

# **FY19 Revolving Loan Fund (RLF) Cooperative Agreement Terms and Conditions**

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization cooperative agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k), agreements that transitioned to § 104(k), or agreements which have been amended after 12/24/14.

These T&Cs do not apply to pre-FY 2003 agreements subject to CERCLA § 104(d).

## **I. GENERAL FEDERAL REQUIREMENTS**

Note: For the purposes of complying with certain provisions of the Uniform Grant Guidance (UGG), 2 CFR Part 200, loans made by RLF recipients are subawards as that term is defined at 2 CFR § 200.92. The term subaward also encompasses “grants” made by the RLF recipient under CERCLA § 104(k)(3)(B)(ii). The UGG requirements for subawards in the form of loans and subawards in the form of grants are different. For clarity, these T&Cs refer to “loans” to describe subawards that generate program income from repayments of principal, interest charges and loan processing fees paid by “borrowers”. The T&Cs refer to “subgrants” to describe subawards the RLF recipient provides to an eligible entity or nonprofit organization (“subgrantees”) under terms that do not require repayment.

### **A. Federal Policy and Guidance**

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the proposal for the Cooperative Agreement Recipient (CAR).
2. In implementing this agreement, the CAR shall comply with and require that work done by borrowers and subgrantees with cooperative agreement funds comply with the requirements of CERCLA § 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.
3. The CAR must consider whether it is required to have borrowers or subgrantees conduct cleanups through a State or Tribal response program. If the CAR chooses not to require borrowers and subgrantees to participate in a State or Tribal response program, then the CAR is required to consult with the EPA Project Officer on each loan or subgrant to ensure the proposed cleanup is protective of human health and the environment.
4. A term and condition or other legally binding provision shall be included in all agreements entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Part 200.

5. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); 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.
6. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). For more detailed information on complying with Davis-Bacon please see the Davis-Bacon Addendum to these terms and conditions.

## **II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY REQUIREMENTS**

### **A. Brownfield Site Eligibility**

1. The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been approved pre-approved in the CAR's workplan by EPA. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA and whether the CAR is the potentially responsible party under CERCLA § 107 is exempt from CERCLA liability or has defenses to CERCLA 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 from the EPA Project Officer. In its 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 EPA has determined that the property is eligible.
3. Brownfield Sites Contaminated with Petroleum
  - a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:
    - i. the State determines there is "no viable responsible party" for the site;
    - ii. 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

- iii. 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. Please contact the EPA Project Officer for additional information.

- b. Documentation must include:
  - i. the identity of the State program official contacted;
  - ii. the State official's telephone number;
  - iii. the date of the contact; and
  - iv. a summary of the discussion relating to the State's determination 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.

- c. If the State chooses not to make the determinations described in Section II.A.3. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
- d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield 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 Section II.A.3.b. above.

## **B. Borrower and Subgrantee Eligibility**

- 1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites owned by the eligible entity or nonprofit organization at the time of the award of the subgrant. Eligible subgrantee include eligible entities as defined under CERCLA § 104(k)(1), which includes nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined at 2 CFR § 200.70. Nonprofit institutions of higher education as defined at 2 CFR § 200.55 are also eligible for cleanup subgrants. 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 subgrants.
- 2. The CAR may provide loans to an eligible entity, a site owner, a site developer, or another person without regard to whether the borrower is a for-profit organization. Borrowers do not have to own the property throughout the term of the loan unless ownership is required for the purpose of securing collateral or the CAR otherwise determines that borrower site ownership is necessary.

3. The subgrantee must retain ownership of the site throughout the period of performance of the subgrant and must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site. For the purposes of this agreement, the term “owns” means fee simple title unless EPA Project Officer approves a different ownership arrangement.
4. The CAR may not provide a subgrant to itself or another component of its own unit of government or organization.
5. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principal. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30%, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. Eligible entities and nonprofit organizations described in Section II.B.1. are eligible for discounted loans. **Private, for-profit entities are not eligible for discounted loans.**
6. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a borrower or subgrantee is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the borrower’s or subgrantee’s counsel. However, the CAR must advise the borrower or subgrantee that the investigation and/or opinion of its subgrantee counsel is not binding on the Federal Government.
7. For approved eligible petroleum-contaminated brownfield sites, the borrower or subgrantee cleaning up the site must not be potentially liable for cleaning up the site. For brownfield 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.
8. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrantees.
9. A borrower or subgrantee 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 subgrant. The CAR, in consultation with EPA, must consider this history in its analysis of the borrower or subgrantee as a cleanup and business risk.
10. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrantee.

### **C. Obligations for CARs, Borrowers, or Subgrantees**

1. CARs, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a loan or subaward must provide information indicating that cooperative agreement funds will not be used to pay for a response cost at a site for which the CAR, borrower, or subgrantee is potentially liable under CERCLA § 107. The CAR, borrower, or subgrantee must demonstrate that it meets the requirements for one of the Landowner Liability Protections as

either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO). These requirements include certain threshold criteria and continuing obligations that must be met in order for the CAR, borrower, or subgrantee to maintain its eligible status. If the CAR, borrower, or subgrantee fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA § 104(k)(8)(C). The Landowner Liability Protection requirements include:

- a. Performing “all appropriate inquiries” into the previous ownership and uses of the property before acquiring the property.
- b. Not being potentially liable or affiliated with any other person who is potentially liable for response costs at the site through: any direct or indirect familial relationship, any contractual, corporate, or financial relationships, or through the result of a reorganized business entity that was potentially liable.

While not necessary to obtain ILO protection, the CAR, borrower, or subgrantee must still establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and any resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship.

- c. Demonstrate that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (does not specifically apply for the CPO protection).
- d. Taking “reasonable steps” with respect to hazardous substance releases by stopping any continuing releases, preventing any threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to any previously released hazardous substance.
- e. Complying with any land use restrictions established or relied on in connection with the response action at the site and not impeding the effectiveness or integrity of institutional controls employed in connection with the response action.
- f. Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.
- g. Complying with information requests and administrative subpoenas (does not specifically apply for the ILO protection).
- h. Providing all legally required notices with respect to the discovery or release of any hazardous substances at the site (does not specifically apply for the ILO protection).

Notwithstanding the CAR's, borrower's, and subgrantee's continuing obligations under this agreement, the CAR, borrower, and subgrantee are subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

CARs, borrowers, and subgrantees that are exempt from CERCLA liability or do not have to meet the requirements for asserting an affirmative defense to CERCLA liability must also comply with continuing obligation items c.-h.

### **III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS**

#### **A. Sufficient Progress**

1. This condition supplements the requirements of the Sufficient Progress Condition in the General Terms and Conditions. If after 2 years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR § 200.339. for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.339, depending on the circumstances. Sufficient progress is indicated by the CAR having made a loan(s) and/or grant (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, the development of one or more potential loans/subgrants, or other documented activities that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

#### **B. Substantial Involvement**

1. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by EPA generally includes administrative activities by the EPA Project Officer such as monitoring, reviewing, and approving of procedures for borrower and subgrantee selection, reviewing of project phases, and approving substantive terms included in professional services contracts. EPA will not direct or recommend that the CAR enter into a loan, subgrant, or contract with a particular entity.
  - b. Substantial EPA involvement includes brownfield property-specific funding determinations. described in [Section II.A](#). The CAR may request technical assistance from EPA to determine if sites qualify as brownfield sites and to determine whether the statutory prohibition found in CERCLA § 104(k)(5)(B)(i)(IV) applies. This prohibition does not allow a CAR, borrower, or subgrantee to use cooperative agreement funds to clean up a site if the

CAR, borrower, or subgrantee is potentially liable under §107 of CERCLA.

- 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 subgrants.
- e. EPA may waive any of the provisions in [Section III.B.1.](#), with the exception of property-specific funding determinations, at its own initiative or upon request by the CAR. The EPA Project Officer will provide waivers in writing.

2. Effects of EPA's substantial involvement include:

- 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 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 the EPA Project Officer and the State.
- c. The CAR remains responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

**C. Cooperative Agreement Recipient Roles and Responsibilities**

- 1. The CAR is responsible for establishing an RLF team that will implement the program and assign a Program Manager for coordinating the team's activities as outlined below.
- 2. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10 to coordinate, direct, and oversee the brownfield site cleanup activities at a given site, if it does 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 subgrant 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 must be consistent with 2 CFR Parts 200 and 1500 and [EPA's Subaward Policy](#). Additional information is available in EPA's [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).
- 4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel must review all loan/subgrant agreements prior to execution unless the EPA Project Officer

waives this requirement.

5. The CAR is responsible for ensuring that borrowers and subgrantees comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrantees are consistent with the terms and conditions of this agreement.
6. When the CAR makes loans and subgrants under this agreement, they become a pass-through entity for the purposes of the subrecipient oversight and management requirements of [2 CFR §§ 200.330 through 200.332](#). Requirements for oversight and management of subgrantees are supplemented in EPA's National Term and Condition for Subawards which is included in the General Terms and Conditions of this Cooperative Agreement.
7. The following requirements apply when a pass-through entity makes loans. These requirements apply to loans and borrowers in lieu of those specified in EPA's National Term and Condition for Subawards.
  - a. Pass-through entities must establish and follow a system that ensures all loan agreements are in writing and contain all of the elements required by [2 CFR § 200.331\(a\)](#) with the exception of the indirect cost provision of 2 CFR § 200.331(a)(4). EPA has developed a template for subaward agreements that is available in [Appendix D of EPA's Subaward Policy](#) which may also be used for loan agreements.
  - b. Borrowers must comply with the internal control requirements specified at [2 CFR § 200.303](#) and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The pass-through entity must include a condition in all loans that requires borrowers to comply with this requirement. No other provisions of the Uniform Grant Guidance, including the Procurement Standards, apply directly to borrowers.
  - c. Prior to making loans, the pass-through entity must ensure that each borrower has a "unique entity identifier." This identifier is required for registering in the [System for Award Management](#) (SAM) and by [2 CFR Part 25](#) and [2 CFR § 200.331\(a\)\(1\)](#). The unique entity identifier currently is the subgrantee's Data Universal Numbering System (DUNS) number. Information on obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity's agreement with EPA entitled "*Central Contractor Registration/System for Award Management and Universal Identifier Requirements*" T&C of the pass-through entity's agreement with EPA.
  - d. The pass-through entity must ensure that the terms of all loan agreements and subgrants require that borrowers and subgrantees comply with [2 CFR Part 170, Reporting Subaward and Executive Compensation](#) under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition of the pass-through entity's agreement with EPA entitled "*Reporting Subawards and Executive Compensation.*"



- e. In addition to other prudent lending practices described, in [Section VI.](#), pass-through entities must establish and follow a system for evaluating borrowers risks of noncompliance with federal statutes, regulations, and the terms and conditions of the loan agreement as required by [2 CFR § 200.331\(b\)](#) and document the evaluation. Risk factors may include:
  - i. Prior experience with same or similar loans;
  - ii. Results of previous audits;
  - iii. Whether the borrower has new or substantially changed personnel or systems; and
  - iv. Extent and results, if any, of federal awarding agency or the pass-through entity's monitoring of the borrower.
- f. Pass-through entities must establish and follow a process for deciding whether to impose additional requirements on borrowers based on risk factors as required by [2 CFR § 200.331\(c\)](#). Examples of additional requirements authorized by [2 CFR § 200.207](#) include:
  - a. Only disbursing funds to the borrower under the “actual expense” method after obtaining detailed cost accounting records;
  - b. Withholding authority to proceed to the next phase of the loan funded project until receipt of evidence of acceptable performance within a given period of performance;
  - c. Requiring additional, more detailed financial reports;
  - d. Requiring additional project monitoring;
  - e. Requiring the borrower to obtain technical or management assistance; and
  - f. Establishing additional prior approvals.
- g. Pass-through entities must establish and follow a system for monitoring borrower performance that includes the elements required by [2 CFR § 200.331\(d\)](#) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.
- h. Pass-through entities must establish and follow written procedures under [2 CFR § 200.302\(b\)\(7\)](#) for determining that loan costs are allowable in accordance with [2 CFR Part 200, Subpart E](#) and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that borrowers incur, or a combination of both approaches provided the pass-through entity documents its determinations.
- i. Pass-through entities must establish and maintain a system under [2 CFR §](#)

[200.331\(d\)\(3\)](#) and [2 CFR § 200.521\(c\)](#) for issuing management decisions for Federal or Single Audits of loans that make findings relating to this award. However, the CAR remains accountable to EPA for ensuring that unallowable loan costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the borrower or not.

By accepting this award, the CAR is certifying that it either has systems in place to comply with the requirements described in items in [Section III.C.](#) or will refrain from making loans until the systems are designed and implemented.

8. As the pass-through entity, the CAR must report to EPA on its borrower and subgrantee monitoring activities under [2 CFR § 200.331\(d\)](#), including the following information as part of the CAR's quarterly performance reporting:
  - a. Summaries of results of reviews of financial and programmatic reports;
  - b. Summaries of findings from site visits and/or desk reviews to ensure effective borrower or subgrantee performance;
  - c. Environmental results the borrower or subgrantee achieved;
  - d. Summaries of audit findings and related pass-through entity management decisions, if any; and
  - e. Actions the pass-through entity has taken to correct any deficiencies such as those specified at [2 CFR § 200.331\(e\)](#), [2 CFR § 200.207](#) and the [2 CFR § 200.338, Remedies for Noncompliance](#).
9. Cybersecurity – The recipient agrees that when collecting and managing environmental data under this cooperative agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.
  - a. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement are secure. For purposes of this section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's

regulatory programs for the submission of reporting and/or compliance data.

- b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.
10. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at [www.fgdc.gov](http://www.fgdc.gov).

#### **D. Quarterly Progress Reports**

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.328, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1<sup>st</sup> quarter); January 1 – March 31 (2<sup>nd</sup> quarter); April 1 – June 30 (3<sup>rd</sup> quarter); and July 1 – September 30 (4<sup>th</sup> quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

2. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:
  - a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield RLF cooperative agreement, including the required cost share, and related activities completed with other sources of leveraged funding.
  - b. A summary and status 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.

- c. An update on project schedules and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
- d. A list of the loans and/or subgrants during the reporting quarter.
- e. A budget recap summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); cost share contributions; program income generated and used; and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, of cost overruns or high unit costs, and other pertinent information.

Note: Each property where cleanup activities were performed and/or completed must have its corresponding information updated in ACRES (or via the Property Profile Form with prior approval from the EPA Project Officer) prior to submitting the quarterly progress report (see [Section III.E.](#) below).

- 3. For the loans executed by the CAR under this agreement, the CAR must also report on the following items as part of the CAR's quarterly performance reporting:
  - a. Summaries of results of reviews of financial and programmatic reports.
  - b. Environmental results achieved by the borrower.
- 4. The CAR must maintain records that will enable it to report to EPA on the amount of funds (direct EPA funding and program income) disbursed by the CAR to clean up specific properties under this cooperative agreement.
- 5. 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 EPA-approved workplan.

#### **E. Property Profile Submission**

- 1. The CAR must report on interim progress (i.e., loan signed, clean up started) and any final accomplishments (i.e., clean up completed, contaminants removed, institutional controls, engineering controls) by completing and submitting relevant portions of the Property Profile Form using the 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. The CAR must enter any new data into ACRES prior to submitting the quarterly progress report to the EPA Project Officer. The CAR must utilize the ACRES system.

#### **F. Final Technical Cooperative Agreement Report with Environmental Results**

- 1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.328 *Monitoring and Reporting Program Performance*), the CAR agrees to submit to the EPA

Project Officer within 90 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement and at least one reproducible copy suitable for printing. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas:

- a. a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the EPA-approved workplan;
- b. reasons why anticipated outputs/outcomes were not met; and
- c.
- d. other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

The CAR agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

## **IV. FINANCIAL ADMINISTRATION REQUIREMENTS**

### **A. Cost Share Requirement**

1. CERCLA § 104(k)(10)(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 unless a Federal statute provides otherwise) of at least 20% (i.e., 20% of the total federal funds awarded, which equates to 16.67% of total project costs as shown in the budget table of this agreement). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement, be supported by adequate documentation, and otherwise comply with 2 CFR § 200.306. The recipient may use allowable administrative costs borne by the recipient or a third party to meet its cost share obligation, including indirect costs, subject to the 5% limit on administrative costs described in the Administrative Cost clause in Section IV. Administrative costs, whether paid for by EPA or used as cost share (or a combination of both), may not exceed the 5% limit.

### **B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees**

1. To the extent allowable under the EPA-approved workplan, the CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include activities described in [Section V](#) of these Terms and Conditions. In addition, eligible programmatic expenses may include:
  - a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).
  - b. Ensuring that an RLF cleanup complies with applicable requirements under federal

and state laws, as required by CERCLA § 104(k).

- c. Limited site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
  - d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
  - 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 [Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance](#).
  - h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable federal and state environmental requirements.
  - i. Ensuring that the site is secure if a borrower or subgrantee is unable or unwilling to complete a brownfield site cleanup.
  - j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant may not be used to purchase insurance intended to provide coverage for any of the ineligible uses under [Section IV., Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees](#).
  - k. Any other eligible programmatic costs, including costs incurred by the recipient in making and managing a loan or subgrant; obtaining RLF fund manager services; quarterly reporting to EPA including preparation of Property Profiles; awarding, managing and monitoring loans and subgrants as required by the terms of this agreement implementing 2 CFR § 200.331; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrantees.
  - l. Borrower and subgrantee progress reporting to the CAR is an eligible programmatic cost.
2. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers, or subgrantees at brownfield sites.
3. At least 50% of the funds EPA awards directly to the CAR and the associated cost share must be used by the CAR to provide loans for the cleanup of eligible brownfield sites and associated eligible programmatic costs. The remaining EPA funding and associated cost share may be used for eligible programmatic costs, including issuing and managing subgrants



to clean up eligible brownfield sites. (Note: cleanup subgrants are limited to \$350,000 per site. The CAR may request a waiver of the \$350,000 subgrant limit by consulting with the EPA Project Officer for the waiver process.)

4. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(B)(c):
  - a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
  - b. The extent to which the subgrant 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;
  - c. The extent to which the subgrant will facilitate the use or reuse of existing infrastructure; and
  - d. 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.**

5. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for Brownfields Program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.
6. Under CERCLA § 104(k)(5)(B), CARs and subgrantees may use up to 5% of the amount of federal funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for this agreement is **\$YYYY**. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR or subgrant administration by subrecipients paid for by EPA under the cooperative agreement, or used to meet the recipient's cost share, may not exceed this amount. As required by 2 CFR § 200.403(d), the CAR and subgrantees must classify administrative costs as direct or indirect consistently and may not classify the same types of cost in both categories.

Eligible cooperative agreement and subgrant administrative costs subject to the 5% limitation include direct costs for:

- a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as programmatic.
  - i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;

- ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;
  - iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;
  - iv. Preparing payment requests and handling payments under 2 CFR § 200.305;
  - v. Financial reporting under 2 CFR § 200.327.
  - vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and
  - vii. Closeout under 2 CFR § 200.343 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.
- b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subgrants are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.
- c. Borrowers may use up to 5% of the amount of the loan for loan administration costs. Eligible administrative costs for borrowers include direct costs 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) but only to the extent to which these persons activities support the cleanup and subsequent re-use of the site;
  - 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.
- d. Eligible direct costs for loan administration include expenses for:
  - i. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
  - ii. Maintaining and operating financial management and personnel systems;
  - iii. Preparing payment requests and handling payments; and
  - iv. Audits including non-federal audits required under 2 CFR Part 200, Subpart F.
- e. Borrowers may not use loan funds for indirect costs even if the borrower has an indirect cost rate approved by a cognizant Federal agency.

**C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees**



1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrantee 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 site development activities that are not cleanup actions (e.g., marketing of property, construction of a new facility, or 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 subgrant;
  - e. To pay for a penalty or fine;
  - f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;
  - g. To pay for a response cost at a brownfield site for which the CAR or recipient of the subgrant 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; and
  - i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR 200, Subpart E.
2. 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, and 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 for land held in trust by the United States government for an Indian tribe; or
  - d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

#### **D. Use of Program Income – During the Performance Period**

1. 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 2 CFR § 200.307 and 2 CFR § 1500.7, during the performance period of the cooperative agreement the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement unless otherwise specified (e.g. [Section IV](#), regarding use of 50% of the funds for loans). CARs that intend to use program income for cost share under 2 CFR § 200.307(e)(3) must obtain prior approval from EPA's Grant Management Officer or Award Official unless the cost share method for using program income was approved at time of award. Note that repayments of principal for loans made all or in part with cooperative agreement funds may not be used for cost share. These repayments of principal must be returned to the CAR's Brownfields Revolving Loan Fund.
3. In accordance with 2 CFR § 1500.7(c), to continue the mission of the Brownfields Revolving Loan Fund, recipients may use cooperative agreement funding prior to using program income funds generated by the revolving loan fund.
4. 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.
5. 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 OMB cost principles at 2 CFR Part 200, Subpart E when charging costs against program income. For any cost determined by EPA to have been an ineligible or unallowable use of program income, the recipient shall reimburse the RLF or refund the amount to EPA as directed by EPA's Action Official in its disallowance determination. EPA will notify the recipient of the time period allowed for reimbursement or refund.
6. Loans or subgrants 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 subgrants 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.
7. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income unless this requirement is waived by the EPA Project Officer.

#### **E. Interest-Bearing Accounts**

1. The CAR must deposit advances of cooperative agreement funds (as described in [Section](#)

VII.A., *Methods of Disbursement*) and program income (as defined earlier) in an interest-bearing account.

2. For interest earned on advances, CARs and subgrantees 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.

#### **F. Closeout Agreement and Use of Post Cooperative Agreement Program Income**

1. As provided at 2 CFR § 200.307(f) and 2 CFR § 1500.7(c) after the end of the award period, the CAR may keep and use program income at the end of the cooperative agreement (retained program income) and use program income earned after the award period (post-closeout program income) in accordance with the following Closeout Agreement unless the CAR and EPA's Award Official or Grants Management Officer agree to modify the terms.
2. 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.
3. CAR must deposit program income into an interest-bearing account. Interest earned on program income is considered additional program income.
4. CARs shall use program income to continue to operate the revolving loan fund or for some other brownfield purpose as outlined in the terms of this Closeout Agreement.
5. In accordance with 2 CFR § 200.333(e), the CAR shall maintain appropriate records to document compliance with the requirements of the Closeout Agreement (i.e., records relating to the use of accrued and post-award program income). EPA may request access to these records to verify that retained and post-closeout program income has been used in accordance with the terms and conditions of this Closeout Agreement.
6. EPA prefers the primary use of retained and post-closeout program income be for providing loans for Brownfields cleanups. In addition to Brownfield cleanup loans, program income may be used to fund the following brownfield activities:
  - a. Cleanup subgrants to eligible entities and nonprofit organizations for allowable activities as described in the terms of the cooperative agreement;
  - b. Phase I Environmental Site Assessments at brownfield sites performed in accordance with EPA All Appropriate Inquiries Final Rule or ASTM E1527-13 (or the most current version);

- c. Phase II Environmental Site Assessments and cleanup planning activities at brownfield sites;
  - d. Planning for the assessment, cleanup and re-use of brownfield sites; and
  - e. Programmatic costs to manage and oversee the work being performed.
7. The CAR must ensure that program income is used on a property that is a brownfield site as defined at CERCLA § 101(39) and in accordance with [Section IV.C.](#), *Ineligible Uses of the funds for the CAR, Borrower, and/or Subgrantees* in the CAR's cooperative agreement with EPA, unless otherwise noted as an eligible use of post-closeout program income in the terms and conditions of this Closeout Agreement.
  8. All assessment and cleanup work funded with program income must continue to be performed in accordance with state or tribal environmental rules and regulations and be protective of human health and the environment. If the CAR chooses not to have borrowers or subgrantees conduct assessments or cleanups through State or Tribal response program, then the CAR is required to consult with EPA to ensure the proposed assessment/cleanup is protective of human health and the environment.
  9. All brownfield sites that will be using the program income must be located within jurisdiction of the CAR as described in the scope of work for this cooperative agreement.
  10. Retained and post-closeout program income shall not be used for site inventory work.
  11. When possible, the CAR must continue to perform community involvement activities to solicit input from local communities, these outreach activities may take place with potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, regarding the need for site-specific assessments, loans and subgrants.
  12. Program income may not be used to assess or clean up a site at which the CAR, the borrower, or the subrecipient is potentially liable under CERCLA § 107 unless they qualify for a limitation or defense to liability under CERCLA. The CAR and borrower or subrecipient must make and retain a certification to that effect as part of the records for this Closeout Agreement. If asserting a limitation or defense to liability, the borrower or subrecipient must state the basis for that assertion. When using program income for petroleum-contaminated brownfield sites, the CAR, borrower or subrecipient shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site and retain a certification to that effect as part of the records for this Closeout Agreement. The CAR may consult with EPA for assistance with this matter.
  13. The CAR shall submit Annual Reports for the first five (5) years following the effective date of this Closeout Agreement, and thereafter, the CAR shall submit a report once every five years until there is no program income. The effective date of the Closeout Agreement is

defined as the day after the cooperative agreement is closed. The annual reports/five-year report(s) shall include the following information:

- a. A cover page indicating the CAR's organization, cooperative agreement number, annual report number (i.e., 1, 2 or 3), dates for the reporting period, persons/organizations preparing and submitting the report, and the date of the report submission.
  - b. A summary of the activities conducted during the reporting period, a list of reports and documents generated during the reporting period, and a budget summary table reflecting the expenses incurred and program income received.
  - c. Site data consistent with information requested in current Property Profile Forms as required by the [Section III.E., Property Profile Submission](#), of the cooperative agreement or a list of sites created and/or updated in the ACRES database.
14. The CAR must maintain adequate accounting records for how retained and post-closeout program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained and post-closeout program income.
15. Termination of this Closeout Agreement occurs when no program income remains to be disbursed and all loans have been repaid, the recipient decides to discontinue carrying out the activities and requests termination of the Closeout Agreement; or EPA determines that the CAR is not effectively deploying the program income.
- a. No remaining program income or future loan repayments. The CAR shall notify EPA's Grants Management Officer in writing when this occurs and certify that all funds have been expended in accordance with the terms and conditions of this Closeout Agreement. The notification must provide a final report regarding the relevant cooperative agreement information in the format specified in item 13. above. EPA has 90 days from receipt of this notification to submit any objections to the termination of this Closeout Agreement. If EPA does not object within that time period, then this Closeout Agreement will terminate with no further action.
  - b. Discontinuance of the Closeout Agreement. The CAR shall notify EPA's Grants Management Officer and Project Officer in writing that it has decided to discontinue performing the Closeout Agreement. The notification must provide a final report with the relevant cooperative agreement information in the format specified in item 13. above. The CAR must account for and return all program income to EPA in accordance with instructions provided by the EPA's Grants Management Officer. CARs must also describe the status and amounts of principal and interest payments that will take place after the Closeout Agreement is terminated. Unless waived by the Grants Management Officer, the CAR must remit to EPA on a quarterly basis program income earned after the Closeout Agreement has been terminated.

- c. EPA revocation of the Closeout Agreement. If the recipient holds more than \$500,000 in program income three (3) years after the effective date of this Closeout Agreement EPA may assess whether the CAR has effectively carried out the Closeout Agreement. This assessment will take into account the amount of program income the CAR has disbursed within the three-year period, whether the program income being held is retained program income or post-close out program income, and other factors relevant to ensuring that the recipient deploys program income in a timely manner. EPA may revoke the Closeout Agreement and direct the recipient to return the unused program income to EPA based on this assessment.
16. All records and documents relating to performing the Closeout Agreement must be retained for a period of three (3) years following termination or discontinuation of this Closeout Agreement. Records and documents relating solely to performing the cooperative agreement prior to close out may be disposed of in accordance with 2 CFR § 200.333.
17. EPA's Award Official or Grants Management Officer and the CAR must agree to any modifications to this Closeout Agreement. Agreed-upon modifications must be in writing. Oral or unilateral modifications shall not be effective or binding.
18. If the CAR expends retained program income in a manner inconsistent with this Closeout Agreement, EPA may take actions authorized under 2 CFR Part 200, *Remedies for Noncompliance*.
19. If any provisions of this Closeout Agreement are invalidated by a court of law, the parties shall remain bound to comply with the provisions of this Closeout Agreement that have not been invalidated.
20. No other federal requirements apply to the use of program income under the terms of this Closeout Agreement.

## **V. RLF REQUIREMENTS**

### **A. Authorized RLF Cleanup Activities**

1. The CAR shall prepare an Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, 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, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts caused by extreme weather events (e.g., sea level rise, increased frequency and intensity of flooding, 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.

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 CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

## **B. Quality Assurance (QA) Requirements**

1. If environmental data are to be collected as part of the brownfield 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. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 30 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The QAPP should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. The recipient shall develop Quality Assurance Project Plans (QAPP) to support all environmental data operations in accordance with “The EPA New England Planning and Documenting Brownfields Projects - Generic Quality Assurance Project Plans and Site Specific QAPP Addenda,” March 2009. The term “environmental data operations” refers to any measurement or information that describe environmental processes, conditions, or location; ecological or health effects; produced from models or surveys; compiled from other sources such as data bases and literature; or the performance of environmental technology. The Quality Assurance Project Plan must be approved by EPA before data collection and/or data generation activities begin. The recipient will submit the QAPP to the following:

EPA Project Officer (see page 1 of the assistance agreement), and the

Regional Quality Assurance Manager Nora Conlon ([conlon.nora@epa.gov](mailto:conlon.nora@epa.gov)) or other QA manager specified by the assigned Project Officer.



No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. When the recipient is delegating the responsibility for an environmental data collection or data compilation activity to another organization, the EPA Regional Quality Assurance Manager may allow the recipient to review and approve that organization's QAPP. Additional information on these requirements can be found at the EPA Office of Grants and Debarment website at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.

2. 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](http://www.epa.gov/fem/lab_comp.htm) or a copy may also be requested by contacting the EPA Project Officer for this award.

### **C. Community Relations and Public Involvement in RLF Cleanup Activities**

1. All RLF loan and subgrant 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 workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.
  - a. If any documents, fact sheets, and/or web materials 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 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 <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>.
3. The CAR agrees to notify the EPA Project Officer of public or media events publicizing the



accomplishment of significant events related to construction and/or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

4. To increase public awareness of projects serving communities where English is not the predominant language, CARs are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

#### **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 ABCA; 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. The Administrative Record must be retained for three (3) years after the termination of the cooperative agreement subject to any requirements for maintaining records of site cleanups ongoing at the time of termination contained in the recipient's Closeout Agreement.

#### **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 subgrant agreement shall contain terms and conditions, subject to any required approvals by the state or tribal 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 subgrantee 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 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 Subgranting 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/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.
1. The CAR shall not incur costs under this cooperative agreement for loans subgrants or other eligible costs until an RLF cooperative agreement workplan has been submitted to and approved the EPA Project Officer or program manager. 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/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:
  - a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any such subgrants competitively, it must document the basis for that decision and inform the EPA Project Officer in the first quarterly performance report. The CAR must inform the EPA Project Officer if the CAR subsequently decides to award subgrants competitively in the quarterly performance report immediately following the decision.
  - 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 subgrantees receive RLF financing.
  - d. Developing a formal protocol for potential borrowers or subgrantees 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 subgrantee to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrantees 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 subgrantees submit information describing the borrower's or subgrantee's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant 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 subgrantee.

## **B. Inclusion of Additional Terms and Conditions in RLF Loan and Subgrant Documents**

1. All loans and subgrants must include the information required by 2 CFR § 200.331(a). EPA has developed an optional template to use in creating this agreement that is available on EPA's [Subaward Policy](#) internet page. EPA does not require CARs to use the template.
2. The CAR shall ensure that the borrower or subgrantee meets the cleanup and other program requirements of the RLF cooperative agreement by including the following special terms and conditions in RLF loan agreements and subgrants:
  - a. Borrowers or subgrantees 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.](#) and [Section II.](#))
  - b. Borrowers or subgrantees shall ensure that the cleanup protects human health and the environment.
  - c. Borrowers or subgrantees shall document how funds are used. If a loan or subgrant includes cleanup of a petroleum-contaminated brownfield site(s), the CAR shall include a term and condition requiring that the borrower or subgrantee maintain separate records for costs incurred at that site(s).
  - d. Borrowers or subgrantees shall maintain records for a minimum of three (3) years following completion of the cleanup financed all or in part with RLF funds unless one of the conditions described at [2 CFR § 200.333](#) is present. Borrowers or subgrantees shall obtain written approval from the CAR prior to disposing of records. CARs shall also require that the borrower or subgrantee provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the federal government. As stated in [Section IV.F.](#), records related to the closeout agreement must be retained by the CAR for the duration of the closeout agreement and retained for a period of three (3) years following termination or discontinuation of this Closeout Agreement.
  - e. Borrowers or subgrantees 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 or subgrant.
  - f. Borrowers or subgrantees shall certify that they are not potentially liable under CERCLA § 107 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 subgrantee must state the basis for that assertion. When using cooperative agreement funds for petroleum-contaminated brownfield sites, borrowers or subgrantees shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. The CAR may consult with EPA for assistance with this matter.
  - g. Borrowers or subgrantees shall conduct cleanup activities as required by the CAR.
  - h. Subgrantees, other than borrowers, shall comply with all applicable EPA assistance

regulations (2 CFR Parts 200 and 1500). All procurements conducted with subgrant funds, but not loans, must comply with Procurement Standards of 2 CFR §§ 200.317 through 200.326, as applicable.

- i. Borrowers must comply with the internal control requirements specified at 2 CFR § 200.303 and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The CAR must oversee and manage loans as required by 2 CFR §§ 200.330 through 200.332. No other provisions of the Uniform Grant Guidance apply directly to borrowers.
- j. A term and condition or other legally binding provision shall be included in all loans and subgrants 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 subgrantees 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.
- k. EPA provides general information on statutes, regulations and Executive Orders that apply to EPA grants on the [Grants internet site](http://www.epa.gov/grants) at [www.epa.gov/grants](http://www.epa.gov/grants). Many federal requirements are agreement or program specific and EPA encourages CARs to review the terms of their cooperative agreement carefully and consult with their EPA Project Officer for advice if necessary.

### **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:
  - a. 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
  - b. securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

## **VII. DISBURSEMENT, PAYMENT, AND CLOSEOUT**

For the purposes of these Terms and Conditions, the following definitions apply: “payment” is EPA’s transfer of funds to the CAR; the CAR incurs an “obligation” when it enters into an agreement with the borrower or a subgrantee; “disbursement” is the transfer of funds from the CAR to the borrower or subgrantee. The CAR may also disburse funds to a contractor or to pay an allowable cost (e.g. personnel compensation) as provided in [2 CFR § 200.305\(b\)\(1\)](http://www.ecfr.gov/20190101/cfr/title49/chapterI/part200/subpartF/section200.305-1). “Closeout” refers to the process 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. 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 subgrantee 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 subgrantee’s payment of costs incurred in carrying out the loan/subgrant. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.
  - c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/ subgrantee uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.
  - d. Subgrant funds must be disbursed to subgrantees in accordance with 2 CFR § 200.305, as applicable.

## **B. Schedule for Closeout**

1. There are two fundamental criteria for closeout:
  - a. Final payment of funds from EPA to the CAR following the end date for the cooperative agreement or prior to the end date when the CAR has disbursed all of the EPA funding of the funds awarded; and
  - b. Completion of all cleanup activities funded completely, or in part, by direct EPA funding from 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 cooperative agreement are complete.
3. The CAR must follow [Section IV.](#), *Closeout Agreement and Use of Post Cooperative Agreement Program Income* for any retained and future program income generated after closeout. Eligible uses include continuing to operate an RLF for brownfield site cleanup and/or other brownfield site activities as identified in item 6 of the *Closeout Agreement and Use of Post Cooperative Agreement Program Income*.

### **C. Compliance with Closeout Schedule**

1. If the CAR fails to comply with the closeout schedule, any funds attributable to the cooperative agreement, including retained program income not obligated under loan agreement to a borrower or subgrantee, may be subject to federal recovery.

### **D. Final Requirements**

1. The CAR must submit the following documentation:
  - a. The Final Technical Cooperative Agreement Report as described in [Section III.F.](#) of these Terms and Conditions.
  - b. Administrative and Financial Reports as described in the Grant-Specific Administrative Terms and Conditions of this agreement.
2. The CAR must ensure that all appropriate data have been entered into ACRES or all Property Profile Forms are submitted to the EPA Project Officer.

### **E. Recovery of RLF Assets**

1. In case of termination, 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 EPA 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 EPA'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.

### **F. Loan Guarantees**

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms and 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), CERCLA § 104(g) relating to compliance with the Davis-Bacon Act, 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. (See [Section VII.A., 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 cooperative 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 may not 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 the financial institution participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfield site in exchange for access to funds held in escrow in the event of a default by the borrower or subgrantee.
- d. Federal Obligation to the Loan Guarantee Program - 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 subgrantee.
- e. Repayment of Guaranteed Loans - 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 EPA based on disposition instructions provided by the EPA Project Officer. Alternatively, the CAR may, with EPA approval:
  - i. Guarantee additional loans under the terms and conditions of the agreement; or
  - ii. Amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfield sites’ related activities authorized by the terms of the cooperative agreement or, if applicable, a Closeout Agreement.