACT: Andrew Schlack, Program Manager, Capital Magnet Fund, Community Development Financial Institutions Fund, by phone at 202-453-2047 or email at [cmf@cdfi.treas.gov](mailto:cmf@cdfi.treas.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Capital Magnet Fund (CMF) was established through the Housing and Economic Recovery Act of 2008 (the Act), Public Law 110–289, section 1131, as a trust fund to carry out a competitive grant program administered by the CDFI Fund. The mission of the CDFI Fund is to increase economic opportunity and promote community development investments for underserved populations and in distressed communities in the United States. Its long-term vision is an America in which all people have access to affordable credit, capital, and financial services. Between fiscal year 2010 and fiscal year 2023, the CDFI Fund administered a total of eight CMF Application rounds, obligating nearly \$1.1 billion in total awards. Since the last update to the rule in 2016, there have been changes in business practices in the affordable housing industry and regulatory requirements in other relevant Federal affordable housing assistance programs. Accordingly, the CDFI Fund is promulgating this revised interim rule: to streamline and update terms, concepts, and provisions in order to improve the public's understanding and administration of the CMF program requirements; to better align the CMF with other Federal

housing assistance programs; and to better reflect current business practices in the affordable housing industry.

Through the CMF, the CDFI Fund is authorized to make financial assistance grants to Certified Community Development Financial Institutions (CDFIs) and Nonprofit Organizations that have a principal purpose which is the development or management of affordable housing. CMF Awards must be used to attract private financing for and increase investment in the Development, Preservation, Rehabilitation, and Purchase of Affordable Housing primarily for Extremely Low-Income, Very Low-Income, and Low-Income Families and Economic Development Activities which, in conjunction with Affordable Housing Activities, will stabilize or revitalize a Low-Income Area or Underserved Rural Area.

All capitalized terms herein are defined in the definitions section of this revised interim rule, as set forth in 12 CFR 1807.104.

## **II. Comments on the February 8, 2016, Interim Rule**

The current version of the rule is an Interim Rule that went into effect on February 8, 2016. The comment period for the February 8, 2016, Interim Rule (“2016 interim rule”) ended on April 8, 2016. The CDFI Fund received eight written submissions.

### *A. 12 CFR 1807.104. Definitions*

The CDFI Fund received two comments related to the definition of “Affordable Housing Fund.” One commenter suggested that the definition should be revised to mean a revolving loan, grant, or investment fund that may be formed as a separate legal entity, managed by the Recipient and for which its capital is used to finance Affordable Housing Activities. A second commenter suggested that the term “Revolving Fund” be removed from the definition of “Affordable Housing Fund” since not all Affordable Housing Funds will revolve and noted there is a separate definition in the 2016 interim rule for a “Revolving Loan Fund.” The CDFI Fund appreciates these comments and incorporates debt, grant, and equity investments into the definition of “Affordable Housing Fund.” The CDFI Fund has also removed the phrase

“revolving fund” from the definition, as reflected in the revised interim rule. Capitalizing a Revolving Loan Fund is now a separate Eligible Use, a newly defined term in the revised interim rule, of the CMF Award. Additionally, the CDFI Fund notes that, under the revised definition of Affordable Housing Fund, Recipients may continue to capitalize an Affordable Housing Fund through a single purpose entity – which must be approved in advance by the CDFI Fund to carry out CMF activities – as further detailed under the terms of an Assistance Agreement.

One commenter stated that the definition of “Homeownership” did not include cooperative or mutual housing. The CDFI Fund appreciates this comment and notes that under the 2016 interim rule, the definition of “Homeownership” includes ownership in a cooperative housing or mutual housing project as a qualified form of ownership notwithstanding the fact that the Recipient is required to determine whether such ownership or membership constitutes “Homeownership” under State law. To minimize confusion and alleviate concerns, the definition of “Homeownership” in the revised interim rule clearly states that Homeownership includes ownership interest in “condominium, cooperative, mutual housing, or ground lease title interest,” as allowed under State law in Single-family housing or manufactured housing unit.

*B. 12 CFR 1807.402—Affordable Housing Homeownership*

Several commenters expressed concern that the recoupment and replacement requirement for Homeownership units sold before the end of the Affordability Period set forth at 12 CFR 1807.402(a)(5) in the 2016 interim rule could be a barrier when using the CMF Award to support Homeownership or result in disincentivizing mortgage originators from using the CMF Award in underwriting loans. One commenter suggested that deed-restricted sales capping the resale value of the Housing make selling such mortgages on the secondary market very challenging. The CDFI Fund appreciates the comments and recognizes the commenters’ concerns related to the recoupment and replacement requirements in the 2016 interim rule. To alleviate some of the commenters’ concerns, the CDFI Fund updated the redesignated 12 CFR 1807.402(a)(1)(vi) in the revised interim rule to require recoupment and replacement of the Housing only when the

resale to an unqualified Homebuyer occurs any time during the first five years after the date of Purchase. When the resale to an unqualified Homebuyer occurs any time during year six through the end of the Affordability Period, the CMF investment will be recouped proportionally; however, the Recipient is not required to replace the sold Housing unit with another Housing unit. Recoupment of the CMF investment is Program Income, as described in the Assistance Agreement.

One commenter suggested that the CDFI Fund create a separate allocation of the CMF Awards specifically for Homeownership applicants. The CDFI Fund appreciates the commenter's suggestion, but making an allocation of the CMF Awards to a select group of applicants is not authorized under the Act.

*C. Economic Development Activities*

Two commenters stated that there should not be a limit on the use of the CMF Award for Economic Development Activities, as the statute establishing the CMF does not set a limit. The commenters recommended that if a limit were to be established, it should be clarified in the Notice of Funds Availability and not in the regulations. The CDFI Fund appreciates the comments and finds limiting the use of the CMF Award for Economic Development Activities to no more than 30 percent to be appropriate and necessary. This ceiling ensures that the CMF Award is primarily used to maintain and increase affordable housing, which appears to be the more dominant focus of the Act. Further, this requirement has not proven to be a barrier to Recipients over the life of the program. Since the Fiscal Year 2016 CMF round, only \$3.5 million in CMF Awards have financed/supported 11 Projects with Economic Development Activities. This represents less than one percent of the CMF Awards disbursed to all CMF Projects. Section 1807.302(c) in the 2016 interim rule, which discusses the limitation on the use of the Economic Development Activities, has been redesignated as § 1807.403 in the revised interim rule.

One commenter suggested that the definition of “Economic Development Activity” not only apply to physical structures such as buildings, but also include loans to businesses for working capital and equipment. The CDFI Fund appreciates the comment and notes that while extending business loans plays an important role related to Economic Development Activities, the primary purpose of the CMF is to promote the increase of affordable housing by assisting Recipients with the purchase, development, preservation and rehabilitation of structures, such as Multi-family rental or Single-family housing, and related Community Service Facilities and real estate properties in order to revitalize neighborhoods across the country. Accordingly, the CDFI Fund did not make that change to the definition of “Economic Development Activity” in the revised interim rule at § 1807.104.

Two commenters expressed concern with the definition of “Concerted Strategy” as it relates to Economic Development Activities. The commenters recommended that the CDFI Fund accept a less formal document to evidence a Concerted Strategy and remove the requirement that Economic Development Activities to be located physically proximate to affordable housing. The CDFI Fund appreciates the comments and notes that the definition of “Concerted Strategy” in the revised interim rule reinforces the standard that Economic Development Activities must be part of a local or regional planning document adopted by the jurisdiction. This ensures that the Economic Development Activities are consistent with and reflective of the local vision, are part of a strategy with a geographic focus, and that support synergy amongst community effort, private investment, and affordable housing. The CDFI Fund did not change the documentary requirement in the revised interim rule at § 1807.403(d). The definition of “Concerted Strategy” also remains unchanged in the revised interim rule at § 1807.104, and as further detailed in § 1807.403(c).

#### *D. Preservation*

Some commenters opined on the definition of “Preservation.” These comments reflect concern that the current definition of “Preservation” could limit activities to only those that

involve refinancing. Another commenter recommended that the current definition of “Preservation” clarify that acquisition-lending to purchase land or existing housing is an eligible use of the CMF Award. Other commenters suggested replacing the term “refinancing” with “recapitalizing,” or adding “recapitalizing” to the definition of “Preservation.” Other comments suggest allowing CMF Recipients to combine the CMF Awards with financial assistance from other CDFI Fund programs, as well as local and State affordable housing programs, as a way to fully capture all possible “Preservation” initiatives. The CDFI Fund appreciates the comments and notes that the definition of “Preservation” in the revised interim rule is modified to add the term “recapitalization” and reflects acquisition, refinancing, recapitalization, and/or rehabilitation of Multi-family rental housing or Single-family housing as Eligible Uses of the CMF Award. Recipients can use the CMF Award in concert with financial assistance from local and State affordable housing programs, as well as with other CDFI Fund programs subject to the restrictions provided in the respective Assistance Agreements designed to avoid duplication or over-subsidization. The revised interim rule further clarifies that “Preservation” activities must involve Projects without prior rent restrictions, or Projects with existing affordability rent restrictions that are set to expire during the Investment Period or expire at other timeframes as determined by the CDFI Fund. For those Projects without existing affordability rent restrictions, the CMF investment will impose a new affordability rent restriction of at least 10 years, or other time period set forth in any applicable NOFA issued by the CDFI Fund. For those Projects with expiring affordability rent restrictions, the CMF investment must create at least an additional 10 years of affordability or other time period set forth in the applicable NOFA issued by the CDFI Fund. This ensures CMF Awards are used in Projects that are at an imminent risk of losing their affordability, and also implements new affordability requirements for those Projects without existing rent restrictions.

*E. Underserved Rural Areas*

One commenter suggested that the CDFI Fund change the criteria for what qualifies as an “Underserved Rural Area(s)” as it appears in the definition in the 2016 interim rule. The commenter suggested that one of the qualifying factors should be the total prior five years per capita dollars of all Federal assistance (not specific to the CMF Award) used to develop or rehabilitate affordable housing. The CDFI Fund appreciates the comment and notes that this recommendation is not administratively feasible. The CDFI Fund further notes that the revised interim rule includes a new definition, “Rural Area,” which mirrors the definition in 12 CFR 1282.1 (Enterprise Duty to Serve Final Rule) and replaces the term “Underserved Rural Area.”

#### *F. Miscellaneous Comments*

The CDFI Fund considered several comments despite the fact that they did not pertain to the specific changes being made in the 2016 revised interim rule. Six comments referred to the “High Housing Need” geographic designation which is no longer a part of the CMF program criteria. Eight comments were about the 2016 CMF Application or Application process. The CDFI Fund notes that these Application-related requirements are set forth in §§ 1807.800 and 1807.801 of the revised interim rule. They remain unchanged except for the deletion of §§ 1807.801(b)(1) through (b)(4) which were deleted due to redundancy. Two other comments were about the reporting requirements for Economic Development Activities and Program Income. These requirements are more appropriate for the CMF Assistance Agreement and other CMF guidance and materials. Another commenter noted that the 2016 interim rule omits any mention of fair housing which is not correct. The CDFI Fund refers to fair housing in § 1807.503(b)(2)(i) of the revised interim rule, which remains unchanged.

### **III. Comments on the July 7, 2023, Notice and Request for Information**

This revised interim rule addresses and incorporates written comments the CDFI Fund received in response to the Notice and Request for Information (RFI) that was published in the Federal Register on July 7, 2023. The CDFI Fund issued the RFI to enhance and improve the efforts of the CMF program to create and preserve affordable housing across the country,



minimize administrative burden on program applicants and award recipients, and safeguard public funds. The CDFI Fund received over 40 pieces of correspondence in response to the RFI. Public comments that are within the scope of the revised interim rule are summarized and addressed in the following paragraphs.

Numerous commenters responded to the CDFI Fund's request for input about how to facilitate CMF program alignment with other Federal affordable housing programs. They recommended that aligning the CMF with other Federal programs, particularly the Low-Income Housing Tax Credit (LIHTC) program, would reduce administration burden and prevent duplication of compliance reporting requirements. Additional Federal housing programs that commenters mentioned for alignment included the HUD HOME Investment Partnership Program, HUD Section 8 Housing Choice Voucher Program, United States Department of Agriculture (USDA) Rural Development Section 515 Rural Rental Housing Program, and Section 502 Direct Loan Program. One commenter stated that aligning the CMF with other Federal housing programs allows for a cohesive structure within the affordable housing industry and promotes administrative efficiencies. The CDFI Fund appreciates the comments and the revised interim rule introduces a new concept, Presumptively Compliant, as set forth in § 1807.106, and defined as "Presumptively Compliant" or "Presumptive Compliance" in § 1807.104. Under the Presumptively Compliant concept, certain CMF Affordable Housing projects that are also funded under other designated Federal housing programs and subject to certain rules and restrictions that are similar to those under the CMF program. Subject to verification by the CDFI Fund and as further set forth in the Assistance Agreement and guidance, these projects would be presumed to meet certain CMF rules and requirements, as long as those projects are deemed compliant under applicable designated Federal housing programs.

In response to RFI questions about aligning income definitions and recertifying tenant income, some commenters stated that the definition of "Very Low-Income" should be adjusted from the current definition of 50 percent of the Area Median Income (AMI) to 60 percent AMI

to align with LIHTC. They suggested this would increase administrative efficiencies, reduce reporting requirements, and make the CMF more attractive as an additional funding source for LIHTC projects. Some commenters also recommended that the CDFI Fund revise CMF income certification requirements to align with LIHTC to avoid duplicating reporting requirements and reduce administrative burden. The CDFI Fund appreciates the comments and in response, changed the definition of “Very Low-Income” in the revised interim rule from 50 percent AMI and below, to 60 percent AMI and below. In addition, the CDFI Fund will no longer require the annual tenant income recertification for Projects where 100 percent of the units are subject to CMF affordability restrictions; the CDFI Fund will set forth additional parameters in the Assistance Agreement.

In response to a question in the RFI related to Project Commitment requirements, several commenters requested programmatic flexibility and expressed support for a new Commitment process. The CDFI Fund appreciates the comments and accordingly revises the interim rule to include a new Commitment process in § 1807.501. Under the revised interim rule, the CMF Award must first be Committed for Use to at least one of the Eligible Uses set forth in § 1807.301 within two years of receiving the CMF Award. In addition to the requirement that the CMF Award be Committed for Use within two years, in order to ensure that the CMF Awards are committed to specific projects, a Recipient must make a Project Commitment within three years of receiving the CMF Award. This change will allow Recipients one additional year to source qualified projects during the Investment Period.

With respect to the use of Program Income (PI), some commenters recommended easing the current restrictions which required Recipients to only engage in activities designated in the Assistance Agreement. They recommended that the CDFI Fund allow Recipients to use PI for all CMF “eligible activities.” The CDFI Fund appreciates the comments and notes that Recipients’ use of PI will continue to be detailed in the Assistance Agreement, which gives the

CDFI Fund the appropriate flexibility to implement any updates to its policy on a more frequent basis and communicate them as such.

A number of commenters recommended changing or eliminating the limit on the purchase price of Homeownership Housing financed with the CMF Award. The current limit set forth in the 2016 interim rule is no more than 95 percent of the area median purchase price as determined by HUD under the HOME Investment Partnership Program (HOME Program). The CDFI Fund appreciates the comments and notes that the index used to set purchase price limits in §§ 1807.402(a)(1)(ii) and (b)(1) of the revised interim rule is revised to mirror the limits set forth in the HUD FHA Section 203(b) Mortgage Insurance Program. While some commenters suggested using other indices, such as four times the area median income or state housing finance agency limits, the CDFI Fund deems the FHA 203(b) limits to be a more reliable and effective index, and better reflective of current market conditions.

A few commenters recommended establishing a new minimum compliance period for Economic Development Activities financed using a CMF Award. The CDFI Fund appreciates these comments and § 1807.403 in the revised interim rule now includes a minimum compliance period of three years for Economic Development Activities. One commenter inquired about the leveraged costs and the associated calculation to meet the requirement. The CDFI Fund appreciates the comment and notes that the requested information appears in the Assistance Agreement.

#### **IV. Summary of Changes**

##### *A. Overview*

The revised interim rule strikes and replaces existing 12 CFR part 1807 in its entirety. Principal changes include, among other things, a clarification of CMF terms, concepts and requirements to improve Recipients' understanding of their obligations and requirements under the CMF program; a revision of CMF program requirements to better address activities and current business practices in the affordable housing industry; the addition of a new section, § 1807.403,

detailing parameters related to Economic Development Activities; and a new eligibility requirement regarding Nonprofit Organizations wherein they are required to be designated as such under the laws of the organization's State or Indian Tribe of formation, be exempt from Federal income taxation pursuant to § 501(c)(3) of the Internal Revenue Code – with the exception of organization affiliated with Indian Tribes – and be able to demonstrate that a share of its total assets is dedicated to the development or management of affordable housing. The revised interim rule also deletes and adds new definitions in § 1807.104, replaces title heading and content in § 1807.106, and redesignates, adds or deletes subsections in §§ 1807.300, 1807.400, 1807.401, 1807.402, 1807.500, 1807.501, 1807.503, 1807.801 and 1807.902. Other changes that provide further clarification and elimination of redundancies are identified and discussed further below.

The following is a section-by-section overview of the amendments in this rulemaking.

*B. Description of the Revised Interim Rule*

The changes to the 2016 interim rule as provided in the revised interim rule, on a section-by-section basis, are as follows:

*Subpart A—General Provisions*

The change to § 1807.100 clarifies that CMF activities must take place in the United States, specifically, “every State of the United States, the District of Columbia, or territories of the United States.” The revision to § 1807.101(a) clarifies that CDFIs must be certified by the CDFI Fund. The term “merit-based” in § 1807.101(b) is deleted, leaving only “competitive,” as a technical correction. The CMF Application process has always been and remains a competitive one. The term “eligible uses” in § 1807.101(b) is replaced with the defined term “Eligible Uses” in § 1807.104 to align with the terminology used in the Act, and is further described in § 1807.301. Section 1807.102 is revised by removing references to specific CDFI Fund programs to accommodate any future changes or additions to CDFI Fund programs; a corresponding change is made to delete the phrase “Notice of Funds Availability, Notice of Guarantee

Availability, or Notice of Allocation Availability,” and replaced with the phrase “are set forth in the applicable funding notice.”

There are a number of changes to the definitions in § 1807.104. A new term “Affordability Period” is added to establish a period of at least 10 years or other longer time period set forth in the applicable NOFA issued by the CDFI Fund. This will give the CDFI Fund the flexibility to extend the affordability requirement, which was set at 10 years in the 2016 interim rule. The term “Affordable Housing Activities” is revised to deem Secondary Market Mortgage Purchase, a new term being introduced in the revised interim rule, as allowable under the definition. This change codifies a regulatory waiver articulated in the Fiscal Year 2023 NOFA related to Secondary Market Mortgage Purchases, to deem the use of a CMF Award for the direct purchase of Secondary Market Mortgages as allowable pursuant to the CMF program requirements. The term “Affordable Housing Fund” is revised by clarifying that it is an investment fund consisting of the CMF Award and any Leveraged Capital that a Recipient manages and uses to finance Affordable Housing Activities. Specifically, a Recipient may use an Affordable Housing Fund for leveraging purposes by making any combination of debt, grant, or equity investments, but excludes the purchase of stock, securities, or the buy-out of partnership interest. A new term “Application” is added to refer to the CDFI Fund’s CMF application, including any written and verbal information in connection therewith, and any exhibits, attachments, appendices and/or written or verbal supplements thereto. A new term “CMF Unit” is added to facilitate the understanding and applicability of program performance goals and compliance requirements. The definition implements threshold requirements that units financed with a CMF Award, at a minimum, have separate kitchen and bath facilities, except for single room occupancies, assisted living facilities, and group homes. The term “Committed” is changed to “Committed for Use,” but the definition remains the same. This change accommodates a new Commitment process for the CMF Awards, which better reflects the Act and affords Recipients more time to meet the Project Commitment requirements. The term “Community Service Facility” is revised to clarify

that the associated costs and expenses for services rendered at such facilities must directly benefit nearby residents of affordable housing. Some examples of such service programs include health care, childcare, educational programs, job training, food and nutrition services, art and social services, as further specified in the Assistance Agreement. The term “Direct Administrative Expenses” is revised by clarifying that they must be related to “the financing and/or in support of Projects.” The term “Economic Development Activity” is revised by deleting the term “neighborhood based” in order to allow expanded revitalization efforts that include and transcend neighborhood-based businesses; deleting “which, In Conjunction with Affordable Housing Activities, implements,” because the term “In Conjunction with Affordable Housing” is no longer a defined term in the revised interim rule; and clarifying that a CMF Award must be used to stabilize, sustain, or revitalize communities and neighborhoods physically proximate to any affordable housing to benefit a Low-Income Area or Underserved Rural Area. A new term, “Economic Development Activity Fund” is added to describe an investment fund consisting of the CMF Award and any Leveraged Capital that a Recipient manages and uses to finance Economic Development Activities. Specifically, a Recipient may use Economic Development Activity Fund for leveraging purposes by making any combination of debt, grant, or equity investment, but excludes the purchase of stock, securities, or the buy-out of partnership interests. The term “Eligible-Income” is revised by clarifying that for owner-occupied or rental Housing units, the qualifying annual income is at 120 percent or below of the AMI, adjusted for Family size, as determined by HUD. The term “Eligible Project Costs” is revised by deleting “Leveraged Costs” and deeming all development, financing, refinancing, acquisition, relocation, loan loss reserve, guarantee, predevelopment, and related soft costs incurred in achieving Project Completion as eligible, as described in the Assistance Agreement. These costs can be paid using a CMF Award and any Leveraged Capital. A new term “Eligible Uses” is defined and added. This term replaces “Eligible Activities” in § 1807.301 of the 2016 interim rule and as applicable, in relevant parts of the revised interim rule, to align with the

terminology used in the Act. The term “Extremely Low-Income” is revised to clarify that for owner-occupied or rental Housing units, the qualifying annual income is at 30 percent or below of the AMI, adjusted for Family size, as determined by HUD. The term “Family” is revised to include both single individuals and a group of individuals living in the same dwelling unit, who may be related by birth, marriage or adoption, or otherwise unrelated to each other in a household. A new term “Feasibility Determination Expenses” is added to create a mechanism by which a Recipient can allocate a portion of the CMF Award to support expenses disbursed to determine the feasibility of potential Affordable Housing Activities and/or Economic Development Activities. The Recipient must incur these expenses before Project Commitment. Such expenses may include preliminary market studies, engineering, architectural analyses, and financial feasibility analyses, which are explicitly excluded from Eligible Project Costs. A new term “Homebuyer” is added to describe a Family that may receive CMF assistance for Homeownership. This addition to the definitions is to ensure that Recipients do not use the CMF Awards to assist Families in buying second homes or multiple homes. The term “Homeownership” is revised to better align with the CMF program requirements by deleting the CDFI Fund’s need to approve equivalent forms of ownership, because such approval is no longer a program requirement, and replacing it with a list of additional acceptable types of ownership, including cooperative, mutual housing, or ground lease title interest, as allowed under applicable State law; and deleting subsections (1)(i) through (iii) as they appear in the 2016 interim rule related to specific ground lease terms for Indian trust or restricted Indian lands, Housing located in Guam, the Northern Mariana Islands, the U.S. Virgin Island, and American Samoa, and manufactured housing. The 2016 interim rule specified terms for ground leases based on the location or type of housing. The CDFI Fund has decided that such specifications were overly prescriptive and not necessary for general program administration; instead, the revised interim rule requires compliance with applicable State law; redesignating (2) and (3) as (1) and (2), respectively, with no change to the content in (1); replacing “restrictions on resale” in

redesignated (2) with “restrictions on affordability,” and deleting “may only be” and replacing it with “is” to take into account a possible application of affordability restrictions imposed by local homeownership programs. A new term “Homeownership Program” is added to codify the general waiver granted to select Recipients in the Fiscal Year 2018 NOFA, that allowed them to meet the CMF Commitment requirement for Homeownership, as long as the Recipients’ Board of Directors established a homeownership program and committed the CMF Award to the program at the time of the Project Commitment. This newly defined term requires Recipients to establish a program to finance Purchase by meeting the requirements of § 1807.501, in a form and substance acceptable to the CDFI Fund. The definition of “Housing” is streamlined to refer to Single-family and Multi-family residential units, such as manufactured housing, permanent supportive housing, single-room occupancy housing, assisted living and group homes that are permanent in nature and not temporary. The term, as revised, consolidates a list of supportive housing types – identified by specific population groups – under the single term “permanent supportive housing” in order to ensure that all eligible population groups are included in the definition; excludes manufactured housing lots as a type of housing, because CMF is not intended to finance dedicated lots or lands without associated Housing; adds assisted living as another eligible type of Housing; removes the reference to elder cottage housing opportunity (ECHO) because it is no longer eligible to be financed with the CMF Award; and clarifies that Housing financed with the CMF Award must be permanent in nature, which is consistent with similar clarifications made throughout the revised interim rule. The term “In Conjunction With Affordable Housing” is no longer a stand-alone definition, but instead embedded in the definition of “Economic Development Activities” at § 1807.403 in the revised interim rule. A new term “Indian Tribe” is added to define any Indian Tribe, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*); each such Indian Tribe must be recognized as eligible for special programs and services provided



by the United States to Indians because of their status as Indians. The term “Leveraged Costs” is replaced with “Leveraged Capital,” and the definition is revised to reflect a type of capital used to finance and support Affordable Housing Activities and Economic Development Activities that exceed the dollar amount of the CMF Award, as further provided in § 1807.500. The term “Low-Income” is revised to clarify that for owner-occupied or rental Housing units, the qualifying annual income is at 80 percent or below of the AMI, adjusted for Family size, as determined by HUD. The term “Low-Income Area (or LIA)” is revised by deleting a provision referring to block numbering, because it is not part of the geographic verification system. The term “Metropolitan Area” is revised by adding at the end “and as made available by the CDFI Fund for a specific Application funding round” in order to make this definition consistent with the definition of “Non-Metropolitan Area,” as it currently appears in the CMF program guidance. The term “Multi-family” is revised to delete “townhouse” from the definition, because a townhouse is a type of building that can be a Single-family housing, Multi-family housing, or mixed-use building. The term “Nonprofit Organization” is revised to include those organizations that are designated as a nonprofit or non-for-profit entity under the laws of the organization’s State or Indian Tribe of formation; exempt from Federal income taxation pursuant to § 501(c)(3) of the Internal Revenue Code of 1986, with the exception of organizations affiliated with Indian Tribes; and able to demonstrate that a share of its total assets are dedicated to the development or management of affordable housing, as provided for in the NOFA. This change promotes consistency regarding the identification of entities within the scope of the definition and consistency with the statutory terminology, and provides additional clarity regarding the inclusion of Indian Tribes. Under the revised definition, a Nonprofit Organization may be an entity controlled by an instrumentality or subdivision of a state or local government. For transition purposes, the CDFI Fund is delaying the implementation of the new definition of “Nonprofit Organization” until the first NOFA published on or after January 1, 2026. The term “Participating Jurisdiction” is no longer a defined term because it refers to a jurisdictional area

that receives funding under the HOME program. Given that the revised interim rule incorporates the price limits set forth in HUD FHA Section 203(b) Mortgage Insurance Program and discontinues the use of the limits used in the HOME program, the term “Participating Jurisdiction” is no longer applicable to the CMF. A new term “Permanent Housing” is added to distinguish it from temporary or transitory housing to reinforce that a CMF Award must be used to support Housing that is owned or rented under a written lease with an initial lease term of six months or longer. The term “Preservation” is revised by deleting all content in (1) through (5) as they appear in the 2016 interim rule and replacing it with new content. The definition as revised clarifies that in the case of owner-occupied Single-family housing or Multi-family rental housing with existing rent restrictions, any Preservation effort must extend the existing affordability restrictions that are set to expire within the Investment Period or set to expire at another time as defined by the CDFI Fund. The extension will be subject to the Affordability Period or as set forth in the Assistance Agreement. If the Housing does not have an existing affordability restriction, a new Affordability Period must be imposed subject to the aforementioned requirements. This minimizes the risk of an imminent loss of existing affordability restrictions for projects subject to preservation efforts using a CMF Award. It also proactively addresses the possible loss of affordable housing subject to affordability expiration pursuant to another Federal housing program. A new term “Presumptively Compliant” or “Presumptive Compliance” is added to describe a mechanism by which the CDFI Fund deems certain rules, requirements and designations under other comparable Federal housing programs to meet certain the CMF requirements. This change is being implemented to better align CMF with other Federal funding programs, to ease Recipients’ administrative burden and reporting requirements, and to reflect strong support received from stakeholders in response to the RFI. The term “Program Income” is revised by adding “and as further specified in the Recipient’s Assistance Agreement” to the existing definition, in order to allow the CDFI Fund to use another appropriate source to further clarify rules regarding Program Income; and replacing “2 CFR part 1000” with “2 CFR part 200”

to incorporate a more accurate regulatory citation. The term “Project” is revised to facilitate Recipients’ understanding of the term used in the CMF program and to clarify that it refers to a specific Affordable Housing Activity, Economic Development Activity, or Homeownership Program the Recipient uses its CMF Award to finance or support, resulting in Project Completion. A new term “Project Commitment” is added to require the Recipient to provide, in written form and substance acceptable to the CDFI Fund, a commitment to a Project as set forth in § 1807.501. The addition of this term complements the new Commitment process in § 1807.501 and expands on the concept of “Committed” in the 2016 interim rule. It also extends the time for Project Commitment. The term “Purchase” is revised to describe the use of the CMF Award to provide financing to a Family for Homeownership that meets the qualifications set forth in subparts D and E of this part; or, in the case of using the CMF financing for an acquisition of rental Housing, to a developer or a project sponsor who also meets the qualifications set forth in subparts D and E of this part. This is to ensure that the CMF Awards are used for the Purchase of Affordable Housing to serve Families meeting these qualifications, or assist developers or project sponsors who, in turn, ultimately serve such Families. The term “Revolving Loan Fund” is revised to describe an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient manages and uses to finance and/or support Affordable Housing Activities and/or Economic Development Activities. The repayments on such loans are used to finance additional loans. The term “Risk-Sharing Loan” is revised to describe loans consisting of the CMF Award and any Leveraged Capital made for Affordable Housing Activities and/or Economic Development Activities whereby the risk of borrower default is shared by the Recipient with other lenders. A new term “Rural Area” is added to refer to a census tract that meets the definition of Rural Area, as defined in 12 CFR 1282.1. A new term “Secondary Market Mortgage” is added to create qualifications for the purchase of third-party originated mortgages using a CMF Award. This formalizes the policy guidance provided in the Fiscal Year 2023 NOFA that the Recipients’ purchase of CMF eligible loans from a third-

party originator within 12 months of origination are an allowable activity under the CMF program. Specifically, the definition restricts the use of the CMF Award for the purchase of Secondary Market Mortgages to those mortgage(s) originated by third party lenders and purchased by Recipients within 12 months or less from the date of their origination as evidenced by an agreement; for which the source of origination is not the CMF Award; and that would not have been originated but for the Recipient's purchase. A new term "Secondary Market Mortgage Purchase" is added to describe a Recipient's purchase of a Secondary Market Mortgage to complement the definition of "Secondary Market Mortgage." The term "Service Area" is revised by adding a national Service Area or other areas further defined by the CDFI Fund in the applicable NOFA, in order to expand the scope of the coverage. This allows Recipients to better serve certain geographic locations such as Rural Areas. The term "Single-family housing" is revised to include mutual housing, a manufactured housing unit only, or a combination of a manufactured housing unit and its lot. This ensures that the CMF funded financing requires an affordable housing unit and prohibits the financing of a manufactured housing lot only. The term "State" is revised to streamline the definition and accommodate any United States government changes to its territories by deleting the current list of United States territories "the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Island, Guam, the U.S. Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands" from the definition. All United States territories, Districts and Commonwealths remain as eligible geographies. The term "Subsidiary" is revised to refer to an entity that is majority-owned by its parent company. This clarification is to make a clear distinction between the definitions of Affiliates and Subsidiaries. The term "Underserved Rural Area" is revised because it needs to be consistent with the definition of "Rural Area," which is a new term in the revised interim rule. The term "Uniform Administrative Requirements" is revised by replacing "2 CFR part 1000" with "2 CFR part 200" to incorporate a more accurate regulatory citation. The term "Very Low-Income" is revised by clarifying that for owner-occupied or rental Housing units, the

qualifying annual income is at 60 percent or below of the AMI, adjusted for Family size, as determined by HUD.

Section 1807.105 is revised by replacing the term “would” with “would not” to clarify that for individual waivers, the CDFI Fund will determine that the application of the requirement to be waived does not adversely affect achieving the purpose of the Act. Section 1807.106 is redesignated as “Presumptive Compliance with Other Federal Programs,” and the entire content removed and replaced with new CMF requirements related to Presumptive Compliance. Section 1807.107 is revised by deleting the reference to the prior publication of the interim rule “February 8, 2016,” clarifying the applicability of the interim rule to all future uses of prior CMF Awards and all future CMF Awards granted under any NOFA published after the publication date of this revised interim rule, and specifying when the new definition of “Nonprofit Organization” will take effect to facilitate the transition to the new definition.

#### *Subpart B—Eligibility*

Section 1807.200(a)(2)(iii) is revised by replacing “[c]an demonstrate that” with “[d]emonstrates” as an editorial change, and by adding relevant CMF program documents at the end of the sentence for clarification. Section 1807.200(b) is revised by clarifying that for an Applicant seeking eligibility under § 1807.200(a)(1), the CDFI will verify that the Applicant is a Certified CDFI pursuant to the guidance provided in the applicable NOFA.

#### *Subpart C—Eligible Purposes; Eligible Uses: Restrictions*

Section 1807.300(b) includes an updated definition for “Economic Development Activities,” as further described in § 1807.403, that they must be located in a Low-Income Area or Underserved Rural Area; undertaken in conjunction with any affordable housing that is authorized as such under applicable local, State or Federal housing program laws; and reasonably available, physically proximate to, and benefit residents of such affordable housing. Sections 1807.300(b)(1) through (3) in the 2016 interim rule are deleted and some of the concepts contained therein are reorganized in § 1807.403 as new content.

Section 1807.301 is redesignated as “Eligible Uses,” and § 1807.301(d) is revised to incorporate the newly defined term “Economic Development Activity Fund.”

Section 1807.302(a)(12) is revised by replacing “student dormitories” with “dormitories” to clarify that CMF Awards cannot be used to fund any types of dormitories, not just student dormitories. Section 1807.302(b)(1) is revised by adding to the list of businesses deemed ineligible to receive financing and/or support with a CMF Award those businesses or activities provided in 13 CFR 120.110(c) through (p), and other businesses deemed inconsistent with the general purpose of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 *et seq.*; Pub. L. No. 103-325). Section 1807.302(c) is revised to state that the restriction on the use of Economic Development Activities to no more than 30 percent of their CMF Awards must be approved in the applicable Assistance Agreement. Section 1807.302(d) is revised to clarify that any Affordable Housing financed and/or supported by Loan Guarantee or Loan Loss Reserves shall be tracked during the Affordability Period for compliance with the affordability requirements, as provided in subpart D of this part. Section 1807.302(e) is revised by clarifying that repayment of loans made pursuant to Loan Guarantees or Loan Loss Reserves during the Investment Period must be used as Program Income, subject to the requirements in the Recipient’s Assistance Agreement. Section 1807.302(f) is revised to allow Recipients to use the CMF Award for Direct Administrative Expenses or Feasibility Determination Expenses at amounts set forth in the applicable NOFA and corresponding Assistance Agreement. This change provides additional flexibility on the use of the CMF Award when Recipients are assessing a project’s feasibility as part of their preliminary analysis prior to Project Commitment. The expanded guidance further provides that neither Feasibility Determination Expenses nor Direct Administrative Expenses may be deemed as Eligible Project Costs.

Section 1807.303(a) is revised by deleting “for the approved, eligible CMF Award uses” and replacing it with “in the manner as further set forth in the Assistance Agreement,” because terms

on the use of Program Income will be provided in the Assistance Agreement. Section 1807.303(b) is revised by replacing “2 CFR part 1000” with “2 CFR part 200” to incorporate a more accurate regulatory citation.

*Subpart D—Qualifications as Affordable Housing*

Section 1807.400 is restructured with the newly designated subsections 1807.400(a), (b) and (c) and revised with new requirements by maintaining the current guidance on the use of a CMF Award for Affordable Housing Activities, including compliance with affordability qualifications set forth in the applicable NOFA and/or Assistance Agreement; setting forth new requirements based on the new definition of Permanent Housing in the revised interim rule; and establishing that none of the residents of Affordable Housing can be full-time students, unless they are married filing a joint tax return, receive assistance under Title IV of the Social Security Act, enrolled in a job training program, are with dependent children as single parents, as defined in IRC sec. 152, previously enrolled in a foster care program, or meet other criteria specified by the CDFI Fund.

The introductory paragraph to § 1807.401 is revised by clarifying that rental Multi-family housing Projects financed and/or supported with a CMF Award must have at least 20 percent of the units rent-restricted to any combination of Low-Income, Very Low-Income, or Extremely Low-Income Families with specific income levels and meet the rent limits provided for in the applicable NOFA and Assistance Agreement in any CMF funding round. Section 1807.401(a) is revised by deleting all of the content that describes the calculation of CMF rental units according to a tenant’s income category and replacing it with “[t]he gross rent limits for Affordable Housing are further specified in the Assistance Agreement.” There are no changes to the content in § 1807.401(b). Section 1807.401(c) is revised to clarify that the gross rent restrictions are set forth in the Assistance Agreement and under IRC sec. 42(g)(2), as applicable. Section 1807.401(d) is revised to clarify that Housing under this section must meet the affordability requirement during the Affordability Period. Moreover, the affordability restrictions are allowed

to terminate upon foreclosure of the Housing or transfer in lieu of foreclosure. The affordability requirements must be imposed by deed restrictions, covenants running with the land, or other recording instruments. A Recipient may use other types of recording instruments, as further set forth in the Assistance Agreement, if written approval is obtained from the CDFI Fund. To the extent allowed under State law, proceeds used to pay off mortgages financed with a CMF Award in the event of a sale of a property at a foreclosure sale, transfer in lieu of foreclosure, short sale, or other types of disposition, will be treated as Program Income to allow Recipients to engage in additional Affordable Housing Activities and/or Eligible Uses, except to capitalize an Economic Development Activity Fund, in § 1807.301. Section 1807.401(e) is re-titled as “Standard Lease Terms and Conditions,” and the entire content removed and replaced to prescribe that a written lease or rental agreement, which must be in compliance with applicable State or local law, is required for all tenants occupying rental CMF Units. Section 1807.401(f)(1) is revised to clarify that at the time of each initial lease and occupancy, the tenant income will be determined to ascertain income eligibility. During the Affordability Period, the existing tenant’s income will be re-examined annually based on requirements set forth in the Assistance Agreement. In addition, “household” is replaced with “Family” to incorporate the new term and “assisted” with “supported” for clarity as an editorial change. Section 1807.401(f)(3) is deleted, as it is no longer applicable based on the current HOME regulation in effect. Section 1807.401(f)(4) in the 2016 interim rule is redesignated as § 1807.401(f)(3) and is revised by replacing the term “Low-Income Family” with “Family” to expand the scope of applicable Families for the CMF. Section 1807.401(g)(1) is revised to incorporate the new term “CMF Unit.” Section 1807.401(g)(2) is revised by deleting references to IRC sec. 42(g) and 42(h) to the extent that the CDFI Fund has not and is not fully adopting the requirements set forth therein in the revised interim rule, as the rent limitation determination and calculation will be provided for in the Assistance Agreement. Moreover, this section incorporates editorial changes to clarify that the maximum rent for tenants whose incomes no longer qualify is either 30 percent of the Family’s annual income, or the



amount payable by the tenants under State or local law, whichever is less. Section 1807.401(g)(3) is revised to incorporate the new term “CMF Unit” in lieu of “CMF financed or assisted unit” and clarifies that if the income of a tenant of a CMF Unit no longer qualifies, the Recipient may designate another unit as a rent-restricted replacement unit, as long as it meets the affordability qualification for the same income category as the original unit within the same Project. A new term “Homebuyer” is being incorporated throughout § 1807.402 to prohibit Recipients from using the CMF Awards to assist Families in buying second homes or multiple homes. Section 1807.402 is restructured as follows: § 1807.402(a) in the 2016 interim rule is redesignated as § 1807.402(a)(1); § 1807.402(a)(1) is redesignated as § 1807.402(a)(1)(i) with a new subheading “Single-family housing”; § 1807.402(a)(2) is redesignated as § 1807.402(a)(1)(ii) with a new subheading “Purchase price limits”; § 1807.402(a)(3) is redesignated as § 1807.402(a)(1)(iii) with a new subheading “Qualifying Homebuyer”; a new § 1807.402(a)(1)(iv) is added with new content under subheading “Eligible-Income requirements”; § 1807.402(a)(4) is redesignated as § 1807.402(a)(1)(v); and § 1807.402(a)(5) is redesignated as § 1807.402(a)(1)(vi)(A) and (B). The redesignated § 1807.402(a)(1) is revised by clarifying that a Recipient that uses the CMF Award to finance or support the Purchase of Housing by a qualified Homebuyer must ensure that the Housing and Homebuyer meet the affordability requirements in subpart D of this part. The redesignated § 1807.402(a)(1)(ii) is revised by replacing the Single-family housing purchase price limits of “95 percent of the median purchase price for the area as used in the HOME Program” with the purchase price limits for the area under the HUD FHA Section 203(b) Mortgage Insurance Program, or any other index as designated by the CDFI Fund. This revision is necessary because the index used in the 2016 interim rule has lagged market conditions, resulting in limited availability of housing choices for Families, particularly large Families, and may have had the unintended effect of concentrating affordable housing to certain geographic areas and communities, possibly in conflict with the CMF objectives. This section further requires that the underlying mortgage be originated based

on an assessment of whether the borrower can repay the loan based on terms and conditions that are transparent and understandable, and the affordability of the mortgage to the Homebuyer over the life of the loan. The redesignated § 1807.402(a)(1)(iii) is revised by replacing “Family” with “Homebuyer” to incorporate the new term for accuracy; a similar requirement that “the Single-family housing must be the principal residence of the Family throughout the period described in paragraph (a)(4) of this section” is now included in § 1807.402(a)(1)(v). The new § 1807.402(a)(1)(iv) establishes that a qualifying Homebuyer under this section must have a household income at Eligible-Income; to determine whether a Family would be income-eligible under this section, adjusted gross income as defined under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax reporting is used, or other methodology for determining income eligibility as provided in the Assistance Agreement; and a homeowners of one- to four- unit Single-family housing may rent the additional unit(s) as Permanent Housing if at least one unit is maintained as the principal residence of the Homebuyer. This last requirement is being added to encourage an increase in the overall number of rental units to help boost the supply of rental housing and address an unprecedented housing crisis nationwide. The redesignated § 1807.402(a)(1)(v) is revised by adding the requirement that the Single-family housing must be the principal residence of the Homebuyer at the time of Purchase and is subject to the affordability requirements during the Affordability Period as provided in redesignated § 1807.402(a)(1)(vi) to ensure the CMF Award is being used to serve the intended income qualified Homebuyer. It further explains that the Affordability Period does not apply to additional units of the Single-family housing being rented as Permanent Housing. The redesignated § 1807.402(a)(1)(vi) is revised to state that the Recipient must establish and impose recoupment, replacement and resale strategies requiring that under new § 1807.402(a)(1)(vi)(A), if the Housing is sold in five years or less from the date of Purchase, the Housing must be sold in a manner that meets the qualifications set forth in § 1807.402, or the CMF Award will be recouped and the Housing replaced with a replacement unit to satisfy the affordability

requirement for the remainder of the Affordability Period. Under new § 1807.402(a)(1)(vi)(B), if the Housing is sold any time after five years from the date of Purchase but before the end of the Affordability Period, the Housing must be sold to a new Eligible-Income Family or, if the Housing is not sold to an Eligible-Income Family, a proportionate share of the CMF investment must be recouped as Program Income. In case the Housing is not sold to an Eligible-Income Family after five years from the date of Purchase and the Recipient recoups a proportional amount of the CMF Awards as Program Income, the Recipient is not required to replace the sold Housing with another replacement unit. Additionally, a Recipient's recoupment, replacement, and resale strategy must meet the requirements of newly designated § 1807.402(a)(1)(vi) for compliance with program requirements and the terms under the Assistance Agreement. The affordability requirements are allowed to terminate at the time of foreclosure, transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD. The occurrence of these events will result in the Housing no longer being subject to an affordability requirement or a recoupment, replacement, or resale strategy previously imposed by the Recipient. The affordability restrictions shall be revised according to the original terms, however, if during the original Affordability Period, the owner of record before the termination event obtains an ownership interest in the Housing. Section 1807.402(b)(1) is revised by replacing the Single-family housing purchase price limits as used in the HOME Program with those used in the HUD FHA Section 203(b) Mortgage Insurance Program, identical to the change made to § 1807.402(a)(1)(ii). Section 1807.402(b)(2) is revised to reinforce that the Single-family housing must remain the principal residence of the Family throughout the Affordability Period, as described in § 1807.402(b)(3). Section 1807.402(b)(3) is revised by replacing "at least 10 years" with "Affordability Period" to incorporate the new term, and "after Rehabilitation is completed" with "upon Project Completion or meet recoupment, replacement, and/or resale" to accurately describe the program requirement in § 1807.402(a)(1)(vi) as referenced herein. A new § 1807.402(b)(4) is added to describe the allowable uses of permanent additional units as described

in the definition of “Housing” for a Homebuyer owning Single-family housing subject to the requirements under this part. Section 1807.402(c) is revised to reinforce that any owner of Single-family housing under this section must meet the definition of “Homebuyer.” Section 1807.402(e) is revised to clarify that when converting rental CMF Units to Homeownership units by selling, donating, or otherwise conveying the units to existing tenants, the tenants can only become Homebuyers under an existing documented rent-to-own program pursuant to the requirements under this section. The Homeownership units are also subject to a minimum period of affordability equal to the remaining rental Affordability Period, as further specified in the Assistance Agreement.

A newly added § 1807.403 comprises CMF program requirements regarding Economic Development Activities and is now consolidated under a single section. The 2016 interim rule requirement, located in § 1807.302(c), that no more than 30 percent of a CMF Award for each individual CMF Award round, may be used for Economic Development Activities, is repeated in the introductory paragraph of § 1807.403. The introductory paragraph to § 1807.403 also provides that a CMF Award used for Economic Development Activities must stabilize, sustain, or revitalize communities and neighborhoods physically proximate to any affordable housing to meet the requirements outlined in this section.

Section 1807.403(a) describes the Eligible Uses of a CMF Award to finance and support Economic Development Activities pursuant to § 1807.301, with the exception of Affordable Housing Fund. This revision extends all Eligible Uses for Economic Development Activities, which was not previously articulated in the 2016 interim rule. Section 1807.403(b) provides a new requirement that Recipients who use their CMF Awards for allowable Economic Development Activities resulting in real estate and/or physical structures must ensure such are used for a minimum of three years commencing with Project Completion. This requirement establishes a new compliance requirement, which is absent in the 2016 interim rule, that physical structures resulting from Economic Development Activities retain the intended or similar

purpose for at least three years from Project Completion. Section 1807.403(c) restates the definitional requirement that the Economic Development Activities must be undertaken as part of a Concerted Strategy which, for example, will result in increased education, employment, transportation, financial services or other opportunities in a Low-Income Area or Underserved Rural Area. Section 1807.403(d) incorporates the requirements related to the term “In Conjunction with Affordable Housing” which appears in the 2016 interim rule. This section establishes that Economic Development Activities must be located in a Low-Income Area or Underserved Rural Area; undertaken in conjunction with any affordable housing that is subject to or authorized by local, State or Federal laws; and reasonably available, physically proximate, and benefit residents of such affordable housing. This section also establishes criteria for physical proximity for Metropolitan and Non-Metropolitan Areas, which are existing provisions in the 2016 interim rule being reorganized under this section for ease of reference.

*Subpart E—Leveraged Capital; Eligible Project Costs; Commitment Requirements*

Section 1807.500(a) is revised under a new subheading “Eligible Project Costs” to clarify that the leverage requirement to generate Eligible Project Costs in an amount at least 10 times the CMF Award excludes any Direct Administrative Expenses and Feasibility Determination Costs, combined, from the calculation. This is to allow Recipients additional flexibility in the use of the CMF Award in determining whether to proceed with prospective projects prior to Project Commitment. In § 1807.500(b)(1), “percentage” is replaced with “multiplier” to reflect the update to the term “Leveraged Capital,” and “private” is added before “non-government sources” for clarity. Sections 1807.500(b)(2)(ii) through (iii) are revised to reinforce that Leveraged Capital used to finance and/or support Affordable Housing Activities or Economic Development Activities must comply with §§ 1807.400, 1807.401 and 1807.402 or § 1807.403 in subpart D, respectively, and as further provided in the Assistance Agreement. Section 1807.500(c) is deleted in its entirety; any related requirements will be described in the Assistance Agreement.

Section 1807.501, re-titled as “Commitments,” establishes a new Commitment process to better align with the requirements under the Act. This section also adds new content at §§ 1807.501(c)(4) through (6) to expand the requirements to determine Project Commitment. To afford Recipients additional time and flexibility in identifying projects to further CMF objectives, § 1807.501(a) is revised to establish that pursuant to § 1807.301, the use of a CMF Award must be Committed for Use by Recipients to one or more Eligible Uses within two years of the date designated in the Recipient’s Assistance Agreement. The content in §§ 1807.501(b)(1) through (3) is deleted in its entirety and the new content in § 1807.501(b) provides that the Recipient must achieve Project Commitment within three years of the date designated in the Recipient’s Assistance Agreement, resulting in a longer timeframe to identify viable projects. The content in § 1807.501(c) is deleted in its entirety and new content in the newly designated §§ 1807.501(c)(1) through (3) describes the Commitment requirements for real estate projects, and replaces “commitment” with “Project Commitment,” a newly defined term in the revised interim rule. The newly designated §§ 1807.501(c)(4) through (6) set forth the following new, expanded Commitment requirements: For Secondary Market Mortgage Purchase, the Recipient must evidence an agreement with a third party lender to purchase the qualified mortgages and demonstrate that such mortgages would not have been otherwise originated by the third party lender; for a qualified Homeownership Program, the Recipient must evidence that a commitment has been made by the action of the Recipient’s Board or Directors; and for a Project comprised of a Loan Guarantee or Loan Loss Reserves, the Recipient must enter into a guarantee agreement or have established a cash reserve, escrow, or accounting-based accrual reserve with a lender or investor. These revisions are a recognition of the breadth of CMF activities and differing criteria in meeting Project Commitment. Section 1807.501(c) is deleted in its entirety due to redundancy, as similar content appears in § 1807.901 and in the NOFA. Section 1807.501(d) is deleted in its entirety, as this content is set forth in the NOFA and/or Assistance Agreement.

Section 1807.503(a) is revised by adding “for Affordable Housing Activities and Economic Development Activities” after “Project Completion” to fully capture the Project Completion requirements for all types of CMF activities. Section 1807.503(a)(4) is revised by clarifying that for Preservation, Project Completion occurs when the refinancing of the loan is closed and the underlying real estate is compliant with all CMF requirements, subject to any additional program requirements for Rehabilitation as applicable. Section 1807.503(a) adds new content at §§ 1807.503(a)(5) through (7) in the revised interim rule to expand the Project Completion requirements to include Secondary Market Mortgage Purchase, Loan Loss Reserve and Loan Guarantee activities. Section 1807.503(b) is revised by deleting “which must be met for a period of at least 10 years after the Project Completion date” with respect to property standards based on the new definition of “Affordability Period,” which could be extended to more than 10 years. Section 1807.503(b)(1) is revised by adding a subheading “Code requirements.” Section 1807.501(b)(2) is revised by adding a subheading “Other requirements.” Section 1807.503(b)(2)(i) is revised by adding “Title VIII of the Civil Rights Act of 1968” before “Fair Housing Act” for clarity and making editorial changes to clarify that “Multi-family housing” as used in this section is equivalent to “covered multifamily dwellings,” as defined in 24 CFR 100.201.

Section 1807.503(b)(3)(i) is revised by replacing “10-year period of affordability” with “Affordability Period” to incorporate the new term.

*Subpart F—Tracking Funds; Uniform Administrative Requirements; Nature of Funds*

Section 1807.602 is revised by deleting “CMF Award proceeds retain their Federal character until the end of the Investment Period” as this or similar requirement will be set forth in the Assistance Agreement and/or other CDFI Fund guidance.

*Subpart H—Evaluation and Section of Applications*

Section 1807.800(a) is revised by deleting “on a merit based and” and adding “based on the criteria outlined in the NOFA” as an editorial change for clarity.

Section 1807.801(b) is revised by deleting §§ 1807.801(b)(1) through (b)(4) in their entireties for redundancy, as they are included in other CDFI Fund guidance materials. Section 1807.801(c) is revised by designating this subsection as “Other Factors” with no change to content.

*Subpart I—Terms and Conditions of CMF Award*

Section 1807.900(a)(2) is revised by replacing “uses” with “Eligible Uses” for clarity. Section 1807.900(c) is revised to clarify that the CDFI Fund will provide a Recipient with reasonable notice and opportunity to cure any instances of noncompliance prior to determining whether the Recipient has failed to comply substantially with the Act, these regulations or an Assistance Agreement.

Section 1807.902(b) is redesignated as “Beneficiary Demographic Data” for clarity and revised by deleting “must” and replacing it with “may be required to” to reflect a change in the program requirements.

Section 1807.902(d) is revised by adding “and the applicable NOFA” at the end for clarity.

Section 1807.902(e)(iii) is revised by updating financial reporting criteria for regulated financial institutions (*i.e.*, Insured Depository Institutions, Depository Institution Holding Companies, and Insured Credit Unions) to align with the CDFI Fund compliance requirements with respect to completing a Financial Statement Audit report.

Section 1807.902(f) is deleted in its entirety as the requirement is included in the applicable NOFA and/or the Assistance Agreement.

**V. Rulemaking Analysis**

*A. Executive Order (E.O.) 12866*

It has been determined that this interim rule is not a significant regulatory action under Executive Order 12866, as amended. Accordingly, a regulatory impact assessment is not required.

*B. Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required under the Administrative Procedure Act (5 U.S.C. 553), or any other law, the Regulatory Flexibility Act does not apply.



### *C. Paperwork Reduction Act*

The collections of information contained in this interim rule will be reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned the applicable, approved OMB Control Numbers associated with the CDFI Fund under 1559–XXXX. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

### *D. National Environmental Policy Act*

This interim rule has been reviewed in accordance with the CDFI Fund’s environmental quality regulations (12 CFR part 1815), promulgated pursuant to the National Environmental Protection Act of 1969 (NEPA), which requires that the CDFI Fund adequately consider the cumulative impact proposed activities have upon the human environment. It is the determination of the CDFI Fund that the interim rule does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the NEPA and the CDFI Fund’s environmental quality regulations (12 CFR part 1815), neither an Environmental Assessment nor an Environmental Impact Statement is required.

### *E. Administrative Procedure Act*

Because the revisions to this revised interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act, 5 U.S.C. 553(a)(2).

### *F. Comment*

Public comment is solicited on all aspects of this revised interim rule. The CDFI Fund will consider all comments made on the substance of this revised interim rule, but it does not intend to hold hearings.

### *G. Catalogue of Federal Domestic Assistance Number*

Capital Magnet Fund—21.011.

## **List of Subjects in 12 CFR Part 1807**

Community development, Grant programs—housing and community development, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 12 CFR part 1807 is revised to read as follows:

### **PART 1807--CAPITAL MAGNET FUND**

#### **Subpart A -- General Provisions**

Sec.

- 1807.100 Purpose.
- 1807.101 Summary.
- 1807.102 Relationship to other CDFI Fund programs.
- 1807.103 Recipient not instrumentality.
- 1807.104 Definitions.
- 1807.105 Waiver authority.
- 1807.106 Presumptive Compliance with Other Federal Programs.
- 1807.107 Applicability of regulations for CMF Awards.

#### **Subpart B -- Eligibility**

- 1807.200 Applicant eligibility.
- 1807.201 through 1807.299 [Reserved]

#### **Subpart C -- Eligible Purposes; Eligible Uses; Restrictions**

- 1807.300 Eligible purposes.
- 1807.301 Eligible Uses.
- 1807.302 Restrictions on use of a CMF Award.
- 1807.303 Authorized uses of Program Income.

#### **Subpart D -- Qualification as Affordable Housing**

- 1807.400 Affordable Housing-general.
- 1807.401 Affordable Housing-Rental Housing.

1807.402 Affordable Housing-Homeownership.

1807.403 Economic Development Activities.

**Subpart E -- Leveraged Capital; Eligible Project Costs; Commitment; Project Completion**

1807.500 Leveraged Capital; Eligible Project Costs.

1807.501 Commitments.

1807.502 CMF Award limits.

1807.503 Project Completion; Property standards.

**Subpart F -- Tracking Funds; Uniform Administrative Requirements; Nature of Funds**

1807.600 Tracking funds.

1807.601 Uniform Administrative Requirements.

1807.602 Nature of funds.

**Subpart G -- Notice of Funds Availability; Applications**

1807.700 Notice of funds availability.

1807.701 through 1807.799 [Reserved]

**Subpart H -- Evaluation and Selection of Applications**

1807.800 Evaluation and selection--general.

1807.801 Evaluation of Applications.

**Subpart I -- Terms and Conditions of a CMF Award**

1807.900 Assistance agreement.

1807.901 Payment of funds.

1807.902 Data collection and reporting.

1807.903 Compliance with government requirements.

1807.904 Lobbying restrictions.

1807.905 Criminal provisions.

1807.906 CDFI Fund deemed not to control.

1807.907 Limitation on liability.

1807.908 Fraud, waste and abuse.

Authority: 12 U.S.C. 4569.

## **Subpart A – General Provisions**

### **§ 1807.100 Purpose.**

The purpose of the Capital Magnet Fund (CMF) is to attract private capital for and increase investment in Affordable Housing Activities and related Economic Development Activities in every State of the United States, the District of Columbia, or territories of the United States.

### **§ 1807.101 Summary.**

- (a) Through the CMF, the CDFI Fund competitively awards grants to Certified CDFIs and qualified Nonprofit Organizations to leverage dollars for:
  - (1) The Development, Preservation, Rehabilitation or Purchase of Affordable Housing primarily for Low-Income Families; and
  - (2) The financing of Economic Development Activities.
- (b) The CDFI Fund selects Recipients to receive CMF Awards through a competitive Application process. CMF Awards may only be used for Eligible Uses set forth in subpart C of this part. Each Recipient will enter into an Assistance Agreement that will require it to leverage the CMF Award amount and abide by other terms and conditions pertinent to any assistance received under this part.

### **§ 1807.102 Relationship to other CDFI Fund programs.**

Restrictions on applying for, receiving, and using the CMF Awards in conjunction with awards under other programs administered by the CDFI Fund are set forth in the applicable funding notice.

### **§ 1807.103 Recipient not instrumentality.**

No Recipient shall be deemed to be an agency, department, or instrumentality of the United States.

### **§ 1807.104 Definitions.**

For the purpose of this part:

*Act* means the Housing and Economic Recovery Act of 2008, as amended, Public Law 110-289, section 1131;

*Affiliate* means any entity that Controls, is Controlled by, or is under common Control with, an entity;

*Affordability Period* means a period of at least 10 years or other longer time period in the applicable NOFA issued by the CDFI Fund, during which time the Recipient must ensure the affordability requirements set forth herein and/or the Assistance Agreement are met for each Project;

*Affordable Housing* means housing that meets the requirements set forth in subpart D of this part;

*Affordable Housing Activities* means the Development, Preservation, Rehabilitation, and/or Purchase of Affordable Housing or Secondary Market Mortgage Purchase;

*Affordable Housing Fund* means an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient:

- (1) Manages and makes investment decisions for; and
- (2) Uses to finance Affordable Housing Activities in any combination of debt, grant, or equity investments, which does not include the purchase of stock, securities, or the buy-out of partnership interests;

*Applicant* means any entity submitting an Application for a CMF Award;

*Application* means the CDFI Fund's CMF application form, including any written or verbal information in connection therewith and any exhibits, attachments, appendices and/or written or verbal supplements thereto, submitted by an Applicant to the CDFI Fund, in response to the applicable Notice of Funds Availability (NOFA);

*Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q), and includes, with respect to Insured Credit Unions, the National Credit Union Administration;

*Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;

*Assistance Agreement* means a formal, written agreement between the CDFI Fund and a Recipient that specifies the terms and conditions of assistance under this part;

*Capital Magnet Fund (or CMF)* means the program authorized by the Act and implemented under this part;

*Certified Community Development Financial Institution (or Certified CDFI)* means an entity that has been determined by the CDFI Fund to meet the certification requirements set forth in 12 CFR 1805.201;

*CMF Award* means the financial assistance in the form of a grant made by the CDFI Fund to a Recipient pursuant to this part;

*CMF Unit* means

(1) A single residential unit of Housing financed or supported with a CMF Award, rented or owned by a Family, with dedicated kitchen and bath facilities that meets the requirements of subparts D and E, as applicable; or

(2) A single-room occupancy (SRO) unit, a group home, or an assisted living facility with shared common kitchen and bath facilities accompanied by an individual lease for each tenant that meets the requirements of subparts D and E of this part;

*Committed for Use* means as set forth in § 1807.501, that the Recipient is able to demonstrate, in written form and substance that is acceptable to the CDFI Fund, a commitment for Eligible Use of the CMF Award;

*Community Development Financial Institutions Fund (or CDFI Fund)* means the Community Development Financial Institutions Fund, the U.S. Department of the Treasury, established

pursuant to the Community Development Banking and Financial Institutions Act of 1994, as amended, 12 U.S.C. 4701 *et seq.*;

*Community Service Facility* means the physical structure in which service programs directly benefit nearby residents of any affordable housing. These service programs serve residents of affordable housing and include, but are not limited to, health care, childcare, educational programs including literacy and after school programs, job training, food and nutrition services, arts, and/or social services, as further set forth in the Assistance Agreement;

*Concerted Strategy* means a formal planning document that evidences the connection between Affordable Housing Activities and Economic Development Activities. Such documents include, but are not limited to, a comprehensive, consolidated, or redevelopment plan, or some other local or regional planning document adopted or approved by the jurisdiction;

*Control* means:

- (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons;
- (2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or
- (3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company;

*Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as each are defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(w);

*Development* means any combination of the following activities: Land acquisition, demolition of existing facilities, and construction of new facilities, which may include site improvement, utilities development and rehabilitation of utilities, necessary infrastructure, utility services, conversion, and other related activities resulting in Affordable Housing;

*Direct Administrative Expenses* as described in 2 CFR 200.413 of the Uniform Administrative Requirements, means direct costs incurred by the Recipient, related to the financing and/or in support of Projects;

*Economic Development Activity* means the development, preservation, acquisition and/or rehabilitation of Community Service Facilities and/or other physical structures in which businesses operate in order to implement a Concerted Strategy to stabilize, sustain, or revitalize communities and neighborhoods physically proximate to any affordable housing benefiting a Low-Income Area or Underserved Rural Area, subject to subpart D of this part;

*Economic Development Activity Fund* means an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient:

- (1) Manages and makes investment decisions for; and
- (2) Uses to finance Economic Development Activities in any combination of debt, grant, or equity, which does not include the purchase of stock, securities, or the buy-out of partnership interests;

*Effective Date* means the date that the Assistance Agreement is effective; such date is determined by the CDFI Fund after the Recipient has returned an executed Assistance Agreement, along with all required supporting documentation, including an opinion from its legal counsel, if required;

*Eligible-Income* means having, in the case of owner-occupied or rental Housing units, annual income at 120 percent or below of the area median income, adjusted for Family size, in the same manner as HUD makes these adjustments for its other published income limits;

*Eligible Project Costs* means all eligible development, financing, refinancing, acquisition, relocation, loan loss reserve, guarantee, predevelopment, and related soft costs incurred in the achievement of Project Completion, as described in the Assistance Agreement, paid using a CMF Award and any Leveraged Capital;

*Eligible Uses* means allowable uses of the CMF Award set forth in § 1807.301;



*Extremely Low-Income* means, in the case of owner-occupied or rental Housing units, having income at 30 percent or below of the area median income, adjusted for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low incomes;

*Family* means a household of one or more persons living in the same dwelling unit. All persons in a household who are related by birth, marriage or adoption are regarded as members of the Family. A Family may also include individuals living in a household who are not related to each other;

*Feasibility Determination Expenses* mean direct costs, as defined by the Uniform Administrative Requirements, and incurred by the Recipient to determine the feasibility of potential Affordable Housing Activities and/or Economic Development Activities to implement the CMF Award. These costs must be incurred before Project Commitment. Costs designated as Feasibility Determination Expenses cannot be deemed as Eligible Project Costs. Such expenses may include, but are not limited to, preliminary market studies, engineering, architectural analyses, financial feasibility analyses, and other costs as further detailed in the Assistance Agreement and guidance provided by the CDFI Fund;

*Homebuyer* means a Family that does not currently own any Single-family housing or is in the process of selling and replacing their primary residence. A Homebuyer may not own any other Single-family housing or Multi-family housing. Notwithstanding this definition, a Homebuyer includes a Family that owns a manufactured housing unit and is in the process of replacing or refinancing it, or owns a manufactured housing unit as part of the conversion of a manufactured housing park to a tenant-owned park or cooperative;

*HOME Program* means the HOME Investment Partnership Program established by the HOME Investment Partnerships Act under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*;

*Homeownership* means ownership interest in a home in fee simple, or by condominium, cooperative, mutual housing, or ground lease title interest, as allowed under State law, in one- to four-unit Single-family housing, or ownership of a manufactured housing unit. The ownership interest is subject to the following additional requirements:

(1) Ownership interest may not merely consist of a right of possession under a contract for deed, installment contract, or land contract pursuant to which the deed is not given until the final payment is made; and

(2) Ownership interest is subject to the restrictions on affordability permitted under the Assistance Agreement and this part; mortgages, deeds of trust, or other liens or instruments securing debt on the property; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest;

*Homeownership Program* means an affordable housing program established by a Recipient for the purpose of providing direct financing or grants to Homebuyers to purchase Single-family housing. The Project Commitment requirements of § 1807.501 are satisfied if the board of directors of the Recipient makes a Project Commitment of the CMF Award to the Homeownership Program by resolution in a form and substance acceptable to the CDFI Fund;

*Housing* means Single-family and Multi-family residential units including, but not limited to, manufactured housing, permanent supportive housing, single-room occupancy (SRO) housing, assisted living, and group homes that are permanent in nature and not temporary, short term, transitional, or a dormitory, as further set forth by the CDFI Fund;

*HUD* means the Department of Housing and Urban Development established under the Department of Housing and Urban Development Act of 1965, 42 U.S.C. 3532 *et seq.*;

*Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). Each such Indian Tribe must be recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

*Insured CDFI* means a Certified CDFI that is an Insured Depository Institution or an Insured Credit Union;

*Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund by the National Credit Union Administration pursuant to authority granted in 12 U.S.C. 1783 *et seq.*;

*Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation pursuant to authority granted in 12 U.S.C. 1813(c)(2);

*Investment Period* means the period beginning with the Effective Date and ending on the fifth year anniversary of the Effective Date, or such other period as may be established by the CDFI Fund in the Assistance Agreement;

*Leveraged Capital* means capital raised to finance the costs for Affordable Housing Activities and Economic Development Activities that exceeds the dollar amount of the CMF Award, as further described in § 1807.500;

*Loan Guarantee* means the Recipient's use of the CMF Award to support an agreement to indemnify the holder of a loan for all or a portion of the unpaid principal balance in case of default by the borrower. The proceeds of the loan that is guaranteed with the CMF Award must be used for Affordable Housing Activities and/or Economic Development Activities;

*Loan Loss Reserves* means proceeds from the CMF Award that the Recipient will set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable for Affordable Housing Activities and/or Economic Development Activities, or for related purposes that the CDFI Fund deems appropriate;

*Low-Income* means, in the case of owner-occupied or rental Housing units, having income at 80 percent or below of the area median income, adjusted for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes;

*Low-Income Area (or LIA)* means a census tract in which the median family income does not exceed 80 percent of the area median family income. With respect to a census tract located within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater. In the case of a census tract located outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide Non-Metropolitan Area median family income or the national Non-Metropolitan Area median family income, whichever is greater;

*Low Income Housing Tax Credits (or LIHTCs)* means credits against income tax under section 42 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. 42;

*Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949-1953 Comp., p. 758), as amended, and as made available by the CDFI Fund for a specific Application funding round;

*Multi-family housing* means residential properties consisting of five or more dwelling units, such as a condominium unit, cooperative unit, or an apartment;

*Non-Metropolitan Area* means counties that are designated as Non-Metropolitan Counties by the Office of Management and Budget (OMB) pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949-1953 Comp., p. 758), as amended, and as made available by the CDFI Fund for a specific Application funding round;

*Nonprofit Organization* means any corporation, trust, association, cooperative, or other organization that is:

- (1) Designated as a nonprofit or not-for-profit entity under the laws of the organization's State or Indian Tribe of formation;
- (2) Exempt from Federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, with the exception of organizations affiliated with Indian Tribes; and
- (3) Able to demonstrate, as set forth in the NOFA, that a share of its total assets is dedicated to the development or management of affordable housing;

*Payment* means the transmission of CMF Award dollars from the CDFI Fund to the Recipient;

*Permanent Housing* means Housing that is owned or is rented under a written lease with an initial lease term of six months or more;

*Preservation* means the acquisition, refinancing, recapitalization, of existing Multi-family rental housing or Single-family housing, with or without Rehabilitation, to create, maintain, or extend the affordability requirement as provided in subpart D of this part. Preservation may include the refinancing of owner-occupied Single-family housing or Multi-family rental housing to extend the existing affordability restrictions set to expire during the Investment Period, or other timeline as defined by the CDFI Fund, by at least an additional 10-year Affordability Period or as set forth in the Assistance Agreement. Preservation may also include the imposition of a new Affordability Period on Housing not currently subject to affordability restrictions;

*Presumptively Compliant* or *Presumptive Compliance* means certain rules, requirements and designations under other Federal housing programs that the CDFI Fund deems to meet certain CMF requirements;

*Program Income* means gross income as described in 2 CFR part 200 and as further specified in the Recipient's Assistance Agreement;

*Project* means a specific Affordable Housing Activity, Economic Development Activity, or Homeownership Program the Recipient uses its CMF Award to finance or support, resulting in Project Completion;

*Project Commitment* means that the Recipient is able to demonstrate, in written form and substance that is acceptable to the CDFI Fund, a commitment to a Project as set forth in § 1807.501;

*Project Completion* means that all of the requirements set forth at § 1807.503 for a Project have been met;

*Purchase* means to use a CMF Award to provide financing to:

- (1) A Family for Homeownership that meet the qualifications set forth in subparts D and E; or
- (2) A developer or project sponsor for the acquisition of rental Housing that must meet the qualifications set forth in subparts D and E of this part;

*Recipient* means an Applicant selected by the CDFI Fund to receive a CMF Award pursuant to this part;

*Rehabilitation* means any repairs and/or capital improvements that contribute to the long-term preservation, current building code compliance, habitability, sustainability, or energy efficiency of Affordable Housing;

*Revolving Loan Fund* means an investment fund consisting of the CMF Award and any Leveraged Capital that the Recipient:

- (1) Manages and approves lending decisions for; and
- (2) Uses to finance Affordable Housing Activities and/or Economic Development Activities wherein the repayments on such loans are used to finance additional loans;

*Risk-Sharing Loan* means loans consisting of the CMF Award and any Leveraged Capital made for Affordable Housing Activities and/or Economic Development Activities in which the risk of borrower default is shared by the Recipient with other lenders (*e.g.*, participation loans);

*Rural Area* means a census tract that meets the definition of Rural Area per 12 CFR 1282.1

(Enterprise Duty To Serve Final Rule) that is: A census tract outside of a Metropolitan Statistical Area as designated by the Office of Management and Budget; or A census tract in a Metropolitan Statistical Area as designated by the Office of Management and Budget that is outside of the Metropolitan Statistical Area's Urbanized Areas, as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 64 housing units per square mile for USDA's RUCA Code #2;

*Secondary Market Mortgage* means a mortgage:

(1) Originated by a qualified third party lender as defined in guidance by the CDFI Fund and purchased by the Recipient in 12 months or less from the date of its origination using a CMF Award and evidenced by an agreement that meets subparts C, D and E of this part;

(2) For which the source of the origination is not the CMF Award; and

(3) That would not have been originated but for the Recipient's Secondary Market Mortgage Purchase;

*Secondary Market Mortgage Purchase* means the purchase of a Secondary Market Mortgage;

*Service Area* means the geographic area in which the Applicant proposes to use the CMF Award, and the geographic area approved by the CDFI Fund in which the Recipient must use the CMF Award as set forth in its Assistance Agreement. Service Area may include a national Service Area for Rural Areas and additional areas that may be defined by the CDFI Fund in the applicable NOFA;

*Single-family housing* means a one- to four- unit Family residence, a condominium unit, a cooperative unit, mutual housing, a manufactured housing unit only, or the combination of a manufactured housing unit and lot;

*State* means the states of the United States, the District of Columbia, or any territory of the United States;

*State-Insured Credit Union* means any credit union that is regulated by, and/or the member accounts of which are insured by, a State agency or instrumentality;

*Subsidiary* means any company that is majority owned, or Controlled directly, or indirectly, by another company. For purposes of ownership, a Subsidiary's parent company possesses more than 50 percent ownership of the Subsidiary;

*Underserved Rural Area* means all Rural Areas as defined as a census tract that meets the definition of Rural Area per 12 CFR 1282.1 (Enterprise Duty To Serve Final Rule) that is: A census tract outside of a Metropolitan Statistical Area as designated by the Office of Management and Budget; or A census tract in a Metropolitan Statistical Area as designated by the Office of Management and Budget that is outside of the Metropolitan Statistical Area's Urbanized Areas, as designated by the U.S. Department of Agriculture's (USDA) Rural-Urban Commuting Area (RUCA) Code #1, and outside of tracts with a housing density of over 64 housing units per square mile for USDA's RUCA Code #2;

*Uniform Administrative Requirements* means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200);

*Very Low-Income* means, in the case of owner-occupied or rental Housing, having income at 60 percent or below of the area median income, with adjustments for Family size, as determined by HUD, except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low Family incomes;

#### **§ 1807.105 Waiver authority.**

The CDFI Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the CDFI Fund must determine that application of the requirement to be waived would not



adversely affect achieving the purposes of the Act. For waivers of general applicability, the CDFI Fund will publish notification of granted waivers in the Federal Register.

**§ 1807.106 Presumptive Compliance with Other Federal Programs.**

The CDFI Fund may deem certain other Federal program requirements, designations and/or reporting criteria as being Presumptively Compliant with any of the CMF program requirements set forth herein. Recipients participating in and meeting the program requirements of such designated Federal programs may be deemed compliant with certain CMF program requirements, as provided for in the Assistance Agreement or other CDFI Fund guidance and materials.

**§ 1807.107 Applicability of regulations for CMF Awards.**

- (a) The regulations of this part are applicable for all uncommitted funds from prior CMF Awards issued as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], as well as all CMF Awards made pursuant to all Notices of Funds Availability published after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].
- (b) The definition of “Nonprofit Organization” is applicable to any Notice of Funds Availability published on or after January 1, 2026; until that time, the definition of “Nonprofit Organization” in § 1807.104 of the 2016 interim rule remains in effect.

**Subpart B – Eligibility**

**§ 1807.200 Applicant eligibility.**

- (a) *General requirements.* An Applicant will be deemed eligible to apply for a CMF Award if it is:
  - (1) A Certified CDFI. An entity may meet the requirements described in this paragraph (a)(1) if it is:
    - (i) A Certified CDFI, as set forth in 12 CFR 1805.201;
    - (ii) A Certified CDFI that has been in existence as a legally formed entity as

set forth in the applicable Notice of Funds Availability (NOFA); or

- (2) A Nonprofit Organization having as one of its principal purposes, the development or management of affordable housing. A Nonprofit Organization may meet the requirements described in this paragraph (a)(2) if it:
- (i) Has been in existence as a legally formed entity as set forth in the applicable NOFA;
  - (ii) Demonstrates, through articles of incorporation, by-laws, or other board-approved documents, that the development or management of affordable housing are among its principal purposes; and
  - (iii) Demonstrates, by providing information described in the Application, NOFA, and/or supplemental information, as may be requested by the CDFI Fund, that a certain percentage, set forth in the applicable NOFA, of the Applicant's total assets are dedicated to the development or management of affordable housing.
- (b) *Eligibility verification.* An Applicant shall demonstrate that it meets the eligibility requirements described in paragraph (a)(2) of this section by providing information described in the Application, NOFA, and/or supplemental information, as may be requested by the CDFI Fund. For an Applicant seeking eligibility under paragraph (a)(1) of this section, the CDFI Fund will verify that the Applicant is a Certified CDFI as described in the applicable NOFA.

1807.201 through 1807.299 [Reserved]

### **Subpart C— Eligible Purposes; Eligible Uses; Restrictions**

#### **§ 1807.300 Eligible purposes.**

Each Recipient must use its CMF Award for the Eligible Uses described in § 1807.301 so long as such Eligible Uses increase private capital for and increase investment in:

- (a) Development, Preservation, Rehabilitation, and/or Purchase of Affordable Housing for primarily Extremely Low-Income, Very Low-Income, and Low-Income Families; and
- (b) Economic Development Activities, as further described in § 1807.403, which stabilize, sustain, or revitalize communities and neighborhoods and must be: located in a Low-Income Area or Underserved Rural Area; undertaken in conjunction with any affordable housing that is authorized as such under applicable local, State or Federal housing program laws, and reasonably available to, physically proximate to, and beneficial to residents of affordable housing.

**§ 1807.301 Eligible Uses.**

The Recipient must use its CMF Award to finance and support Affordable Housing Activities and/or Economic Development Activities through the following Eligible Uses:

- (a) To capitalize Loan Loss Reserves;
- (b) To capitalize a Revolving Loan Fund;
- (c) To capitalize an Affordable Housing Fund;
- (d) To capitalize an Economic Development Activity Fund;
- (e) To make Risk-Sharing Loans; and
- (f) To provide Loan Guarantees.

**§ 1807.302 Restrictions on use of a CMF Award.**

- (a) The Recipient may not use its CMF Award for the following:
  - (1) Political activities;
  - (2) Advocacy;
  - (3) Lobbying, whether directly or through other parties;
  - (4) Counseling services (including Homebuyer or financial counseling);
  - (5) Travel expenses;
  - (6) Preparing or providing advice on tax returns;
  - (7) Emergency shelters (including shelters for disaster victims);

- (8) Nursing homes;
  - (9) Convalescent homes;
  - (10) Residential treatment facilities;
  - (11) Correctional facilities; or
  - (12) Dormitories.
- (b) The Recipient shall not use the CMF Award to finance or support Projects that include:
- (1) The operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or any of the businesses of activities set forth in 13 CFR 120.110(c) through (p), or any other businesses deemed inconsistent with the general purpose the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 *et seq.*); or
  - (2) Farming activities (within the meaning of the Internal Revenue Code (IRC) section 2032A(e)(5)(A) or (B)), if, as of the close of the taxable year of the taxpayer conducting such trade or business, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer that are used in such a trade or business, and the aggregate value of the assets leased by the taxpayer that are used in such trade or business, exceeds \$500,000.
- (c) For each individual CMF Award, the Recipient may not use more than 30 percent of its CMF Award for Economic Development Activities, if such use is approved in its applicable Assistance Agreement.
- (d) Any Recipient that uses its CMF Award for a Loan Guarantee or Loan Loss Reserves must ensure that loan(s) made pursuant to a Loan Guarantee or Loan Loss Reserves finance Affordable Housing Activities and/or Economic Development Activities. The Affordable Housing resulting from the Recipient's Loan Guarantee or Loan Loss Reserve

shall be tracked during the Affordability Period for compliance with the affordability requirements as set forth in subpart D of this part.

- (e) If loans that are made pursuant to a Loan Guarantee or Loan Loss Reserves are repaid during the Investment Period, the Recipient must use the funds made available by the loan repayment as Program Income as set forth in the Recipient's Assistance Agreement.
- (f) The Recipient may use its CMF Award for Direct Administrative Expenses or Feasibility Determination Expenses at amounts set forth in the applicable NOFA and corresponding Assistance Agreement. Neither Direct Administrative Expenses nor Feasibility Determination Expenses can be attributable to Eligible Project Costs for a Project.

**§ 1807.303 Authorized uses of Program Income.**

- (a) Program Income earned in the form of principal and equity repayments must be used by the Recipient in the manner further set forth in the Assistance Agreement.
- (b) Program Income earned in the form of interest payments, and all other forms of Program Income (except for that which is earned as described in paragraph (a) of this section), must be used by the Recipient as set forth in the Assistance Agreement and in accordance with 2 CFR part 200.

**Subpart D -- Qualification as Affordable Housing**

**§ 1807.400 Affordable Housing—General.**

- (a) For any amount of the CMF Award used for Affordable Housing Activities, 100 percent of such Eligible Project Costs must be attributable to Affordable Housing, meaning that the Affordable Housing complies with the affordability qualifications set forth in this subpart for Eligible-Income Families. Further, as a subset of said 100 percent, greater than 50 percent of the Eligible Project Costs must be attributable to Affordable Housing that comply with the affordability qualifications set forth in this subpart for Low-Income,

Very Low-Income, or Extremely Low-Income Families, or as further set forth in the applicable NOFA and/or Assistance Agreement.

(b) Affordable Housing must be Permanent Housing.

(c) All the occupants of the Affordable Housing must not be full-time students unless they are:

(1) Married students who file a joint tax return;

(2) Students who receive assistance under Title IV of the Social Security Act;

(3) Students enrolled in a job training program;

(4) Students who are single parents with children who are their dependents, as defined in IRC sec. 152;

(5) Students who previously were part of a foster care program; or

(6) Meet other criteria specified by the CDFI Fund.

**§ 1807.401 Affordable Housing—Rental Housing.**

To qualify as Affordable Housing, each rental Multi-family housing Project financed with a CMF Award must have at least 20 percent of the units rent-restricted to any combination of Low-Income, Very Low-Income, or Extremely Low-Income Families and must comply with the rent limits as set forth in the applicable NOFA and Assistance Agreement in any CMF funding round. The CDFI Fund may require a greater percentage of the units per Project to be income-targeted and/or require a specific targeted income commitment in any given CMF round, as set forth in the applicable NOFA and Assistance Agreement.

(a) *Rent limitations.* The gross rent limits for Affordable Housing are further specified in the Assistance Agreement.

(b) *Nondiscrimination against rental assistance subsidy holders.* The Recipient shall require that the owner of a rental unit cannot refuse to lease the unit to a Section 8 Program certificate or voucher holder (24 CFR part 982, Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program

and the Section 8 Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

- (c) *Initial rent schedule and utility allowances.* The Recipient shall ensure that utility allowances and submetering rules are consistent with regulations concerning utility allowances and submetering in buildings that are subject to gross rent restrictions as set forth in the Assistance Agreement and under IRC sec. 42(g)(2), as applicable.
- (d) *Periods of affordability.* Housing under this section must meet the affordability requirements during the Affordability Period. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership and must be imposed by deed restrictions, covenants running with the land, or other recording instruments. Upon receipt of a written approval from the CDFI Fund, a Recipient may use a different recording instrument as provided for in the Assistance Agreement. The affordability restrictions are allowed to terminate upon foreclosure or transfer in lieu of foreclosure. To the extent allowed under State law, in the event of a sale of property at foreclosure, transfer in lieu of foreclosure, short sale or other types of disposition, proceeds available to pay off a mortgage financed with a CMF Award shall be treated as Program Income.
- (e) *Standard lease terms and conditions.* All tenants occupying rental CMF Units shall be required to enter into a written lease or rental agreement setting forth the terms and requirements which are, but not limited to, compliance with applicable State and local law.
- (f) *Tenant income determination.* (1) At the time of each initial lease and occupancy, the tenant income shall be determined to ascertain income eligibility. During the Affordability Period, the existing tenant income shall be re-examined in a manner as set

forth in the Assistance Agreement. Tenant income examination and verification are ultimately the responsibility of the Recipient. Tenant income shall include income from all Family members. The Recipient must require the Project owner to obtain information on rents and occupancy of Affordable Housing financed or supported with a CMF Award in order to demonstrate compliance with this section.

- (2) One of the following two definitions of “annual income” must be used to determine whether a Family is income-eligible:
  - (i) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes; or
  - (ii) Annual Income as defined at 24 CFR 5.609 (except that when determining the income of a homeowner for an owner-occupied Rehabilitation Project, the value of the homeowner’s principal residence may be excluded from the calculation of “Net Family Assets,” as defined in 24 CFR 5.603).
- (3) The CDFI Fund reserves the right to deem certain government programs, under which a Family is a recipient, as income eligible for purposes of meeting the tenant income requirements under this section.
- (g) *Over-income tenants.* (1) CMF Units continue to qualify as Affordable Housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to the CDFI Fund are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.



- (2) The maximum rent for tenants whose incomes no longer qualify is either 30 percent of the Family's annual income, or the amount payable by the tenants under State or local law, whichever is less; however, tenants whose income exceeds the Eligible-Income level are not required to pay rent in excess of the market rent for comparable, unassisted units in the neighborhood.
- (3) If the income of a tenant of a CMF Unit no longer qualifies, the Recipient may designate another unit within the Project as a rent-restricted replacement unit that meets the affordability qualifications for the same income category as the original unit, as further set forth in the Recipient's Assistance Agreement. If there is not an available replacement unit, the Recipient must fill the first available vacancy with a tenant that meets the affordability qualifications for the same income category of the original unit as necessary to maintain compliance with the CMF requirements and the Assistance Agreement.

**§ 1807.402 Affordable Housing—Homeownership.**

- (a) *Purchase with or without Rehabilitation.* (1) A Recipient that uses the CMF Award to finance or support the Purchase of Housing by a qualified Homebuyer must ensure that the Housing and Homebuyer meet the affordability requirements of this subpart as follows:
  - (i) *Single-family housing.* The Housing must be a Single-family housing.
  - (ii) *Purchase price limits.* The Single-family housing does not exceed the purchase price limits for the area under the HUD FHA Section 203(b) Mortgage Insurance Program, or any other index designated by the CDFI Fund as set forth in the applicable Assistance Agreement; the related mortgage must be originated based upon an assessment of whether the Homebuyer can repay the loan based on terms and conditions that are transparent and understandable to the Homebuyer, and the mortgage is affordable to the Homebuyer over the life of the loan.

(iii) *Qualifying Homebuyer.* The Single-family housing must be purchased by a qualifying Homebuyer.

(iv) *Eligible-Income requirements.* A qualifying Homebuyer must have a household income at no greater than Eligible-Income. To determine whether a Homebuyer qualifies as Eligible Income (or at any other income level specified in the Assistance Agreement) under this section, the Recipient must use the Homebuyer's adjusted gross income as defined under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax reporting purposes, or other methodology for determining income eligibility as provided in the Assistance Agreement. Homebuyers of one- to four- unit Single-family housing may rent the additional unit(s) as Permanent Housing if at least one unit is maintained as the principal residence of the Homebuyer.

(v) *Periods of affordability.* Single-family housing under this section must become the principal residence of the Homebuyer at the time of Purchase and is subject to the affordability requirements during the Affordability Period and as further set forth in § 1807.402(a)(1)(vi). The Affordability Period does not apply to additional units rented as Permanent Housing, as described in § 1807.402(a)(1)(iv).

(vi) *Resale.* To ensure that the CMF Awards are being used for qualifying Families during the Affordability Period, recoupment, replacement, and/or resale strategies must be established and imposed by the Recipient. A recoupment, replacement, and/or resale strategy must ensure that:

(A) In the event the qualifying Family sells the Housing in five years or less from the date of Purchase, the Housing must be sold to an Eligible-Income Family meeting the qualifications set forth in § 1807.402. Otherwise, the CMF Award investment must be recouped by the Recipient and the Housing replaced with a replacement unit to satisfy the affordability requirement for the remainder of the Affordability Period. If

the Housing is replaced, the replacement unit must be sold to an Eligible-Income Family and must also meet the qualifications set forth in § 1807.402.

(B) In the event the qualifying Family sells the Housing any time after five years from the date of Purchase but before the end of the Affordability Period, the Housing must either be sold to a new Eligible-Income Family or, if the Housing is not sold to an Eligible-Income Family, the CMF investment must be recouped as Program Income in a proportional amount from net sale proceeds, as further set forth in the Assistance Agreement. If the Housing is not sold to an Eligible-Income Family after the five-year anniversary of the Purchase date and the Recipient recoups a proportional amount of the CMF Awards as Program Income, the Recipient is not required to replace the sold Housing with a replacement unit.

(2) The Recipient may design and implement its own recoupment, replacement, and/or resale strategy, subject to the requirements of § 1807.402(a)(1)(vi) to maintain compliance with the CMF requirements and the Assistance Agreement. Deed restrictions, covenants running with the land, or other similar instruments may be used as the mechanism to impose a strategy. The Recipient shall report to the CDFI Fund the event of resale and/or recoupment and redeployment of the CMF Award, or an equivalent amount, in the manner described in the Assistance Agreement or other guidance issued by the CDFI Fund.

(3) The affordability restrictions are allowed to terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure, or assignment of an FHA-insured mortgage to HUD. The termination of the affordability restrictions pursuant to any of the aforementioned terminating events will result in the Housing no longer being subject to a recoupment, replacement, and/or resale strategy as previously imposed by the Recipient. The Recipient may use purchase options, rights of first refusal or other preemptive rights to purchase the Housing before foreclosure to preserve

affordability. The affordability restrictions shall be revived according to the original terms if, during the original Affordability Period, the owner of record before the termination event obtains an ownership interest in the Housing.

(b) *Rehabilitation not involving purchase.* Single-family housing that is currently owned by a qualifying Family, as set forth in § 1807.400, qualifies as Affordable Housing if it meets the following requirements of this paragraph (b):

- (1) The estimated value of the Single-family housing, after Rehabilitation, does not exceed the purchase price limits for the area, as used in the HUD FHA Section 203(b) Mortgage Insurance Program, or any other index designated by the CDFI Fund. The underlying mortgage(s) should be affordable for the Homebuyer;
- (2) The Single-family housing is owned by a qualifying Family as set forth in § 1807.400 and is the only principal residence of the Family at the time of Project Commitment and remains the principal residence of the Family throughout the Affordability Period as described in paragraph (b)(3) of this section;
- (3) Single-family housing under this paragraph (b) must meet the affordability requirements during the Affordability Period upon Project Completion or meet the recoupment, replacement, and/or resale provisions of paragraph (a)(5) of this section; and
- (4) Single-family housing under this paragraph (b) currently owned by a qualifying Family may be rehabilitated to convert a portion of the Housing into one to three permanent additional units, each with a separate means of ingress/egress, kitchen, sleeping area, bathing area, and bathroom facilities, independent of the primary dwelling. The additional units may be rented as Permanent Housing as long as the primary dwelling remains the principal residence of the Family. While the Affordability Period applies to the primary dwelling, it does not apply to the additional units discussed in this section.

- (c) *Ownership interest.* The owner must meet the definition of Homebuyer and the ownership in the Single-family housing assisted under this section must meet the definition of Homeownership as defined in § 1807.104.
- (d) *New construction without Purchase.* Newly constructed Single-family housing that is built on property currently owned by a Family that will occupy the Single-family housing upon Project Completion, qualifies as Affordable Housing if it meets the requirements under paragraph (a) of this section.
- (e) *Converting rental units to Homeownership units for existing tenants.* Rental CMF Units may be converted to Homeownership units by selling, donating, or otherwise conveying the units to the existing tenants only under an existing documented rent-to-own program to enable the tenants to become Homebuyers in accordance with the requirements of this section. The Homeownership units are subject to a minimum period of affordability equal to the remaining rental Affordability Period, as further specified in the Assistance Agreement.

#### **§ 1807.403 Economic Development Activities.**

A CMF Award used for Economic Development Activities must stabilize, sustain, or revitalize communities and neighborhoods to meet the requirements set forth herein. For each individual CMF Award round, the Recipient may use no more than 30 percent of its CMF Award for Economic Development Activities, if such use is approved in its applicable Assistance Agreement.

- (a) *Eligible uses.* A Recipient may use its Economic Development Activity Fund to finance and/or support Economic Development Activities through any Eligible Use pursuant to § 1807.301 except for Affordable Housing Fund.
- (b) *Minimum use Term.* Community Service Facilities or physical structures resulting from Economic Development Activities must be used for allowable Economic

Development Activities for a minimum of three years commencing with Project Completion.

- (c) *Concerted strategy.* Economic Development Activities must complement and be undertaken as part of a Concerted Strategy that includes, but is not limited to, education, employment, transportation, financial services, commercial goods and services and other opportunities in a Low-Income Area or Underserved Rural Area.
- (d) *In Conjunction with Affordable Housing Activities.* Economic Development Activities must be:
  - (1) Located in a Low-Income Area or Underserved Rural Area;
  - (2) Undertaken in conjunction with any affordable housing that is subject to or authorized by local, State or Federal laws; and
  - (3) Reasonably available, physically proximate, and benefit residents of such affordable housing. For a Metropolitan Area, the Economic Development Activities must be located within the same census tract or within one mile of such affordable housing. For a Non-Metropolitan Area, Economic Development Activities must be located within the same county, township, or village, or within 10 miles of such affordable housing.

## **Subpart E – Leveraged Capital; Eligible Project Costs; Commitments; Project Completion**

### **§ 1807.500 Leveraged Capital; Eligible Project Costs.**

- (a) *Eligible project costs.* Excluding both the total amount of Direct Administrative Expenses and Feasibility Determination Expenses, each CMF Award must result in Eligible Project Costs that equals at least 10 times the amount of the CMF Award, or some higher standard established by the CDFI Fund in the Recipient's Assistance Agreement. Such Eligible Project Costs must be for Affordable Housing Activities and Economic Development Activities, as set forth in the Assistance Agreement.

- (b) *Leveraged capital.* (1) The applicable NOFA and/or the Assistance Agreement may set forth a required multiplier of Leveraged Capital that must be funded by private, non-governmental sources.
- (2) The Recipient must report to the CDFI Fund the amount of Leveraged Capital, with the following limitations:
- (i) No costs attributable to prohibited uses, as set forth in § 1807.302(a) and (b), may be reported as Leveraged Capital;
  - (ii) All uses of Leveraged Capital to finance and/or support Affordable Housing Activities shall comply with §§ 1807.400, 1807.401 and 1807.402, and as further described in the Assistance Agreement;
  - (iii) All uses of Leveraged Capital to finance and/or support Economic Development Activities shall comply with § 1807.403, and as further described in the Assistance Agreement.

**§ 1807.501 Commitments.**

- (a) The CMF Award must be Committed for Use by the Recipient to one or more Eligible Uses as provided in § 1807.301 within two years from the Effective Date of the CMF Award, as such date designated in the Recipient's Assistance Agreement.
- (b) The Recipient must achieve Project Commitment of the entire CMF Award within three years from the Effective Date of the CMF Award as designated in the Recipient's Assistance Agreement.
- (c) The Recipient must evidence a Project Commitment with a written, legally binding agreement to invest in a Project by providing the CMF Award proceeds to the qualifying Family, developer or project sponsor in which:
  - (1) Construction on real estate can reasonably be expected to start within 12 months of the Project Commitment agreement date; or

- (2) Property title on real estate will be transferred within six months of the Project Commitment agreement date; or
- (3) Construction schedule on real estate ensures Project Completion within five years of a date specified in the Assistance Agreement; or
- (4) The Recipient has entered into a Secondary Market Mortgage Purchase agreement with a third-party lender to purchase the qualified mortgages and the subject mortgages would not otherwise have been originated by the third-party lender absent that agreement; or
- (5) A commitment for a qualified Homeownership Program has been made by the action of the Recipient's Board of Directors; or
- (6) The Recipient has entered into a Loan Guarantee agreement or has established a cash reserve, escrow, or accounting-based accrual reserve with a lender or investor for a Loan Loss Reserve.

**§ 1807.502 CMF Award limits.**

An eligible Applicant and its Subsidiaries and Affiliates may not be awarded more than 15 percent of the aggregate funds available for the CMF Awards during any year.

**§ 1807.503 Project Completion; Property standards.**

- (a) Upon Project Completion, the Project must be placed into service by the date designated in the Assistance Agreement. Project Completion for Affordable Housing Activities and Economic Development Activities occurs, as determined by the CDFI Fund, when:
  - (1) All necessary title transfer requirements and construction work have been performed;
  - (2) The property standards of paragraph (b) of this section have been met;
  - (3) The final drawdown of the CMF Award has been made to the project sponsor or developer;



- (4) For Preservation, the refinancing of the loan is closed and the underlying real estate is in compliance with all CMF requirements and, if applicable, Rehabilitation is completed and the requirements set forth in this paragraph (a) are achieved;
  - (5) For qualified Secondary Market Mortgage Purchase, the loan purchase transaction is complete, all CMF Secondary Market Mortgage requirements are met, and the CMF Award is disbursed to the lender (*i.e.*, seller of the loan);
  - (6) For Loan Loss Reserves, the Loan Loss Reserve is established and the CMF Award is disbursed to an escrow, cash reserve, or obligated to an accounting-based accrual reserve to secure loans for Affordable Housing or Economic Development Activities that meet the requirements of subpart D of this part;
  - (7) For Loan Loss Guarantees, the Loan Guarantee is executed guaranteeing loans for Affordable Housing or Economic Development Activities that meet the requirements of subpart D of this part.
- (b) By the Project Completion date, the Project must meet the requirements of this part, including the following property standards:
- (1) *Code requirements.* Projects that are constructed or Rehabilitated with a CMF Award must meet all applicable State and local codes, Rehabilitation standards, ordinances, and zoning requirements at the time of Project Completion or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable) of the International Code Council.
  - (2) *Other requirements.* In addition, Projects must meet the following requirements:
    - (i) *Accessibility.* The Project must meet all applicable accessibility requirements set forth at 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131 through

12189) implemented at 28 CFR parts 35 and 36, as applicable. Multi-family housing must meet all applicable design and construction requirements set forth in 24 CFR 100.205 which implement Title VIII of the Civil Rights Act of 1968 (Fair Housing Act)(42 U.S.C. 3601-3619). Those design and construction requirements are the same rules that apply to “covered multifamily dwellings,” as defined in 24 CFR 100.201.

(ii) *Disaster mitigation.* The Project must meet all applicable State and local codes, ordinances, or other disaster mitigation requirements (e.g., earthquake, hurricanes, flooding, wild fires), or other requirements as the Department of Housing and Urban Development has established in 24 CFR part 93.

(iii) *Lead-based paint.* The Project must meet all applicable lead-based paint requirements, including those set forth in 24 CFR part 35.

(3) *Rehabilitation standards.* In addition, all Rehabilitation Projects must meet the following requirements:

(i) For rental Housing, if the remaining useful life of one or more major systems is less than the Affordability Period, the Recipient must ensure that, at Project Completion, the developer or Project sponsor establishes a replacement reserve and that monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. Major systems include: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; heating, ventilation, and air conditioning.

(ii) For Homeownership Single-family housing, the Recipient must ensure that, at Project Completion, the Housing is decent, safe, sanitary, and

in good repair. The Recipient must ensure that timely corrective and remedial actions are taken to address identified life-threatening deficiencies.

- (4) *Manufactured housing.* All manufactured housing must meet the Manufactured Home Construction and Safety Standards set forth in 24 CFR part 3280. These standards preempt State and local laws or codes, which are not identical to the Federal standards for the new construction of manufactured housing. The installation of all manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using a CMF Award must meet the requirements set out in paragraph (b)(1) of this section.

#### **Subpart F -- Tracking Funds; Uniform Administrative Requirements; Nature of Funds**

##### **§ 1807.600 Tracking funds.**

The Recipient shall develop and maintain an internal tracking and reporting system that ensures that the CMF Award is used in accordance with this part and the Assistance Agreement.

##### **§ 1807.601 Uniform Administrative Requirements.**

The Uniform Administrative Requirements apply to all CMF Awards.

##### **§ 1807.602 Nature of funds.**

CMF Awards are Federal financial assistance with regard to the application of Federal civil rights laws.

#### **Subpart G -- Notice of Funds Availability; Applications**

##### **§ 1807.700 Notice of funds availability.**

Each Applicant must submit a CMF Award Application in accordance with the applicable Notice of Funds Availability (NOFA) published in the Federal Register. The NOFA will advise

prospective Applicants on how to obtain and complete an Application and will establish deadlines and other requirements. The NOFA will specify Application evaluation factors and any limitations, special rules, procedures, and restrictions for a particular Application round. After receipt of an Application, the CDFI Fund may request clarifying or technical information on the materials submitted as part of the Application.

1807.701 through 1807.799 [Reserved]

## **Subpart H -- Evaluation and Selection of Applications**

### **§ 1807.800 Evaluation and selection—general.**

Each Applicant will be evaluated and selected, at the sole discretion of the CDFI Fund, to receive a CMF Award based on a review process that will include a paper or electronic Application, and may include an interview(s) and/or site visit(s), and that is intended to:

- (a) Ensure that Applicants are evaluated in a fair and consistent manner based on the criteria outlined in the NOFA;
- (b) Ensure that each Recipient can successfully meet its performance goals and achieve Affordable Housing Activity and Economic Development Activity impacts;
- (c) Ensure that Recipients represent a geographically diverse group of Applicants serving Metropolitan Areas and Rural Areas across the United States to address economic distress. Criteria of economic distress may include:
  - (1) The percentage of Low-Income Families or the extent of poverty;
  - (2) The rate of unemployment or underemployment;
  - (3) The extent of disinvestment;
  - (4) Economic Development Activities that target Extremely Low-Income, Very Low-Income, and Low-Income Families within the Recipient's Service Area; and
  - (5) Any other criteria the CDFI Fund shall set forth in the applicable NOFA; and
- (d) Take into consideration other factors as set forth in the applicable NOFA.

### **§ 1807.801 Evaluation of Applications.**

- (a) *Eligibility and completeness.* An Applicant will not be eligible to receive a CMF Award if it fails to meet the eligibility requirements described in § 1807.200 and in the applicable NOFA, or if the Applicant has not submitted complete Application materials. For the purposes of this paragraph (a), the CDFI Fund reserves the right to request additional information from the Applicant, if the CDFI Fund deems it appropriate.
- (b) *Substantive review.* In evaluating and selecting Applications to receive assistance, the CDFI Fund will evaluate the Applicant's likelihood of success in meeting the factors set forth in the applicable NOFA.
- (c) *Other factors.* The CDFI Fund may consider any other factors that it deems appropriate in reviewing an Application, as set forth in the applicable NOFA, the Application and related guidance materials.
- (d) *Consultation with appropriate regulatory agencies.* In the case of an Applicant that is a Federally regulated financial institution, the CDFI Fund may consult with the Appropriate Federal Banking Agency or Appropriate State Agency prior to making a final award decision and prior to entering into an Assistance Agreement.
- (e) *Recipient selection.* The CDFI Fund will select Recipients based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part.

## **Subpart I -- Terms and Conditions of a CMF Award**

### **§ 1807.900 Assistance agreement.**

- (a) Each Applicant that is selected to receive a CMF Award must enter into an Assistance Agreement with the CDFI Fund. The Assistance Agreement will set forth certain required terms and conditions for the CMF Award that may include, but are not limited to, the following:
  - (1) The amount of the CMF Award;
  - (2) The approved Eligible Uses of the CMF Award;
  - (3) The approved Service Area;

- (4) The time period by which the CMF Award proceeds must be Committed for Use;
  - (5) The required documentation to evidence Project Completion; and
  - (6) Performance goals that have been established by the CDFI Fund pursuant to this part, the NOFA, and the Recipient's Application.
- (b) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act or these regulations, or noncompliance with the terms and conditions of the Assistance Agreement, on the part of the Recipient, the CDFI Fund, in its discretion, may make a determination to:
- (1) Require changes in the performance goals set forth in the Assistance Agreement;
  - (2) Revoke approval of the Recipient's Application;
  - (3) Reduce or terminate the CMF Award;
  - (4) Require repayment of any CMF Award that have been paid to the Recipient;
  - (5) Bar the Recipient from applying for any assistance from the CDFI Fund; or
  - (6) Take such other actions as the CDFI Fund deems appropriate or as set forth in the Assistance Agreement.
- (c) Prior to making a determination that the Recipient has failed to comply substantially with the Act or these regulations or an Assistance Agreement, the CDFI Fund shall provide the Recipient with reasonable notice and opportunity to cure any instances of noncompliance.

**§ 1807.901 Payment of funds.**

CMF Awards provided pursuant to this part may be provided in a lump sum payment or in some other manner, as determined appropriate by the CDFI Fund. The CDFI Fund shall not provide any Payment under this part until a Recipient has satisfied all conditions set forth in the applicable NOFA and Assistance Agreement.

**§ 1807.902 Data collection and reporting.**

- (a) *Data; general.* The Recipient must maintain such records as may be prescribed by the CDFI Fund that are necessary to:

- (1) Disclose the manner in which the CMF Award is used, including providing documentation to demonstrate Project Completion;
  - (2) Demonstrate compliance with the requirements of this part and the Assistance Agreement; and
  - (3) Evaluate the impact of the CMF Award.
- (b) *Beneficiary demographics data.* The Recipient may be required to compile such data on the gender, race, ethnicity, national origin, or other information on individuals that are benefiting from the CMF Award, as the CDFI Fund shall prescribe in the Assistance Agreement. Such data will be used to determine whether residents of the Recipient's Service Area are adequately served and to evaluate the impact of the CMF Award.
- (c) *Access to records.* The Recipient must submit financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the CDFI Fund or the U.S. Department of the Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CMF Award. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Recipient's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate and audit or provide for an audit at least annually. The CDFI Fund, if it deems appropriate, may prescribe access to record requirements for entities that receive a CMF Award from the Recipient.
- (d) *Retention of records.* The Recipient shall comply with all applicable record retention requirements set forth in the Uniform Administrative Requirements (as applicable), the Assistance Agreement and the applicable NOFA.
- (e) *Data collection and reporting—*(1) *Financial reporting.* (i) All nonprofit organization Recipients that are required to have their financial statements

audited pursuant to the Uniform Administrative Requirements, must submit their single-audits by a time set forth in the applicable NOFA or Assistance Agreement. Nonprofit organization Recipients (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to the Uniform Administrative Requirements, must submit to the CDFI Fund a statement signed by the Recipient's authorized representative or certified public accountant, asserting that the Recipient is not required to have a single-audit pursuant to the Uniform Administrative Requirements as indicated in the Assistance Agreement. In such instances, the CDFI Fund may require additional audits to be performed and/or submitted to the CDFI Fund as stated in the applicable Notice of Funds Availability and Assistance Agreement.

(ii) For-profit Recipients (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the CDFI Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants by a time set forth in the applicable NOFA or Assistance Agreement.

(iii) Regulated financial institutions (Insured Depository Institutions, Depository Institution Holding Companies, and Insured Credit Unions), including regulated nonprofit organizations, must submit to the CDFI Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants by a time set forth in the applicable NOFA or Assistance Agreement.

(2) *Annual report.* (i) The Recipient shall submit a performance and financial report that shall be specified in the Assistance Agreement (annual report). The



annual report consists of several components which may include, but are not limited to, a report on performance goals and measures, explanation of any Recipient noncompliance, and such other information as may be required by the CDFI Fund. The annual report components shall be specified and described in the Assistance Agreement.

- (ii) The CDFI Fund will use the annual report to collect data to assess the Recipient's compliance with its performance goals and the impact of the CMF and the CDFI industry.
- (iii) The Recipient is responsible for the timely and complete submission of the annual report, even if all or a portion of the documents actually are completed by another entity. If such other entities are required to provide information for the annual report, or such other documentation that the CDFI Fund might require, the Recipient is responsible for ensuring that the information is submitted timely and complete. The CDFI Fund reserves the right to contact such other entities and require that additional information and documentation be provided.
- (iv) The CDFI Fund's review of the compliance of an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union with the terms and conditions of its Assistance Agreement may also include information from the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

**§ 1807.903 Compliance with government requirements.**

In carrying out its responsibilities pursuant to an Assistance Agreement, the Recipient shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, Uniform Administrative Requirements, and Executive Orders. Furthermore, Recipients must comply with

the CDFI Fund's environmental quality regulations (12 CFR part 1815), as well as all other Federal environmental requirements applicable to Federal awards.

**§ 1807.904 Lobbying restrictions.**

No CMF Award may be expended by a Recipient to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

**§ 1807.905 Criminal provisions.**

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Recipients and insiders.

**§ 1807.906 CDFI Fund deemed not to control.**

The CDFI Fund shall not be deemed to control a Recipient by reason of any CMF Award provided under the Act for the purpose of any applicable law.

**§ 1807.907 Limitation on liability.**

The liability of the CDFI Fund and the United States Government arising out of any CMF Award shall be limited to the amount of the CMF Award. The CDFI Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

**§ 1807.908 Fraud, waste and abuse.**

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of a CMF Award should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Pravina Raghavan,

*Director, Community Development Financial Institutions Fund.*

