



CHAPTER TWO:

Roles and Responsibilities

Chapter Summary:

The EPA Regional RLF Coordinator should understand that there are four key roles in the RLF program – EPA, RLF recipients, borrowers, and cleanup subgrantees. Furthermore, the recipient must designate a fund manager to handle financial and loan administration and a qualified environmental professional (QEP) to coordinate and direct cleanup activities. Each recipient must assign a QEP for each site that will undergo an environmental cleanup action. This chapter reviews each organizational and individual role required in the daily administration of an RLF.

This Page Intentionally Blank

2.1 Introduction to RLF Roles. EPA Regions should ensure that recipients understand the roles and responsibilities of all parties involved in RLF daily administration.

There are four key roles in the RLF program: EPA, recipients, borrowers, and cleanup subgrantees. Additionally, each recipient must find an individual to serve as its fund manager, as well as an individual(s) to serve as qualified environmental professional(s). **The cooperative agreement recipient designates one fund manager to manage the financial aspect of the program, and one qualified environmental professional (QEP) for each site to oversee environmental cleanup actions.** These roles will be described in detail in this chapter.

The RLF program can be viewed as a three-tiered process. EPA evaluates applications for RLF capitalization funds and awards cooperative agreement funds. Recipients in turn, must lend to as many borrowers and/or subgrant to as many subgrantees as they can accommodate. Recipients must comply with EPA requirements, but may develop their own criteria for selecting projects and borrowers and subgrantees that will use the RLF funding. EPA will monitor the program, but only maintain a legal relationship with the recipient as defined by the agreement. It is the recipient's responsibility to monitor its borrowers' and subgrantees' environmental cleanup actions, financial management, and loan repayment. The fund "revolves" using loan repayments and program income from fees and interest to provide funding for new loans and other authorized needs.

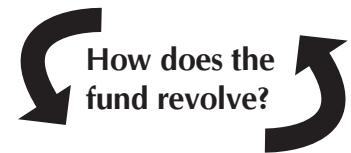
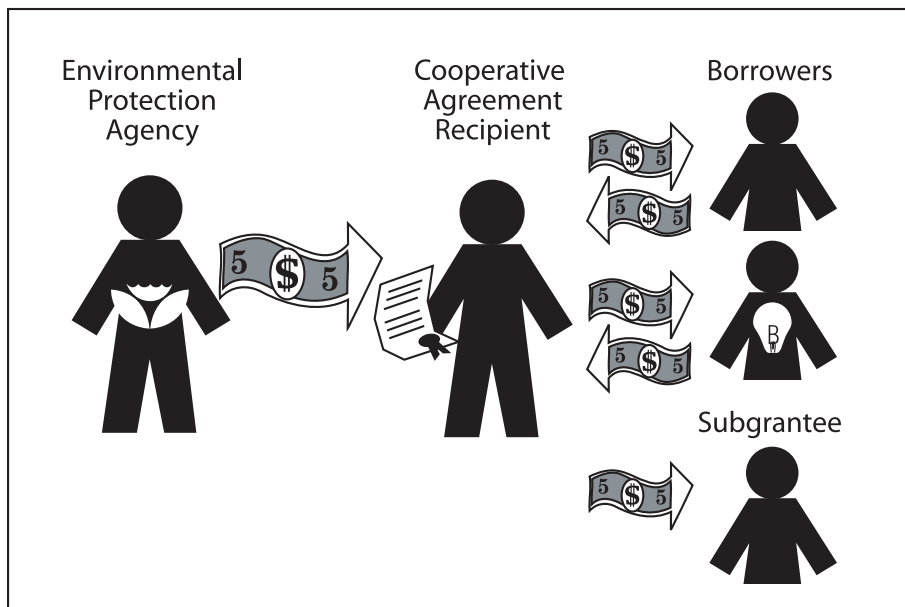
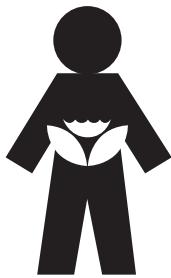


Exhibit 2A – How Does the Fund Revolve?



EPA provides initial RLF funding to recipients, who then lend to as many borrowers as they can manage and/or as their funds can accommodate. The fund "revolves" using loan repayments, interest, and other program income, such as fees, to provide funding for new loans. RLF recipients may also offer cleanup subgrants to eligible entities and non-profit organizations depending on how certain statutory requirements were met.

2.2 EPA Responsibilities. EPA will be substantially involved in overseeing and monitoring the RLF program, and ensuring that all financial management and environmental cleanup requirements are met. EPA does not intend to be involved in the recipients' prioritization of loan or cleanup subgrant recipients or day-to-day management of the loan program, but reserves the right to monitor program activities to ensure that all cooperative agreement financial management and environmental cleanup requirements are met. **EPA expects that its degree of involvement will vary based on the level of experience and expertise of the recipient to implement cleanup and fund management requirements.**



EPA will provide oversight, monitoring, and technical assistance to the recipient, but will not be involved in the recipient's day-to-day management activities or prioritization of borrowers or subgrantees.

EPA's role in the RLF program may include:

- Program monitoring;
- Assisting in the review of site-specific Community Involvement Plans, cleanup documents, and environmental reports;
- Assisting in the review of cleanup phases;
- Oversight on operational matters;
- Reviewing and approving quality assurance project plans/sampling plans;
- Assisting in the review of the substantive terms of RLF loans and cleanup subgrants;
- Assisting in the review of the substantive terms included in certain types of contracts, loans and subgrants to help the recipient verify that the costs incurred in these transactions are eligible expenses under CERCLA § 104(k);
- Providing technical assistance on site and borrower eligibility;
- Analysis of financial and environmental status reports; and
- Monitoring the recipient's fulfillment of all reporting, record keeping, and other program requirements.

In its oversight role, EPA oversees and ensures the recipient operates in accordance with the cooperative agreement. The recipient is responsible for compliance with all applicable state and federal laws and the terms and conditions of the cooperative agreement.

EPA encourages close cooperation/integration with State programs and, where that occurs, EPA will allow the recipient to follow State process and procedures so long as the substantive requirements of the EPA RLF program and the terms and conditions of the cooperative agreement are met. Additionally, EPA's involvement with recipients that are participating in their state voluntary cleanup or response programs may be **reduced**. If the borrower or subgrantee chooses not to participate in a state response program, EPA will oversee to ensure the cleanup is protective of human health and the environment. For

additional information on state or tribal cleanup programs, see the EPA Brownfields Web site for links to state programs: www.epa.gov/brownfields/state_tribal.htm. In certain cases, EPA may determine that a recipient is “high risk” and therefore may require **increased** involvement. See Chapter 1, *Negotiating the Cooperative Agreement*, for more information on high risk recipients.

EPA does not intend to be involved in the recipients’ prioritization of loan or cleanup subgrant recipients or day-to-day management of the loan program. However, EPA will be involved in making property-specific determinations to decide if a site is eligible for brownfields funding. EPA may also be involved in determining whether petroleum sites are eligible brownfields. (See Appendix F, *Guidance for Requests for Property-Specific Determinations for Funding*.) EPA provides oversight and assistance to the recipient, but the loan program is administered on a day-to-day basis by the recipient. Recipients should work closely with their EPA Regional Revolving Loan Fund Coordinator for technical assistance when implementing a loan program, and refer any questions or concerns to them.

FAQs:

Q: Does EPA intend to review each loan application received by the recipient?

A: No. When it is initially established, EPA does not anticipate being substantially involved in the RLF program, but does intend to review individual loan or cleanup subgrant applications over time. Absent the need to take action against a borrower or subgrantee, EPA’s relationship will be with the recipient, not with the borrower or subgrantees.

2.3 Recipient Responsibilities. A recipient administers an RLF program and is legally responsible for ensuring proper environmental cleanups, managing RLF funds, and complying with all applicable federal, state, local, and tribal laws and regulations.

The recipient enters into a cooperative agreement with EPA, and is legally responsible to EPA for its RLF program. Responsibilities include environmental cleanups, financial management, and RLF program administration.

The recipient must select two key role players - the fund manager and the QEP. All roles and responsibilities can be undertaken by cooperative agreement staff, but the recipient may also obtain assistance and expertise from another organization. This option is further explained in Section 2.6, *Alternatives for Filling Key RLF Roles*.



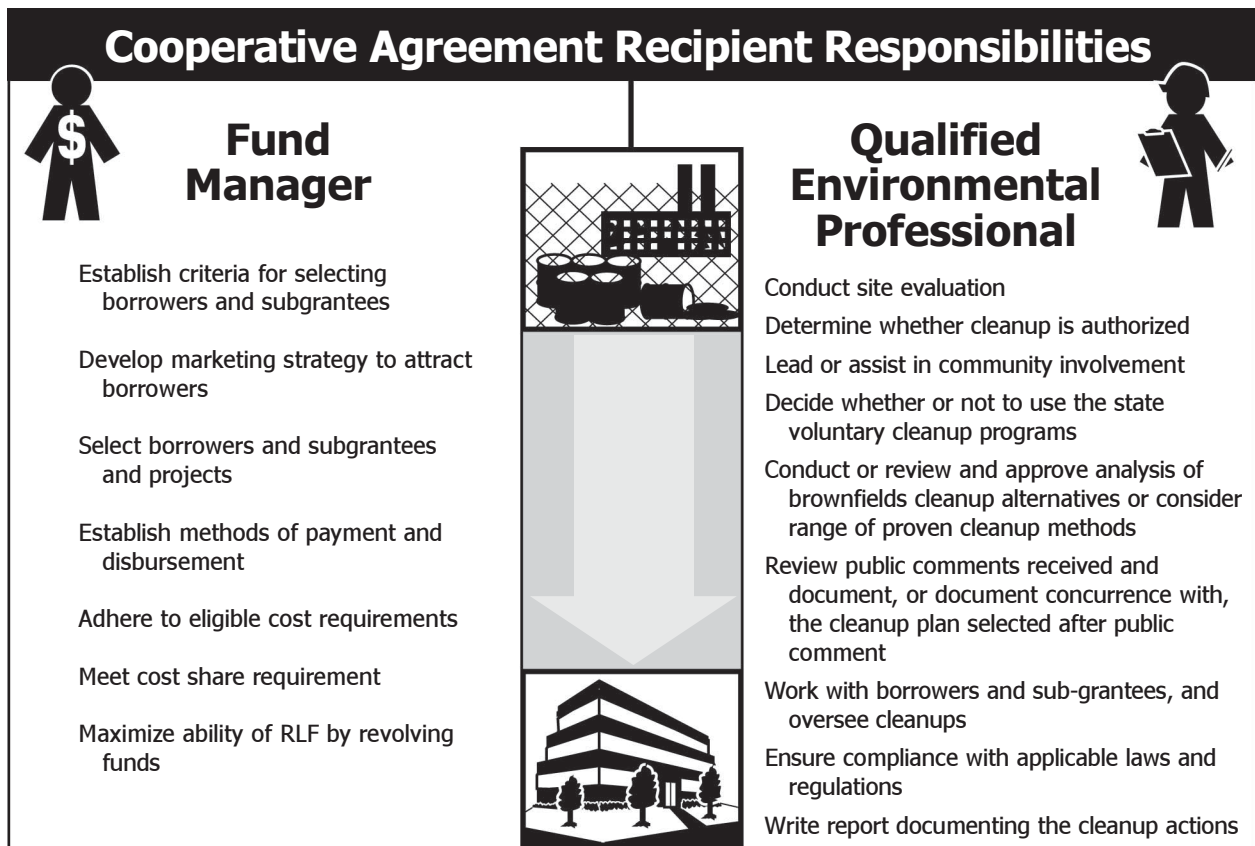
The QEP role is designated by the recipient to coordinate and direct cleanup actions. It is not required that the QEP be a government employee.

Qualified Environmental Professional - The QEP is the individual designated by the recipient to coordinate and direct cleanup. The QEP assists the recipient in carrying out its responsibilities on a site-specific basis, and works on behalf of the recipient. Accordingly, the recipient remains legally responsible to EPA for ensuring that RLF environmental cleanup actions are conducted in accordance with applicable laws and regulations (see Chapter 6, *Environmental Cleanup Responsibilities*, for specific QEP responsibilities).

The recipient can consider several options for choosing a QEP (see Section 2.6, *Alternatives for Filling Key RLF Roles*).

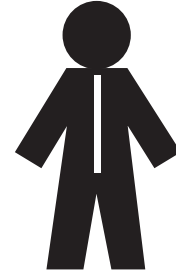
Fund Manager - Each recipient must designate a fund manager who will be responsible for the financial management of the RLF. The fund manager assists the recipient in carrying out its responsibilities on a site-specific basis, and works on behalf of the recipient. The RLF will comprise the original grant funding provided by EPA as

Exhibit 2B – Cooperative Agreement Recipient Responsibilities



NOTE: Fund management and environmental cleanup comprise the two key RLF program functions. These roles are led by a fund manager and a qualified environmental professional, respectively. Although their responsibilities run parallel to one another's, they must work together to ensure a smooth-running RLF program.

well as program income (e.g., principal repayment, interest, and fees) resulting from the lending of funds (see Chapter 5, *RLF Financial Management*, for specific fund manager responsibilities). The recipient may choose to enlist the services of other entities with fund management experience to help the fund manager fulfill their responsibilities. The fund manager can be a government employee or a qualified private or nonprofit entity (see Section 2.6, *Alternatives for Filling Key RLF Roles*).



The fund manager handles financial and loan administration for the recipient.

FAQs:

Q: Can the recipient be a private party?

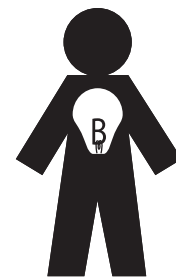
A: No. Under the RLF program, the recipient of an RLF grant must be an eligible governmental entity as described in the statute. However, private parties may borrow RLF funding through a loan from recipients under certain conditions. Private parties are not eligible to receive subgrants.

Q: Can the RLF be administered by the recipient using the services of a review consultant under contract to address technical issues?

A: Yes. Institutional arrangements of the RLF cooperative agreement are intentionally flexible. The recipient can fulfill RLF roles/responsibilities itself or can use agreements or contracts with other public or private organizations to serve as fund manager or QEP (see Section 2.6, *Alternatives for Filling Key RLF Roles*).

2.4 Borrower Responsibilities. Borrowers are responsible for complying with eligible fund uses, participating in the development and execution of the environmental cleanup, and documenting all fund uses as required by the program. Borrowers are contractually responsible to the recipient, but they are not contractually tied to EPA.

Although the recipient retains primary control and final decision making authority over RLF-funded cleanup, it is expected that the borrower will actively participate in developing and conducting the RLF cleanup. The borrower, for example, may assist the recipient by providing site evaluation and other information (e.g., Phase I/Phase II site assessments, or an analysis of brownfields cleanup alternatives) that will facilitate their ability to make RLF cleanup action decisions. All borrowers asserting a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO) limitation on liability must perform (or have already performed) “all appropriate inquiry” as found in CERCLA § 101(35)(B) on or before acquiring the property. These requirements are outlined on the EPA Web site at www.epa.gov/brownfields. These liability limitations are discussed in Chapter 3, *Eligible Fund Uses*. However, the recipient retains primary control and financial decision making authority over all RLF cleanup activities. Any information submitted by the borrower to



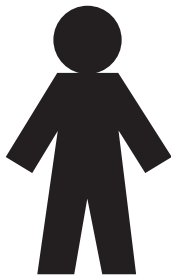
Borrowers are subject to the applicable statutory or regulatory federal and state requirements as well as the intent and goals governing the RLF program.

support a site decision requires an independent review and evaluation by the recipient and its QEP. These responsibilities are described in Chapter 6, *Environmental Cleanup Responsibilities*.

Borrowers are also subject to the statutory requirements of the program that govern use and administration of federal funds. For example, borrowers will be required to document their use of funds for the reporting and record keeping requirement discussed in Chapter 8, *Reporting and Record Keeping Responsibilities*. Recipients are responsible for ensuring that RLF borrowers meet all requirements. EPA will have no direct contractual ties with individual borrowers, but will verify that the recipient complies with its responsibilities through its monitoring and oversight.

The recipient must ensure that borrowers comply with all applicable federal and state requirements as well as the intent of the RLF program. The financial and environmental requirements placed on the borrower should be detailed in the loan agreement.

2.5 Cleanup Subgrantee Responsibilities. Cleanup subgrantees are responsible for complying with eligible fund uses and documenting all fund uses as required by the program.



Subgrantees receive RLF funds as grants, but they must use these funds for eligible RLF purposes only.

RLF cleanup subgrantees can be states, political subdivisions, Indian tribes, U.S. territories, and non-profit organizations. Cleanup subgrants may be provided to an eligible entity or non-profit organization to cleanup sites owned by the eligible entity or non-profit organization at the time the subgrant is awarded. **For-profit entities are not eligible for RLF cleanup subgrants.** RLF cleanup subgrantees are required to fulfill all reporting, record keeping, and other program requirements. Additionally, cleanup subgrantees must use subgrant funds for eligible purposes. They cannot use cleanup funds for prohibited administrative costs or for other costs prohibited by the applicable laws and regulations.

Non-profit subgrantees must expend subgrant funds in accordance with 40 C.F.R. Part 30 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations) and OMB Circular A-122, which establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations.

Subgrants made to eligible entities that are governmental organizations are subject to 40 C.F.R. Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) and OMB Circular A-87, which establishes

principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state and local governments and federally recognized Indian tribal governments (governmental units). **The recipient may not provide a subgrant to itself or another component of its own unit of government or organization.**

FAQs:

Q: As an RLF recipient, will intra-governmental cleanup subgrants be allowed under the Brownfields Law?

A: No. Cleanup subgrants, unlike loans, may not be made by the RLF recipients within the same governmental entity that receives the RLF grant (e.g. one department of a city government cannot “subgrant” to another department of the same governmental entity). However, RLF recipients may choose to apply to EPA separately for a cleanup grant. RLF recipients may also make subgrants to different eligible governmental entities as well as non-profit organizations.

2.6 Alternatives for Filling Key RLF Roles. Recipients may be able to fill all RLF roles in-house, but many recipients seek expertise from one or more other entities that have experience administering loan funds and/or carrying out environmental cleanups. The recipient may obtain services of other qualified agencies, organizations, or individuals to help perform its functions or fill the QEP and/or fund manager roles.

Recipients seeking expert assistance can look to relevant elements of other funding programs, such as those administered by:

- The U.S. Economic Development Administration (see www.osec.doc.gov/eda/);
- The U.S. Department of Housing and Urban Development (see www.hud.gov/offices/cpd/communitydevelopment/programs/index.cfm);
- The U.S. Small Business Administration;
- Infrastructure banks or state revolving fund programs;
- The Clean Water State Revolving Fund (see www.epa.gov/owm/cwfinance/cwsrf/index.htm);
- The U.S. Army Corps of Engineers; or
- Another city, county, or department.

Possible Alternatives for Filling Key Roles

Many alternatives exist to fulfill key roles for recipients due to the varied nature of program needs. The recipient, however, remains the entity legally responsible for carrying out all terms and conditions of the cooperative agreement.

Entities that may be able to cooperate, or provide services, to assist RLF operation include, but are not limited to:

- Economic development offices;
- Environmental management offices;
- Executive offices (mayor's, governor's, and county executive's offices);
- Government finance departments;
- Metropolitan planning organizations (MPOs);
- Offices of management and budget;
- Public works departments;
- Public engineering agencies;
- Transportation departments;
- Environmental consultants;
- Non-profit community development;
- For-profit and non-profit corporations; and
- Financial institutions.

The QEP must have experience with on-site coordination, direction, and review of environmental cleanup activities, and experience with or knowledge of cleanup requirements. These environmental cleanup concepts are defined in detail in Chapter 6, *Environmental Cleanup Responsibilities*. Ultimately, the recipient must be comfortable with the knowledge, experience, and background of the QEP. Possible options for filling this role include:

- **A local government, state, or federal employee of a government other than the recipient's can serve as QEP.** For example, a local government recipient can use a state employee as its QEP. Other examples of intergovernmental QEPs include U.S. Army Corps of Engineers or Bureau of Reclamation employees. Under this option, award recipients need to ensure that the intergovernmental employee will work on behalf of the award recipient.
- **A political subdivision can use a city ordinance(s) that permits the temporary hire of city personnel.** For example, one city hired a licensed site professional to be the QEP for the RLF pilot by a city ordinance on a temporary part-time basis.
- **The recipient can designate an employee as QEP and may use in-house or EPA technical support.** For example, a local government contract with a licensed site professional can provide a mechanism for technical assistance.
- **A private contractor.**

Contracts and Written Commitments

If the recipient seeks to secure commercial services from for-profit entities such as environmental consultants or private financial institutions to assist in key RLF roles, contracts must comply with 40 C.F.R. 31.36. Standards include guidelines on ensuring open competition of bids for work, cost and price analyses, and contract restrictions.

Using alternatives for filling key RLF roles (fund manager and QEP) requires written commitment from the organization(s) supporting the recipient. Written agreements include, but are not limited to procurements, contracts, or subgrants, depending upon the nature of the transaction. (Refer to 40 C.F.R. 31.36 for details on federal procurement regulations.) If these written commitments are not in place, the recipient may not start work on site-specific cleanup until the substantive terms are submitted to EPA for approval. EPA must ensure that supporting entities work on behalf of the recipient and that this intent is demonstrated in the written commitments.

FAQs:

Q: What types of written agreements can the recipient use to secure the services of other government entities or private parties assisting in the roles of QEP or fund manager?

A: The recipient can use contracts to secure commercial services from for-profit entities such as environmental consultants or private financial institutions to assist in key RLF roles. Contracts must comply with 40 C.F.R. 31.36. Standards include guidelines on ensuring open competition of bids for work, cost and price analyses, and contract restrictions. The recipient may also award a subgrant to another governmental entity or non-profit organization if the subgrant is consistent with 40 C.F.R. 31.37 (*subgrant*). Additional information on the difference between contracts and subgrants may be found in OMB circular A-133. There are restrictions on the amount of EPA funds available to compensate consultants. (See 40 C.F.R. 31.36(j).)

This Page Intentionally Blank.



Chapter 2 Check List: *Roles and Responsibilities*

EPA Regions must ensure that the recipient recognizes its responsibility to understand and assign key roles under the RLF program. This checklist may be used by EPA Regions to assist recipients in the daily administration of an RLF program. It is recommended that recipients use this checklist to ensure that they have met all the requirements and taken all steps necessary in assigning roles and responsibilities for running an RLF program.

I. General

EPA must ensure that the recipient has:

- Secured the services of a QEP:
 - from within their own organization (or)
 - from another institution (public, private, or non-profit).
- Secured the services of a fund manager:
 - from within their own organization (or)
 - from another institution (public, private, or non-profit).

II. Obtaining Assistance from other Entities to Fill Key RLF Roles

EPA must ensure that the recipient has assembled and submitted the following for review:

- The written agreement(s) necessary to obtain a QEP from another institution (public, private, or non-profit).
- The written agreements necessary to obtain a fund manager or assistance on fund management from another institution (public, private, or non-profit).

This Page Intentionally Blank.