LISC
Helping neighbors build communities

September 1, 2016

Branch Chief
Regulations and Paperwork Management Branch
U.S. Department of Agriculture, STOP 0742
1400 Independence Avenue SW
Washington DC 20250-0742

Re: Regulator Information Number. 0575-AD05 Community Facility Loans

To Whom It May Concern:

The Local Initiatives Support Corporation (LISC) is pleased to provide comments on the interim rule amending the Community Facility (CF) Direct Loan program to allow the USDA Rural Development (USDA or the Agency) to make direct loans to eligible re-lenders. LISC is grateful for the Agency's thoughtful development of a re-lending structure to deploy much needed capital to areas of persistent poverty served by LISC and its partners.

LISC is a national non-profit housing and community development organization and community development financial institution (CDFI) that is dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice and opportunity. LISC mobilizes corporate, government, and philanthropic support to provide local community development organizations with loans, grants and equity investments; as well as technical and management assistance. LISC has local offices in 31 cities across the country as well as an expansive Rural LISC network of 76 community based organizations serving more than 1,900 counties. Rural LISC with its vast network is able to assist remote and underserved communities across the country and work with local stakeholders to access capital to address housing, education, health, safety and other needs in severely distressed communities.

The Agency has requested comments on whether the CF re-lending program is the best way to reach persistent poverty areas. LISC through its network of nonprofit partners and in coalition with other regional and national organizations has long worked to provide resources to persistent poverty areas. We believe that using our relationships and technical expertise and assistance, CDFIs and other eligible lenders will be better able to deploy CF funding for a number of its flexible uses. While the re-lending structure together with the grant funding provided by Uplift America will make CF funding more accessible and affordable for some projects, the program's current pricing and the lack of capacity within persistent poverty areas will limit the effectiveness of the CF re-lending program as currently structured. Lending for rural investment is particularly challenging as costs remain high but sources and revenue for projects is often limited. For this reason, maintaining the lowest possible costs for lending products is crucial to serving these communities. Further, many rural communities have suffered long term disinvestment that has resulted in a loss of the capacity needed not only to carry-out the CF transaction, but to manage the asset over its lifespan. With this in mind, we offer the following comments on the interim rule.

1. **Loan terms**
   a. *Interest Rate*

While eligible lenders may be able to use their networks to better reach communities of persistent poverty, there are still significant challenges to underwriting transactions in under-resourced communities. To provide viable financing, debt must be available at low interest rates and flexible terms. The interest rate on CF re-lending funds is the same rate available to borrowers under the CF Direct Loan program. While the current rate of 2.75% is historically low, when a re-lending structure is incorporated, the re-lender incurs costs that must be covered, including a USDA- required third party guarantor. This can increase rates to five percent (5%) or more, which while still low is more than many rural projects can carry. USDA has assumed that leveraging of private and philanthropic resources will defray increases in expenses; however philanthropic resources are limited and insufficient to defray overhead costs and materially reduce the interest rate on significant long term loans. We understand that USDA is constrained by statutory definitions of the applicable interest rates, but we urge USDA to evaluate whether there are regulatory changes, such as use of a different index that still meets the broad statutory parameters for establishing market rates, or alternative loan terms or structures for re-lending advances that may allow the ultimate borrowers to benefit from lower rates necessary for their community development projects. We note that both the administrative expense and the risk to USDA is substantially reduced as the re-lender completes the underwriting and monitoring and assumes full-recourse liability for the loans, which is further backed by a third-party guaranty. The considerable risk mitigation and cost reduction should provide USDA some justification in exercising any available flexibilities.

   b. *Recycling loan funds*

RD could maximize the impact of CF funding by allowing re-lenders to recycle funds during the 40-year term. By permitting re-lenders to redeploy principal repayments on CF loans, RD would provide greater flexibility of product types more responsive to project needs, while ensuring that all loans carry program underwriting and pledged collateral requirements. This recycling of funding would allow re-lenders to make a greater number of investments in persistent poverty areas and serve more projects. This type of flexibility has precedent in the Rural Development

Intermediary Relending Program (IRP). In IRP, re-Lenders are provided a loan for a 30-year term and are free to use the loan proceeds for loans of varying lengths and terms. Repayment to RD is based on an amortization schedule for the entire IRP note and not tied to the underlying loans.

c. *Disaster Relief*

In the event of a federally declared disaster, USDA may have the authority to offer special servicing terms or other relief to borrowers under the CF program. We encourage USDA to extend any relief available to CF borrowers in disaster areas to re-lenders that service those areas. Further, we urge USDA to evaluate what relief has historically been provided and consider what authority or structures may be put in place in advance that so that in the event of a disaster, re-lenders may help respond to needs as swiftly as possible.

2. Relender Eligibility (7 CFR 1942.30)

a. *Financial Strength and Performance Rating (7 CFR 1942.30(a)(7))*

The interim rule identifies three alternative criteria for demonstrating a re-lender's financial strength: i) regulation and supervision by banking regulatory agency, ii) achievement of designated Financial Strength and Performance Rating, defined in the NOSA as an AERIS rating, or iii) submission of twenty-nine (29) pieces of supporting documentation. CDFIs are not regulated by a federal or state agency as required under the first option and the vast majority of CDFIs are not AERIS rated. Many non- AERIS-rated CDFIs are financially strong, including some that have investment grade ratings from rating agencies such as Standard & Poor's (S&P), which has begun rating CDFIs in the last several years. To reduce the administrative burden on both USDA and applicant re-lenders, CDFI applicants with an investment grade rating from S&P or one of the other major rating agencies, in addition to a balance sheet that meets defined threshold criteria, should be deemed to have demonstrated a strong Financial Strength and Performance rating under 7 CFR 1942.30(a)(7)(ii).

b. *Letter of Credit* (7 CFR 1942.30(a)(6))

USDA has required that eligible re-lenders post a letter of credit equal to the principal and interest installments due during the first five years of the loan before receiving loan disbursements. Letters of credit are costly and unnecessary from financially stable lenders given the multiple layers of recourse that USDA has for the CF loans. Loans from the re-lender to the project sponsor will be secured by the facility. The re-lender in turn has full recourse liability to USDA for the loans. Rather than imposing a costly requirement for a letter of credit on well-capitalized CDFIs, and thereby increasing the cost of the loan to the end borrower, USDA should provide minimum threshold criteria under which a CDFI would be exempt from this requirement. Specifically, we recommend that USDA exempt from the LOC requirement any CDFI that can demonstrate a history of no defaults on loans payable and/or evidence that it carried at least five years of debt service on an amount payable of equal or greater value than the pending USDA application amount. Additional or alternative criteria for exemptions could include liquidity measures and minimum asset thresholds.

3. **Loan Servicing (7 CFR 1942.30(f)(2)(iv))**

   The interim rule provides that the Agency may "suspend further disbursements, and pursue any other available and appropriate remedies, if any of the re-lender loans become troubled, delinquent, or otherwise in default, or if the re-lender is not meeting the terms of its Re-lender's Agreement." While we are cognizant of USDA's need to protect its interests, the broad language in the regulation could have unintended consequences for the re-lending program and the rural communities it serves. As written, the interim rule would permit USDA to suspend disbursements on any or all of a re-lender's loans if a single loan is troubled, delinquent or in default. This is an unusually low threshold for suspension of disbursements and one that is unnecessary in terms of protecting USDA and the Federal loan resources. CDFIs routinely deal with troubled and delinquent loans and work with borrowers to get them back on track with their payments. In the far more serious case of a default, there is typically a notice and right to cure the event of a default.

   We strongly urge USDA to amend the regulation to provide that the suspension of disbursements will occur only after notice of default and an opportunity to cure. This should include the opportunity for the re-lender to find a substitute project loan which could replace the troubled loan as USDA collateral. Suspension of disbursements should be triggered by the re-lender's failure to provide such substitute collateral, with any previously committed but not fully drawn funds for other project loans exempted from the suspension. We further encourage USDA to issue guidance or criteria for when a default should trigger suspension of disbursements on other loans, as absent concerns about the financial strength of the re-lender, defaults or delinquencies are typically isolated issues specific to a borrower or project that should not impact other critically needed community investments.

We applaud the Agency's effort to increase the number of projects funded through the CF Direct Loan program and reach persistent poverty areas by establishing a re-lending structure. We look forward to working with the Agency to make the re-lending program a success

We thank you for this opportunity to provide comments. If you have any questions please contact Suzanne Anarde, Rural LISC Program Vice President, at sanarde@lisc.org or Andrea Ponsor, Policy Director, at aponsor@lisc.org.

Sincerely,

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