

Region 1 Revolving Loan Fund (RLF)

2015 Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization Grants awarded under CERCLA § 104(k) and those that chose to transition to § 104(k).

They do not apply to pre-FY 2003 grants subject to § 104(d).

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. In implementing this agreement, the cooperative agreement recipient shall comply with and require that work done by borrowers and subrecipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.
2. The CAR is required to have borrowers or subrecipients conduct cleanups under the appropriate State or Tribal response program to ensure the proposed cleanup is protective of human health and environment.

II. SITE/BORROWER/SUBRECIPIENTS ELIGIBILITY

A. Brownfields Site Eligibility

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, whether the CAR is the potentially responsible party under CERCLA 107 and/or has defenses to liability.
2. If the site is excluded from the general definition of a brownfield site, but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination. In their request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

3. For any petroleum-contaminated brownfields site, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (refer to EPA's *Proposal Guidelines for Brownfields Revolving Loan Fund Grants* dated November 2013 for discussion of this element) documenting that:
 - a. a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
 - b. the State determines there is "no viable responsible party" for the site;
 - c. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
 - d. the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate state petroleum program official.

4. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
5. If the State chooses not to make the determinations described in 3.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
6. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in "3" above.

B. Borrower and Subrecipient Eligibility

1. The CAR may only provide cleanup subawards to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time of subawards. Eligible subrecipients include eligible entities as defined under CERCLA § 104(k)(1) and nonprofit organizations as defined in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subawards.

2. The subrecipient must retain ownership of the site throughout the period of performance of the subaward. For the purposes of this agreement, the term “owns” means fee simple title unless EPA approves a different arrangement. **However, the CAR may not provide a subaward to itself or another component of its own unit of government or organization.**
3. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. Eligible entities include those identified in CERCLA § 104(k)(1) and nonprofit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. **Private, for-profit entities are not eligible for discounted loans.**
4. The CAR shall not loan or subaward funds that will be used to pay for cleanup activities at a site for which a loan or grant recipient is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the subrecipient’s or borrower’s counsel. However, the CAR must advise the borrower or subrecipient that the investigation and/or opinion of the subrecipient’s or borrower’s counsel is not binding on the Federal Government.
5. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfields grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.
6. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subrecipients.
7. A borrower or subrecipient must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subaward. The CAR, in consultation with the EPA, must consider this history in its analysis of the borrower or subrecipient as a cleanup and business risk.
8. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subrecipient.

C. Obligations for Grant Recipients, Borrowers, or Subrecipients Asserting a Limitation on Liability from CERCLA § 107

1. Grant recipients, borrowers, or subrecipients who are eligible, or seek to become eligible, to receive a grant, loan, or subaward based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (BFPP), (2) contiguous property owner (CPO), or (3)

innocent landowner (ILO) (known as the “landowner liability protections”), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible grant recipient, borrower, or subrecipients. These include, but are not limited to the following:

- a. All grant recipients, borrowers, or subrecipients asserting a BFPP, CPO or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before the date of acquisition of the property.
- b. Grant recipients, borrowers, or subrecipients seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be potentially liable, or affiliated with any other person that is potentially liable for response costs at the facility through;
 - (a) any direct or indirect familial relationship; or
 - (b) any contractual, corporate, or financial relationships; or
 - (c) a reorganized business entity that was potentially liable or otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.
- c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:
 - i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
 - ii. taking reasonable steps to stop any continuing hazardous substance releases, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;
 - iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
 - iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and
 - v. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).].
- d. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of an RLF agreement is five years, unless otherwise extended by EPA at the CAR's request.
2. If after 2 years from the date of award, EPA determines that the recipient has not made sufficient progress in implementing its cooperative agreement the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. Sufficient progress is indicated by the grantee having made loan(s) and/or subaward(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, and the development of one or more potential loans/subawards.

B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
 - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; reviewing and approving of procedures for loan and subrecipient selection; review of project phases; and approving substantive terms included in professional services contracts.
 - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I. B.1. under *EPA and/or State Approvals of Brownfields Sites* above. The CAR may also request technical assistance from EPA to determine if sites qualify as brownfields sites and to determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition prohibits a grant or loan recipient from using grant funds to clean up a site if the recipient is potentially liable under §107 of CERCLA for that site.
 - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
 - d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subawards.
 - e. EPA may waive any of the provisions in term and condition III. B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:
 - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
 - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with EPA.
 - c. The CAR remains responsible for ensuring costs are allowable under 2 CFR Parts 200 and 1500.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR is responsible for establishing an RLF team that will implement the Program and for coordinating the team's activities as outlined below.
2. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.
3. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subaward program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager for services performed must be consistent with 2 CFR Parts 200 and 1500.
4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel should review all loan/subaward agreements prior to execution.
5. The CAR is responsible for ensuring that borrowers and subaward recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subaward recipients are consistent with the terms and conditions of this agreement.
6. **Competency of Organizations Generating Environmental Measurement Data:** In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to

carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA project officer for this award.

D. Quarterly Progress Reports

1. The CAR must submit progress report on a quarterly basis to the EPA Project Officer. Quarterly progress report must include:
 - a. Summary of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
 - b. An update on project schedules and milestones.
 - c. A list of the loans and/or subawards during the reporting quarter.
 - d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); cost share updates; and total remaining funds.
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.
3. In accordance with 2 CFR 200.328(d)(1) the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, cleanup started) and any final accomplishments (i.e., cleanup completed, contaminants removed, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much funding was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that

help explain where the funding was utilized. See Section VII for more details on final report and closeout.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. CERCLA § 104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

B. Eligible uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subrecipients

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.
 - a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subrecipients at brownfields sites.
 - b. At least 50% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 50% can be used for subawards to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subaward(s). (Note: cleanup subawards are limited to \$200,000 per site). (Note: The CAR may request a waiver to the 50% cap on subaward funds. Please consult with your Regional Project Officer for the waiver process.)
 - c. To determine whether a cleanup subaward is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(B)(c):
 - i. The extent the subaward will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
 - ii. The extent the subaward will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
 - iii. The extent the subaward will facilitate the use or reuse of existing infrastructure; and

- iv. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

- 2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subawards for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include direct costs for:
 - a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k);
 - b. Ensuring that a RLF cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);
 - c. Limited site characterization including confirming the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed;
 - d. Preparing an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.
 - e. Ensuring that public participation requirements are met. This includes preparing a community relations plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments;
 - f. Establishing an administrative record for each site;
 - g. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR 1500.11. The specific requirement for a QAPP is outlined in U.S. EPA Order 53601.1, April 1984, as amended on May 5, 2000;
 - h. Ensuring the adequacy of each RLF cleanup as it is implemented, including

overseeing the borrowers and/or subrecipients activities to ensure compliance with applicable Federal and State environmental requirements;

- i. Ensuring that the site is secure if a borrower or subrecipient is unable or unwilling to complete a brownfields cleanup;
 - j. Using a portion of a loan or subaward to purchase environmental insurance for the site. The loan or subaward may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section C.
 - k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subawards to the extent allowable in III. D. 2.; and carrying out outreach pertaining to the loan and subaward program to potential borrowers and subrecipients; and
 1. Subrecipient progress reporting to the CAR is an eligible programmatic cost.
3. **Local Governments Only.** No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for brownfield program development and implementation (including monitoring of health and institutional controls) as described in the EPA approved workplan. The CAR must maintain records on funds that will be used to carry out this task in its EPA approved workplan to ensure that no more than 10% of its funds are used for brownfield program development and implementation (including monitoring of health and institutional controls).
4. If the CAR makes a subaward to a local government that includes an amount (not to exceed 10% of the subaward) for brownfields program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subrecipient maintains records adequate to ensure compliance with the limits on the amount of subaward funds that may be expended for this purpose.

C. Ineligible uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subrecipients

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subrecipient for any of the following activities:
 - a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments.
 - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.
 - c. Construction, demolition, and development activities that are not integral to the

cleanup actions, and addressing public or private drinking water supplies that have deteriorated through ordinary use.

- d. Job training unrelated to performing a specific cleanup at a site covered by a loan or subaward.
 - e. To pay for a penalty or fine.
 - f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
 - g. To pay for a response cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107.
 - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
 - i. Unallowable costs (e.g., lobbying and fund raising) under 2 CFR Parts 200 and 1500.
2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs incurred by the CAR and subrecipients under 2 CFR 200 Subpart E.
- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirement for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR 200 and 1500. Direct costs for grant and subaward administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee or subrecipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.
 - b. Ineligible grant or subaward administration costs include direct costs for:
 - i. Preparation of applications for Brownfields grants and subawards;
 - ii. Record retention required under 2 CFR Parts 200.333-337 and 1500.6;
 - iii. Record-keeping associated with equipment purchases required under 2 CFR 200.313;
 - iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR 200.308 and 2 CFR 1500.8;
 - v. Maintaining and operating financial management systems required under 2

CFR 200.302;

- vi. Preparing payment requests and handling payments under 2 CFR 200.305
 - vii. Non-federal audits required under 2 CFR 200 Subpart F; and
 - viii. Close out under 2 CFR 200.343.
 - ix. Borrowers are subject to the CERCLA § 104(k)(4)(B) administrative cost prohibition requirements. The CAR must ensure that loan agreements prohibit borrowers and subrecipients from using loans financed with cooperative agreement funds for administrative costs.
- c. Prohibited administrative costs for the borrower (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for loan administration and overhead costs.
- d. Direct costs for loan administration are ineligible even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:
- i. Preparation of applications for loans and loan agreements;
 - ii. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
 - iii. Maintaining and operating financial management and personnel systems;
 - iv. Preparing payment requests and handling payments; and
 - v. Audits.
- e. Overhead costs by the borrower that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in loans include expenses for:
- i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);
 - ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
 - iii. Supplies and equipment not used directly for cleanup at the site.

- iv. Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.
 - v. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.
4. Cooperative agreement funds may not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
 - b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
 - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except land held in trust by the United States government for an Indian tribe; or
 - d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

D. Use of Program Income

1. In accordance with 2 CFR 200.307 and 2 CFR 1500.7 the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
2. In accordance with Section 104(d)(3)(D), when a CAR transitions to a 104(k) cooperative agreement, any program income (e.g. fees, interest or principal repayments) generated prior to transition will be added to the 104(k) agreement and must be used in a manner consistent with Section 104(k)(3) and with the terms and conditions, contained herein.
3. The CAR may use program income from fees, interest payments from loans, and other forms of eligible program income to meet its cost-share. The CAR shall not use repayments of principal of loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfields cleanup revolving fund.

4. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with applicable OMB cost principles when charging costs against program income. For any cost determined by the EPA to have been an ineligible use of program income, the recipient shall reimburse the RLF or the EPA. EPA will notify the recipient of the time period allowed for reimbursement.
5. Loans or subawards made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subawards made with direct funding from EPA in combination with non Federal sources of funds are also subject to the same terms and conditions of this agreement.
6. The CAR must obtain EPA approval of the substantive terms of loans and subawards made entirely with program income.

E. Post Cooperative Agreement Program Income

1. After the end of the award period, the CAR shall use program income in a manner consistent with the terms and conditions of a “close out” agreement negotiated with EPA. In accordance with 2 CFR 200.333(e), the CAR shall maintain appropriate records to document compliance with the requirements of the close out agreement (i.e., records relating to the use of post-award program income). EPA may request access to these records or may negotiate post-close-out reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the close out agreement.
2. In accordance with 2 CFR 1500.7(c), to continue the mission of the Brownfields Revolving Loan fund, recipients may use grant funding prior to using program income funds generated by the revolving loan fund. Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their closeout agreement.

F. Interest-Bearing Accounts

1. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.
2. Interest earned on advances, CARs and subrecipients are subject to the provisions of 2 CFR 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.
3. Interest earned on program income is considered additional program income.

V. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.
2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental data are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 2 CFR 1500.11 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subaward cleanup activities require a site-specific community relations plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.
2. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved work plan, which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed. Specifically:
 - a. If any document, fact sheet, and/or web material are developed as part of this cooperative agreement, then they shall include the following statement: "Though this

project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of the EPA."

- b. If a sign is developed, as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at: <http://www.epa.gov/ogd/tc.htm>.

D. Administrative Record

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include the analysis of brownfield cleanup alternatives; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

E. Implementation of RLF Cleanup Activities

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subaward agreement shall contain terms and conditions, subject to any required approvals by the regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.
2. If the borrower or subrecipient is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subaward Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield

cleanup lending/subawarding objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subawarding practices that can include loan/subaward processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

2. The CAR shall not incur costs under this cooperative agreement for loans, subawards or other eligible costs until an RLF grant workplan has been submitted to and approved by U.S. EPA. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subawards and lending/subawarding practices. These activities shall include, but not be limited to the following:
 - a. Considering awarding subawards on a competitive basis. If the CAR decides not to award any subawards competitively, it must document the basis for that decision and inform EPA.
 - b. Establishing appropriate project selection criteria consistent with Federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.
 - c. Establishing threshold eligibility requirements whereby only eligible borrowers or subrecipients receive RLF financing.
 - d. Developing a formal protocol for potential borrowers or subrecipients to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subrecipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subrecipients for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.
 - e. Requiring that borrowers or subrecipients submit information describing the borrower's or subrecipient's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subaward recipient as a cleanup and business risk.
 - f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
 - g. Establishing standardized procedures for the disbursement of funds to the borrower or subrecipient.

B. Inclusion of Special Terms and Conditions in RLF Loan and Subaward Documents

1. The CAR shall ensure that the borrower or subrecipient meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subawards:
 - a. Borrowers or subrecipients shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable Federal and State laws and regulations. See Section I.A.2.
 - b. Borrowers or subrecipients shall ensure that the cleanup protects human health and the environment.
 - c. Borrowers or subrecipients shall document how funds are used. If a loan or subaward includes cleanup of a petroleum-contaminated brownfields site(s), the CAR shall include a term and condition requiring that the borrower or subrecipient maintain separate records for costs incurred at that site(s).
 - d. Borrowers or subrecipients shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subrecipients shall obtain written approval from the CAR prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subrecipient provide access to records relating to loans and subawards supported with RLF funds to authorized representatives of the Federal government.
 - e. Borrowers or subrecipients shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.
 - f. Borrowers or subrecipients shall certify that they are not potentially liable under § 107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subrecipient must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, borrowers or subrecipients shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.
 - g. Borrowers or subrecipients shall conduct cleanup activities as required by the CAR.
 - h. Subrecipients shall comply with applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subaward funds must comply with

Procurement Standards of 2 CFR 200.317 through 200.326, as applicable.

- i. A term and condition or other legally binding provision shall be included in all loans and subawards entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that borrowers and subrecipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA § 104(k), Federal applicable laws and requirements include: 2 CFR Parts 200 and 1500.
- j. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying with Davis-Bacon, please see the Davis-Bacon Addendum to these terms and conditions.
- k. Federal cross-cutting requirements include, but are not limited to, DBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for: (1) documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subawards that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subaward to a subaward recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:
 - a. The affected party,
 - b. Any member of his immediate family,

- c. His or her partner, or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subrecipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply: “payment” is the U.S. EPA’s transfer of funds to the CAR; the CAR incurs an “obligation” when it enters into a loan agreement with the borrower or subrecipient; “disbursement” is the transfer of funds from the CAR to the borrower or subrecipient. “Close out” refers to the process that the U.S. EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed, and, to establish a closeout agreement to govern the use of program income.

A. Payment Schedule

- 1. The CAR may request payment from EPA pursuant to 2 CFR 200.305 after it incurs an obligation or has an eligible programmatic expense. EPA will make payments to the CAR on a schedule which minimizes the time elapsing between transfer of funds from EPA and disbursement by the recipient to the borrower or subrecipient to pay costs incurred or to meet a “progress payment” schedule. The recipient may request payments when it receives a disbursement request from a borrower or subrecipient based on the borrower or subrecipient’s incurred costs under the “actual expense” method or the schedule for disbursement under the “schedule” disbursement method.

B. Methods of Disbursement

- 1. The CAR may choose to disburse funds to the borrower by means of ‘actual expense’ or ‘schedule.’ If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower’s incurred costs.
 - a. An ‘actual expense’ disbursement approach requires the borrower to submit documentation of the borrower’s expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.
 - b. A ‘schedule’ disbursement is one in which all, or an agreed upon portion, of the

obligated funds are disbursed to the borrower or subrecipients on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the borrower or subrecipient's payment of costs incurred in carrying out the loan/subaward. In unusual circumstances, disbursement may occur upon execution of the loan or subaward. The CAR shall submit documentation of disbursement schedules to EPA.

- c. If the disbursement schedule of the loan/subaward agreement calls for disbursement of the entire amount of the loan/subaward upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subaward. Further, the CAR shall include an appropriate provision in the loan/subaward agreement which ensures that the borrower/recipient uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.
- d. Subaward funds must be disbursed to the subrecipient in accordance with 2 CFR 200.305, as applicable.

C. Schedule for Closeout

1. There are two fundamental criteria for closeout:
 - a. Final payment of funds from EPA to the CAR following expiration of the terms of the agreement or expenditure of the funds awarded; and
 - b. Completion of all cleanup activities funded by the amount of the award.
2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the initial amount of the award are complete.
3. The CAR must negotiate a closeout agreement with EPA to govern the use of program income after closeout. Eligible uses include continuing to operate an RLF for brownfields cleanup and/or other brownfields activities.
4. The closeout agreement will require that any assessments or cleanups financed with program income be consistent with the CERCLA § 107 prohibitions and site eligibility limitations for the effective period of the closeout agreement.

D. Compliance with Closeout Schedule

1. If a CAR fails to comply with the closeout schedule, any cooperative agreement funds not obligated under loan agreement to a borrower or subrecipient may be subject to federal

recovery, and the cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement.

E. Final Requirements

1. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.

- a. The CAR must submit the following documentation:

1. The Final Report as described in III.F.

2. A Final Federal Financial Report (FFR - SF425). Submitted to:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119
<http://www.epa.gov/ocfo/finservices/payinfo.html>

3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.

- b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region

F. Recovery of RLF Assets

1. In case of termination for cause or convenience, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under Remedies for Noncompliance at 2 CFR 200.338 through 200.342 and CERCLA § 104(k) when the Agency determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the Agency's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

G. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms & conditions apply:
 - a. The CAR shall:

- i. document the relationship between the expenditure of CERCLA § 104(k) funds and cleanup activities;
 - ii. maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and
 - iii. ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA § 104(k) and applicable Federal and State laws and will protect human health and the environment.
- b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an “actual expense” or “schedule” basis to the borrower or subrecipient (See Section on Methods of Disbursement). The CAR’s escrow arrangement shall be structured to ensure that the CERCLA § 104(k) funds are properly “disbursed” by the recipient for the purposes of the assistance agreement as required by 2 CFR 200.305. If the funds are not properly disbursed, the CERCLA § 104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 2 CFR 200.305.
- c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:
 - i. the recipient cannot retain the funds;
 - ii. the recipient does not have access to the escrow funds on demand;
 - iii. the funds remain in escrow unless there is a default of a guaranteed loan;
 - iv. the organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and
 - v. there must be an agreement with financial institutions participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfields site in exchange for access to funds held in escrow in the event of a default by the borrower or subrecipient.

d. Federal Obligation to the Loan Guarantee Program

- i. Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR's responsibility. This limitation on the extent of the Federal Government's financial commitment to the CAR's loan guarantee program shall be communicated to all participating banks and borrower or subrecipient.

e. Repayment of Guaranteed Loans

- i. Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to the U.S. EPA. Alternatively, the CAR may, with EPA approval,
 - 1) Guarantee additional loans under the terms and conditions of the agreement or,
 - 2) amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfields related activities.