

May 4, 2016

Marcia Sigal, CMF Program Manager
Community Development Financial Institutions Fund
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Re: Comments on Capital Magnet Fund, interim rule, 81 Fed. Reg. 6434 (February 8, 2016)

Dear Ms. Sigal,

We are writing on behalf of the undersigned civil rights and fair housing organizations to express our concern that the interim Capital Magnet Fund rule omits any reference to the fair housing obligations of the Capital Magnet Fund program, the Community Development Financial Institutions Fund, or the CDFIs and non-profits eligible to administer the Capital Magnet Fund. Specifically, as a federal agency administering activities relating to housing, the Community Development Financial Institutions Fund is directly bound by the duty to affirmatively further fair housing, as set out in the 1968 Fair Housing Act:

All executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary [of HUD] to further such purposes.

42 U.S.C. §3608(d). This legal requirement was reinforced by Executive Order 12892 (January 17, 1994).

Judicial decisions have defined the “affirmatively furthering fair housing” duty as follows: (1) federal agencies may not engage in discrimination, including practices that establish, perpetuate or exacerbate segregation; (2) federal agencies must not permit and may not acquiesce in the discrimination of the non-federal actors they supervise; (3) federal agencies must assess the civil rights impact of their supervisory and financial decisions; and (4) federal agencies and those they supervise must take affirmative steps to dismantle conditions of discrimination and create truly open housing markets. See “Affirmatively Furthering Fair Housing” (AFFH final rule), 80 Fed. Reg. 42272 (July 16, 2015) and cases cited therein.

HUD has attempted to implement its legal obligations under the rule, beginning in the early 1970s, with regulations on site selection, tenant selection, and affirmative marketing in HUD-assisted developments, as well as regulations and guidance governing the activities of HUD grantees (the recent AFFH final rule is the latest example of these regulations). Like HUD, the Treasury Department is obligated to comply with the Fair Housing Act’s “affirmatively furthering” provisions both in its own housing program rules, and in the requirements and guidance it gives to its grantees. But the Capital Magnet Fund Interim Rule is devoid of any reference to this requirement, or to any of the basic regulatory standards that would effectively implement the requirement.

Specific comments and recommendations:

1. Incorporate basic fair housing site selection, tenant selection, and affirmative marketing guidelines for CDFIs and other recipients of Capital Magnet Funds;¹
2. Specifically require grantees to certify their compliance with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, and the “affirmatively furthering fair housing” mandate of Title VIII;
3. Modify the geographic diversity language in §1807.800(c) to ensure that low income housing developed under the program is not solely focused on high poverty, segregated areas, in violation of the Fair Housing Act, but also provides a choice of housing for low income families in low poverty, higher opportunity communities;
4. Modify the language in §1807.902 (a) and (b) to ensure that data includes information on the number of families with Housing Choice Vouchers (or similar rental assistance sources of income) in each development, and that all data on project demographics is made publicly available.

Thank you for the opportunity to comment. We would also be happy to provide additional information on any of the points set out here.

Sincerely,

Philip Tegeler
Poverty & Race Research Action Council
Washington, DC

Joseph Rich
Thomas Silverstein
Lawyers Committee for Civil Rights Under Law
Washington, DC

Jorge Soto
National Fair Housing Alliance
Washington, DC

¹ Background, citations, and recommendations for regulatory standards for site selection, affirmative marketing, and tenant selection are set out in two reports from the PRRAC and other organizations, which are incorporated into this letter by reference: *Opportunity and Location in Federally Subsidized Housing Programs: A New Look at HUD's Site & Neighborhood Standard as Applied to the Low Income Housing Tax Credit* (PRRAC, The Opportunity Agenda, and The Kirwan Institute, October 2011), www.prrac.org/pdf/OpportunityandLocationOctober2011.pdf; *Accessing Opportunity: Recommendations for Marketing and Tenant Selection in LIHTC and Other Housing Programs* (PRRAC, December 2012), <http://www.prrac.org/pdf/affirmativemarketing.pdf>.