



## CHAPTER ONE:

# *Negotiating the Cooperative Agreement*

### *Chapter Summary:*

Entities that are interested in establishing an RLF program for brownfields cleanup in their community must be eligible for RLF grant funding and must submit a proposal to EPA. Grant funding is awarded through a “cooperative agreement” with EPA.

This chapter focuses on the process that begins once EPA selects an applicants’ proposal, but before the cooperative agreement is awarded. After selection, the successful applicant must assemble a cooperative agreement application package and negotiate a workplan and budget with EPA. After the necessary steps have been taken and all documents approved by EPA, funding will be awarded as a “cooperative agreement” and the applicant will be referred to as a “cooperative agreement recipient.”

### *Reference:*

For detailed information on submitting a proposal, refer to the EPA publication “EPA Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants.” This publication is available on the Internet at [www.epa.gov/brownfields](http://www.epa.gov/brownfields).

Information regarding applications for EPA brownfields grants may also be listed in the Catalog of Federal Domestic Assistance (CFDA), [www.cfda.gov](http://www.cfda.gov).

This Page Intentionally Blank

**1.1 *Preparing a Package for Intergovernmental Review.*** Once EPA selects an applicant's proposal, the applicant must prepare a cooperative agreement application package that is subject to intergovernmental review under 40 C.F.R. Part 29. Tribal applications are not subject to intergovernmental review.

## **Contacting the State Intergovernmental Review Office**

Executive Order 12372 was enacted on July 14, 1982, to foster intergovernmental partnership with state and local governments by relying on their review of proposed federal assistance programs such as the RLF. It provides opportunities for consultation by elected officials of those state and local governments that would be directly affected by the proposed financial assistance. EPA implements Executive Order 12372 at 40 C.F.R. Part 29.

In accordance with Executive Order 12372, EPA encourages successful applicants to contact their State Intergovernmental Review Office early so that the required intergovernmental review process may begin immediately upon selection by EPA. If the state does not have an Intergovernmental Review Office, or has chosen not to review RLF applications, the successful applicant must provide notice of the proposed agreement directly to the affected state, area-wide, regional, and local entities. RLF applications are subject to § 204 of the Demonstration Cities and Metropolitan Act of 1966 that requires applicants to allow area-wide agencies a 60-day opportunity for review and comment (see 40 C.F.R. 29.8(c)). EPA may not award an agreement until the applicant has demonstrated that the intergovernmental review is complete. Therefore, the applicant should factor this time frame into their planning.

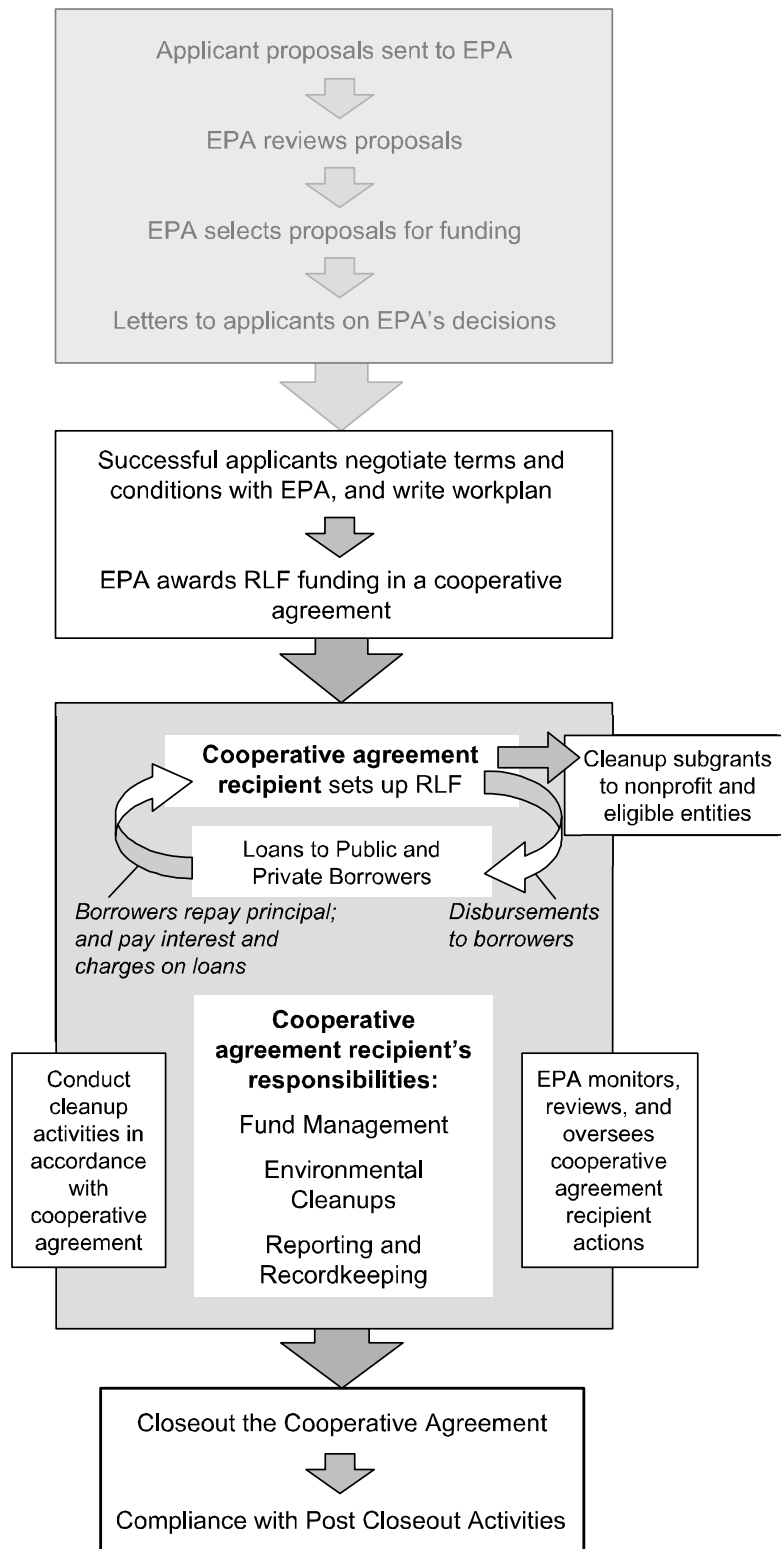
## **Preparing a Cooperative Agreement Application Package**

EPA Regions will request successful applicants to submit a formal cooperative agreement application package. The cooperative agreement application package requires a workplan that should contain detailed information on specific activities, schedules, and budgets, and should expand on information initially submitted in the RLF proposal. The application package must contain the standard application and budget forms, and the required certification forms which can be obtained from EPA Regions or the EPA Web site. EPA will develop the terms and conditions for each successful applicant. These will be discussed in Section 1.2, *Terms and Conditions and Negotiating a Workplan.*



*The Office of Management and Budget maintains a list of official state entities designated by the states to review and coordinate proposed federal financial assistance and direct federal development. Information is available through the Catalog of Federal Domestic Assistance at [www.cfda.gov](http://www.cfda.gov).*

Exhibit 1A – Process for Obtaining and Running an RLF Program



**Standard application and budget form**, Standard Form (SF) 424, is divided into three parts:

- Application for Federal Assistance;
- Budget Information – Non-Construction Programs; and
- Assurances – Non-Construction Programs.

**Required certification forms** include:

- / Certification that the accounting system is adequate to identify, safeguard, and account for all RLF funds. This certification is normally completed through an independent accountant.
- / Other certification forms required under grant rules. Information regarding applications for EPA brownfields grants may be listed in the Catalog of Federal Domestic Assistance at [www.cfda.gov](http://www.cfda.gov).

Additional certification forms may also be required, and successful applicants should contact their EPA Project Officer (PO) to determine which additional forms may be necessary.

**Additional certification forms** include:

- / Preward Compliance Review Report for All Applicants Requesting Federal Financial Assistance - EPA Form 4700-4
- / Certification Regarding Debarment, Suspension and Other Responsibility Matters - EPA Form 5700-49
- Method of Payment - EPA Regional Form
- / Applicant Assurance of Compliance with 40 C.F.R. Part 7 - EPA Regional Form
- QA Requirements Form - EPA Regional Form
- / Anti-lobbying Act of 1990 Application Certification - EPA Regional Form

EPA Regions must ensure that recipients and their borrowers and subgrant recipients comply with the requirements of CERCLA § 104(k) when using cooperative agreement funds.

**1.2 Terms and Conditions and Negotiating a Workplan.** EPA will develop the terms and conditions for each individual grant to define how cooperative agreement funds will be spent. The recipient must submit a formal workplan, which may be negotiated with EPA. These documents serve as the binding agreement that governs the relationship between EPA and the recipient.



*EPA encourages recipients to select subgrantees competitively.*

EPA has developed model terms and conditions that EPA Regional offices use for the cooperative agreement with the applicant. The terms and conditions are unique for each cooperative agreement. EPA Regional Revolving Loan Fund Coordinators will tailor a set of terms and conditions for their specific RLF program and circumstances. These terms and conditions will be binding on the grant recipient, address compliance with all applicable federal and state laws, and ensure that cleanups protect human health and the environment. The terms and conditions should include programmatic requirements that are not addressed by the workplan. Additionally, the successful applicant will work with EPA to prepare a formal workplan that provides a detailed description of the work to be performed and demonstrates its strategy for accomplishing program goals and objectives. The workplan may include, but is not limited to the following deliverables:

- / A schedule outlining milestones to successfully carry out the RLF;
- Details of procedures for selecting qualified borrowers;
- Details of procedures for selecting qualified subgrantees;
- / A financial plan (including the RLF payment structure or fund capitalization);
- An approach for satisfying commitments made in the workplan;
- / An approach for handling the day-to-day operation of the RLF; and
- / Information on community involvement, health and safety, and quality assurance plans and other requirements imposed by the terms and conditions.

**1.3 Awarding a Cooperative Agreement.** Once the cooperative agreement application including the workplan is approved, and terms and conditions have been established, the cooperative agreement is awarded and the applicant is referred to as the recipient.

After EPA has awarded the cooperative agreement, the recipient may then incur costs in accordance with the terms and conditions of the agreement. The Award Official is the EPA Regional Administrator, Assistant Regional Administrator, or Division Director who signs the agreement ensuring that all technical, legal, and administrative evaluations have been made for the award. EPA policy allows recipients to incur up to 90 days of pre-award cost at their own risk. Any pre-award costs the recipient incurs must be eligible and allowable and any procurements must comply with EPA grant regulations. Recipients should be encouraged to discuss pre-award costs with EPA prior to incurring any.

### High Risk Recipients

EPA may treat a recipient as “high risk” if the recipient has demonstrated difficulty in meeting terms and conditions of past awards. “High risk” recipients are identified by some of the following criteria:

- A history of unsatisfactory performance;
- Financial instability; or
- / Using a management system that does not meet 40 C.F.R. Part 31 standards.

A “high risk” cooperative agreement applicant must be notified as soon as possible by the EPA Award Official of the special conditions and the reason(s) for imposing them. Based on the above criteria, EPA may place special terms and conditions on an award if the applicant is deemed “high risk”, such as:

- Limiting payments to reimbursement of already-incurred costs;
- / Withholding authority to proceed to the next phase until evidence of acceptable performance is received;
- Requiring additional, more detailed, financial reports;
- Performing additional project monitoring;
- / Requiring the recipient to obtain technical or management assistance; or
- Establishing additional prior approvals.



*Once the cooperative agreement is signed between EPA and the successful proposal applicant, the applicant becomes a cooperative agreement recipient. RLF grant funds will be marked for that recipient to initiate its local RLF program.*

This Page Intentionally Blank





## Chapter 1 Check List: *Negotiating the Cooperative Agreement*

EPA Regions must ensure that the recipients understand their roles in negotiating the cooperative agreement. This checklist may be used by EPA Regional offices to assist recipients. Successful applicants may use this checklist to ensure that all steps necessary for negotiating a cooperative agreement and submitting the cooperative agreement package have been taken.

### I. Negotiating a Cooperative Agreement

The recipient has:

- Contacted their State Intergovernmental Review Office and the state review must be complete prior to award; and
- Submitted the following:
  - Standard Application and budget forms (SF 424);
    - Application for Federal Assistance;
    - Budget information – Non-construction programs;
    - Assurances – Non-construction programs;
    - Other forms as necessary for construction activities; and
  - Certification of an adequate accounting system.
- Submitted any additional certification forms deemed necessary by the EPA PO such as:
  - Preward Compliance Review Report for All Applicants Requesting Federal Financial Assistance - EPA Form 4700-4
  - Certification Regarding Debarment, Suspension and Other Responsibility Matters - EPA Form 5700-49
  - Method of Payment - EPA Regional Form
  - Applicant Assurance of Compliance with 40 C.F.R. Part 7 - EPA Regional Form
  - QA Requirements Form - EPA Regional Form
  - Anti-lobbying Act of 1990 Application Certification - EPA Regional Form

### II. Terms and Conditions and Negotiating a Workplan

- The recipient has prepared a formal workplan that may include, but is not limited to the following deliverables:
  - A schedule outlining milestones and items to be delivered to EPA (e.g., quarterly reports, site specific Community Involvement Plans, and site specific quality assurance project plans and sampling plans);
  - Details of procedures for selecting qualified borrowers and subgrantees;
  - A financial plan (including the RLF payment structure or fund capitalization);
  - An approach for handling the day-to-day operation of the RLF (See Chapters 4 and 6 of this Manual for more information); and
  - Information on community relations and involvement, health and safety, and quality assurance plans.

### III. Awarding a Cooperative Agreement

The recipient has:

- Finalized an approved workplan;
- Agreed to EPA's terms and conditions; and
- Signed the cooperative agreement (henceforth, the recipient's organization will be referred to as a "cooperative agreement recipient.")

The recipient understands that:

- The terms and conditions and workplan are legally binding documents that must be followed in administering the RLF program.
- EPA will be available to assist them with setting up their RLF.
- If EPA determines that their organization has exhibited "high risk" behavior in the past, EPA may place special terms and conditions on the cooperative agreement award.

This Page Intentionally Blank