



CHAPTER FIVE:

RLF Financial Management

Chapter Summary:

EPA Regions must make certain that the recipient establishes procedures to ensure sound financial management of the RLF before loans can be made to prospective borrowers and before subgrants can be awarded. As part of ensuring sound financial management, RLF fund managers must establish procedures to process loans, repayments, and subgrants. Additionally, recipients should optimize the lending potential of the RLF, and must choose payment and disbursement methods that minimize the time between payment of cooperative agreement award funds by EPA and disbursement of loan funds to borrowers.

The first part of this chapter discusses how EPA Regions can assist an individual or organization in acting as fund manager and in developing prudent lending practices. It also discusses how EPA Regions can help recipients identify sources of capital, establish the type of assistance to be offered, and how to meet the new cost share requirement. The second part of this chapter explains pre-payment requirements, coordinating a method of fund payment with EPA, and optimizing the lending potential of the RLF. This chapter also explains program income, how it must be used, and what to do in the event of a loan default.

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5.1 Enlisting the Services of a Fund Manager. The recipient must serve as or designate a fund manager. The fund manager is responsible for administering both the financial and loan administration components of the RLF.

The fund manager develops loan and subgrant agreements to ensure that all environmental cleanup requirements will be met and that RLF funds are used only for authorized activities. Additionally, the fund manager ensures that the RLF is set up to optimize its lending potential in order to meet the demands for financial assistance in its community.

EPA requires that recipients and their fund managers follow two guiding principles:

- Maximize the ability of the RLF to support cleanup and redevelopment efforts by committing at least the required percentage of funds to loans as stipulated under the terms and conditions.
- Manage funds to reduce the amount of time between EPA's payment of funds to the recipient and their disbursement to the borrower or subgrantee.

EPA Regions should encourage the recipient to maximize the amount of money loaned out for cleanup purposes at all times.

RLF funds should not remain idle. EPA will pay cooperative/agreement funds to the recipient only if those funds are for disbursement to a selected borrower or subgrantee, or for programmatic/costs necessary to carry out the cooperative agreement./

The fund manager ensures that the RLF is managed to conform with:/

- The cooperative agreement terms and conditions;/
- Applicable laws and regulations; and/
- Prudent lending practices./

The following individuals or entities may be selected to serve as fund/manager:/

- The recipient;/
- A private for-profit lender, or other for-profit entity;/
- A qualified nonprofit entity;/
- A different unit of government;/
- A qualified government employee./

If the recipient seeks expertise from an outside source to fill its/fund manager role, it must enter into a written agreement (e.g.,/contract, memorandum of understanding) with that entity to meet/the requirements of the RLF program. In this case, the recipient/



Recipients may be able to fill the fund manager role in-house, but can also seek expertise from outside entities that have experience administering loan funds.

must follow applicable EPA grant regulations at 40 C.F.R. §31.36 to acquire the services of a fund manager competitively. In this program, the recipient may not award a subgrant to a for-profit organization. All contracts must also be competitive. Refer to Section 2.6, *Alternatives for Filling Key RLF Roles* for information on obtaining assistance from outside the recipient organization.

FAQs:

Q: Why does EPA review the substantive terms of written agreements entered into between the recipient and fund manager?

A: EPA is looking at written agreements between organizations to ensure that their roles, responsibilities, and relationships are defined and that the agreement is consistent with the statutory authority of the RLF program. The recipient's work plan will outline the roles and responsibilities of each organization to demonstrate that there is a functional obligation to complete the work. Ultimately, the recipient remains accountable to EPA for compliance with all applicable statutes, cost principles, and terms and conditions.

5.2 *Developing Prudent Lending Practices.* EPA must ensure that recipients establish economically sound structures to maintain the RLF and meet long-term brownfield cleanup lending objectives.

“Prudent lending practices” refer to establishing:

- Underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and
- Lending practices that can include loan processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

It is up to the recipient to implement lending practices that qualify as “prudent,” but the EPA Region must ensure the workplan does specify the following requirements governing the establishment of interest rates, repayment terms, and collateral requirements.

The workplan will address interest rates as follows:

- Fund managers may make loans to eligible borrowers at interest rates less than or equal to the market interest rate, but not less than zero.
- In the workplan, a recipient is responsible for identifying the method that will be used to determine the “prevailing” market interest rate at the time a particular loan is executed with a borrower.

The workplan will address repayment terms as follows:

- Recipients are required to develop a plan for determining repayment terms on individual loans.
- This plan should provide enough detail to assure EPA that loans will be repaid in a timely and efficient manner.
- Fund managers must use sound judgement and apply standard practices when establishing loan repayment durations.

The workplan will address collateral requirements as follows:

- Fund managers are required to obtain adequate and appropriate financial security from borrowers; and act diligently to protect the interests of the revolving loan fund through collection, foreclosure, or other recovery actions on defaulted loans.
- Loans need to be properly secured, but the details of the collateral are an operational decision of the recipients.
- Recipients should determine on a case-by-case basis whether a lien on the brownfield site is appropriate collateral.
- Other collateral may include security interests in equipment or accounts, and personal guarantees.

5.3 Identifying Sources of Capital. Although the RLF program will be initially capitalized by the cooperative agreement award funds from EPA, capital for RLF programs can come from various sources – federal, state, local, and private. EPA Regions should encourage recipients to leverage other funds. Recipients must meet a 20% cost sharing requirement from non-federal funds, or eligible and allowable contributions from labor, materials, or services, or from acceptable sources of program income, unless otherwise waived. The waiver to the cost share is determined on a case-by-case basis during the application process.

Sources of capital for RLF programs other than EPA cooperative/ agreement funds include other financial assistance and recapitalization from the revolving loan fund./

Other sources of capital include financial assistance from:/

- Federal agencies;/
- States;/
- Political subdivisions;/
- Indian tribes; and/
- Private parties./

Recapitalization, which is expected over the life-cycle of the RLF, comes from the following sources:

- Loan repayments;
- Interest payments; and
- Other loan-related charges and fees.

Exploring Options: Identifying Sources of Capital from Federal Financing Programs

Public financing programs offer many incentives to brownfields stakeholders because they reduce lender risks and reduce borrower costs with interest rate reductions and/or subsidies. They also improve the borrower's financial situation with repayment grace periods, tax abatements, and training and technical assistance. In addition, they provide comfort to lenders and/or investors and provide direct resources such as grants.

The RLF program offers financing for the cleanup phase of a brownfields redevelopment site, but stakeholders can use other sources of federal and non-federal funding to cover costs that are ineligible under the RLF program. Below is an overview of other federal financial assistance programs that can be applied to brownfields development activities. Most of these programs are not explicitly created for brownfields; it is up to the stakeholder to determine the overlap for use of these funds.

Loans

- Economic Development Administration (EDA) Title IX - capital for local revolving loan funds
- U.S. Department of Housing and Urban Development (HUD) funds for locally determined Community Development Block Grants (CDBG) loans and "floats"
- Small Business Administration (SBA) micro loans
- SBA Section 504 development company debentures
- EPA Clean Water State Revolving Loan Fund
- EPA Safe Drinking Water Revolving Loan Fund

Loan Guarantees

- HUD Section 108 Loan Guarantees
- SBA section 7(a) and Low-Doc programs

Grants

- HUD Brownfield Economic Development Initiative (BEDI)
- HUD Community Development Block Grants (CDBG)
- EPA assessment grants
- EPA cleanup grants
- EDA Title I - public works and Title IX - economic adjustments
- U.S. Department of Transportation (DOT) - various system construction and rehabilitation programs
- DOT's transportation and community system preservation (TCSP) pilot grants
- U.S. Army Corps of Engineers (USACE) - cost-shared technical services

Equity Capital

- SBA's Small Business Investment Companies

Tax Incentives and Tax-Exempt Financing

- Historic rehabilitation tax credits
- Low-income housing tax credits
- Industrial development bonds
- Tax increment financing

Tax-Advantaged Zones

- HUD/U.S. Department of Agriculture (USDA) Empowerment Zones (various incentives)
- HUD/USDA Enterprise Communities (various incentives)
- HUD Renewal Communities (various incentives)

Regions should be aware that financial assistance from other federal agencies may not generally be used for the cost-share requirement. The exception is HUD's CDBG program.

5.4 Meeting the Cost-Share Requirement. Recipients are required to contribute a 20% cost-share of the total cooperative agreement award (i.e., EPA-awarded funds). The cost-share contribution may be in the form of cash, labor, material, or services from non-federal sources to the extent eligible under the Brownfields Law, and allowable under 40 C.F.R. 31.24.



Recipients transitioning under the new law, will apply the 20% cost share to the EPA funds not previously loaned or otherwise legally expended or encumbered under the existing RLF and to any subsequent supplemental funds provided to the recipient.

Recipients can use only eligible and allowable costs, which include eligible programmatic costs, to meet their cost-share requirement. They cannot meet the cost-share requirement with prohibited administrative costs or other unallowable costs. States and other third-party non-federal entities may contribute funds, labor, services, or materials to be counted towards the cost-share requirement. Generally, other sources of federal funds, including other EPA grants and cooperative agreements, cannot be used to meet the cost-share requirement unless the grant-making authority contains a specific provision that allows the federal grant to be used as a cost-share. For example, the Department of Housing and Urban Development's CDBG program funding at 42 U.S.C. § 5305(a)(9) contains a specific authorization that allows these federal grant funds to be used as a cost-share for other federal grants. Local government RLF programs may use state grants to meet their cost-share requirements to the extent allowed by state law. Finally, the recipient may pass its 20% cost-share requirement onto borrowers and/or subgrantees. Program income, such as loan fees and interest payments, may also be used to meet cost share requirements. For example, State X manages a State Revolving Fund (SRF) under the Clean Water Act that has earned interest. This interest or program income could be used to meet EPA Brownfield cost-share requirements.

Note: All borrowers and subgrantees need to caution recipients that if they do choose to pass the entire 20% cost share on to the borrowers/subgrantees (instead of say just 20% of their respective loans or subgrants) AND they fail to make loans/subgrants, the recipient will still be responsible for paying their 20% cost share on any programmatic costs incurred.

5.5 Establishing the Type of Assistance to be Offered. The purpose of an RLF is to make direct loans and subgrants to facilitate the cleanup of eligible brownfields properties. Other forms of financing, such as loan guarantees, may be allowed by EPA Regions on a case-by-case basis.

There are three forms of financing available through the RLF program - direct loans, loan guarantees, and cleanup subgrants. The terms and conditions of the cooperative agreement will specify the percentage of RLF award funds that may be used for loans and subgrants. Currently, EPA policy does not allow more than 40% of an RLF grant to be directed to subgrants. **No individual subgrant should exceed \$200,000.**

Making Direct Loans

The primary form of financing available to eligible borrowers through the RLF program is direct loans. Direct loans may be provided at below-market interest rates; zero or low interest rates are common, but the interest rate established cannot be at less than zero percent.

All loan processing procedures will be subject to the Single Audit Act of 1984, as amended (as implemented by OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations* and 40 C.F.R. Part 31).

Making Intra-Governmental Loans

An intra-governmental loan is a direct loan by the recipient lending to a branch within its own governmental unit. There are several scenarios in which intra-governmental loans might be needed to facilitate brownfields redevelopment. One example is the case of properties that are considered difficult to redevelop and reuse because associated costs and perceived liabilities make the property unattractive to private investors and developers. Often local governments acquire these properties through tax foreclosure or condemnation. To make these properties viable for redevelopment, they must first be cleaned up. If a recipient is a branch of that same governmental unit with ownership of the condemned property, then intra-governmental borrower eligibility requirements apply. These requirements will be discussed in Section 5.7, *Developing an Approach for Selecting Borrowers and Subgrantees*.



Intra-governmental borrowers have additional eligibility requirements to meet to ensure that the loan is repaid to the RLF.

Borrower Eligibility for Intra-governmental Loans

For an intra-governmental loan, standard loan eligibility restrictions apply, but **the fund manager must also demonstrate** the following:

- Establish that the borrowing entity has the legal authority to enter into a legally binding obligation to repay (for example, a memorandum from the city's legal counsel citing the statutory authority or a city council resolution that obligates the repayment from a particular funding source). The obligation to repay must be more than a "moral" obligation to repay or a simple "promise" to do so.
- Ensure that there is an identifiable source of income/repayment. For example, pilot (payment in lieu of taxes) funds, proceeds from tax increment financing (TIF), or funding from the sale, rent, or lease payments of the property.
- Identify an enforcement entity who can ensure that the loan is repaid. For example, the comptroller's office of the recipient can help avoid potential conflicts of interest.

If a fund manager chooses to make an intra-governmental loan, borrower eligibility requirements would apply and the substantive terms of the agreement must be reviewed by EPA.

Loan Guarantees

Loan guarantees are another type of financial assistance available through the RLF program and are considered on a case-by-case basis. If a recipient chooses to use RLF funds to support loan guarantees, the recipient must:

- Document the relationship between the expenditure of RLF funds and cleanup actions,
- Maintain an escrow account expressly for the purpose of loan guarantees, and
- Ensure that cleanup actions are conducted in accordance with terms and conditions of the cooperative agreement.

Key elements to remember for loan guarantees:

- The recipient will not receive payment from EPA until a guaranteed loan has been issued from a bank or other financial institution (i.e., loan guarantees may be made only on an as-needed basis for specific cleanup activities).
- The recipient is required to communicate the terms and limits of its cooperative agreement to all participating banks and borrowers.
- Funds must remain in escrow and be returned to the recipient only when borrowers repay the guaranteed loans.

- Escrow accounts must be established consistent with standards for “disbursement” of grant funds discussed by the General Accounting Office in 64 Comp. Gen. 96 (1984).
- Financial obligations incurred by the recipient in excess of the RLF award are the responsibility of the recipient.

Cleanup Subgrants

Cleanup subgrants are grants that recipients can offer to states, political subdivisions, Indian tribes, U.S. territories, eligible governmental entities, or non-profit organizations for the purpose of funding cleanup activities at eligible Brownfields sites. The site must be *owned* by the eligible entity or non-profit organization that receives the subgrant. These eligible entities must own the site at the time of the subgrant award, and throughout the duration of site cleanup. Unlike loans, cleanup subgrants may NOT be made within the same governmental entity that receives the RLF grant (i.e., intra-governmental subgrants are not allowed under the RLF program).^{*} For example, if the recipient is a city, then it cannot subgrant to its city development agency. However, if the city redevelopment agency is a separate legal entity, it may be eligible. The percentage of RLF funds that can be used for cleanup subgrants is specified in each cooperative agreement’s terms and conditions.

Loans are generally preferred over subgrants because repayment of the loans will extend the life and expand the utility of federal expenditures under this program, but cleanup subgrants may be made based on several specific statutory considerations.

The RLF recipient must take into consideration:

- The extent to which the cleanup subgrant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for non-profit purposes;
- The extent to which the cleanup subgrant will meet the needs of a community that has an 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;



“Direct cleanup grants” are a new form of financial assistance available from EPA under the Brownfields Law. These are different from cleanup subgrants that are available through the RLF program. No more than 40% of an RLF grant can be directed to subgrants, and RLF cleanup subgrants cannot exceed \$200,000.

^{*}Under CERCLA §104(k)(B)(ii), the eligible governmental entity “providing assistance” may make subgrants to a different eligible entity or to a nonprofit organization. In addition, under the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 40 C.F.R. Part 31, Section 31.3 defines a grantee as “the entire legal entity even if only a particular component of the entity is designated in the grant award document” and further defines a subgrantee as “...the government or other legal entity ...which is accountable to the grantee for the use of the funds provided.”

Exhibit 5A – Environmental Insurance

Exploring Options: Environmental Insurance

Environmental insurance (EI) is, simply, a contractual means to transfer and pool environmental risk in order to increase certainty about a project's costs, and to protect against unanticipated losses. Many private developers of large-scale brownfield sites use EI as a beneficial and cost effective business resource, while public entities often face limitations that have prevented more widespread use of EI in publicly led efforts. In recent years, however, the insurance market has increasingly recognized the profitability of the brownfield-type redevelopment project, and a wider range of EI products is emerging. The market trend is toward policies that are easier to obtain and more valuable to the insured, with higher maximum limits, lengthened policies, and broader coverage. While the actual cost of EI varies dramatically based on the specific details of the project and policy, coverage for brownfield projects has generally become significantly more affordable in the last five years.

The greatest barrier to a cost-effective, site-appropriate EI policy may be a limited awareness of available options. It is highly advisable to consult closely with environmental counsel and a knowledgeable environmental consultant and insurance broker to ensure that any EI policy under consideration is appropriate to particular site conditions and affords the broadest possible protections. Particular attention should be paid to exclusions in the policy that could adversely affect its value to the site.

Benefits of Environmental Insurance (EI):

- Limits liability and increases security for stakeholders
- Funding source to assist and protect small-scale projects
- Facilitates redevelopment by making deals more attractive to potential investment or purchase

Basic Types of EI Policies Relevant to Brownfields Redevelopment:

- **Cleanup Cost Cap:** Protects against cost overruns, incurred for example, in case of discovery of additional contamination or unanticipated changes in regulatory requirements.
- **Pollution (or Environmental Impairment) Liability:** Covers third-party damage claims, including investigation and legal defense costs, and may also cover cleanup of preexisting pollution.
- **Secured Creditor Policies:** Protects lenders' access to capital by limiting creditor risks in case of borrower default, loss of collateral value by pollution, remediation costs at bank owned sites, third party claims, and legal defense costs.

A large number of other EI offerings are available separately, or in combination, including: Asbestos/Lead-Paint Liability, Non-owned Disposal Site Coverage, Closure and Post-Closure Care, Contractor's Pollution Liability, Professional Pollution Liability, and Commercial General Liability.

- The extent to which the cleanup subgrant will facilitate use or reuse of existing infrastructure;
- The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfields remediation; and
- Other factors EPA considers appropriate and included in program grant guidance or in the terms and conditions of the loan.

Non-profit subgrantees must expend subgrant funds in accordance with 40 C.F.R. Part 30, OMB Circular A-122 (nonprofit organizations), and OMB Circular A-21 (universities and educational institutions). Subgrants made to eligible entities that are governmental organizations are subject to 40 C.F.R. Part 31 and OMB Circular A-87 (state, tribal and local governments). All costs incurred by subgrantees must be eligible costs. Subgrantees cannot use cleanup funds for prohibited administrative costs, or for other costs prohibited by the new law.

The recipient remains accountable to EPA for subgrant expenditures and record keeping.

FAQs:

Q: If the recipient is a municipality, may it lend RLF dollars to another government agency (e.g., the city's Redevelopment Agency) if that agency is part of the same municipal government?

A: Yes. A recipient may lend RLF dollars to a borrower that is an agency of the same government as the recipient. This would be considered an intra-governmental loan. The recipient has to ensure that the borrowing entity has the authority to enter into a legally binding obligation to repay, identify a source of repayment, and establish an enforcement entity to ensure that the loan is repaid. Refer to intra-governmental loan eligibility requirements in Section 5.7, *Developing an Approach for Selecting Borrowers and Subgrantees* for more information.

Q: If the recipient is a municipality, may it subgrant RLF dollars to another government agency (e.g., the city's Redevelopment Agency) if that agency is part of the same municipal government?

A: No. The recipient may NOT provide a subgrant to itself or another component of its own unit of government or organization. However, if the city development agency is a separate legal entity, it may be eligible.

5.6 *Purchasing Insurance.* A portion of RLF grants, loans, or subgrants *can* be used to purchase insurance, including environmental insurance on cleanup activities, if needed.

Recipients and borrowers can purchase insurance, specifically environmental insurance to cover their cleanup activities, as an eligible programmatic cost (Refer to Chapter 3, *Eligible Fund Uses*, for details on eligible programmatic cost allowances.)

Borrowers may use a portion of their RLF funds, as reflected in the terms and conditions, for the sole purpose of purchasing environmental insurance if:

- The purchase is necessary to carry out cleanup activities; and
- Associated cleanup activities are carried out in accordance with the terms and conditions of the cooperative agreement.

Borrowers can also purchase other types of insurance if the expense is incidental to and associated with RLF costs they incur for site-specific cleanup activities (e.g., workers compensation).

FAQs:

Q: Is environmental insurance required?

A: Obtaining environmental insurance is optional, but an allowable cost for both borrowers and recipients. It is considered an eligible and allowable programmatic cost and eligible for RLF funds.

5.7 *Developing an Approach for Selecting Projects.* Fund managers, in coordination with the recipient, are responsible for developing an approach for selecting site cleanup projects that are eligible for funding. Fund managers should work with the recipient to establish requirements for project eligibility, and to ensure that the requirements of the cooperative agreement are met.

It is possible for recipients to have several eligible borrowers competing for RLF funds. Generally, borrowers apply for an RLF loan with a site-specific cleanup project already in mind. Recipients should be prepared to substantiate methods and justifications for choosing one project over another by developing project selection criteria. Additionally, recipients must develop a formal protocol that borrowers can use to demonstrate their eligibility. Project selection criteria may be subject to EPA review to ensure that RLF program objectives are being met, but EPA will not make decisions on individual loans.

Project selection criteria should be consistent with:

- Federal and state requirements;

- The intent of the RLF program; and
- The cooperative agreement entered into with EPA.

Formal protocol for eligible borrowers to demonstrate their projects' eligibility should include:

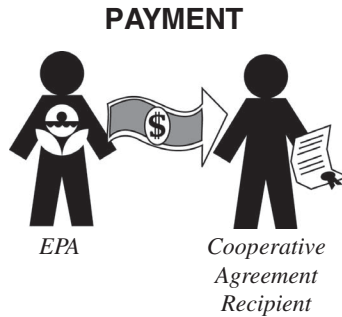
- Descriptions of projects that will be financed, how loan monies will be used, and the qualifications of the borrower to make legitimate use of the funds; and
- Explanations of how a project would be consistent with the RLF program objectives and terms and conditions.

5.8 *Establishing Borrower and Subgrantee Terms and Conditions.* RLF borrowers and subgrantees must agree to general terms and conditions to receive a loan or other forms of financial assistance. EPA has developed model terms and conditions that EPA Regional offices use for the negotiations of the cooperative agreement with the recipient.

Just as the recipient must abide by the terms and conditions negotiated with EPA, it must also draw up terms and conditions with each of its borrowers and subgrantees (see Chapter 1, *Negotiating the Cooperative Agreement*, for information on cooperative agreement terms and conditions). Once a borrower or subgrantee and project are determined eligible for RLF monies, the borrower or subgrantee should work with the recipient to establish loan or subgrant-specific financial requirements to include in the terms and conditions.

Borrower and subgrantee terms and conditions often reflect those drawn up between the recipient and EPA because recipients transfer the terms and conditions placed upon them by EPA onto their borrowers and subgrantees. After determining that a borrower or subgrantee and project are eligible for RLF monies, it is important that the borrower or subgrantee agree and comply with the established financial requirements drawn up at the award of the cooperative agreement. RLF grant funds are retained in Treasury until an obligation is incurred.

5.9 Methods of Payment and Disbursement. Two methods are available for both payment and disbursement of RLF monies to borrowers. Recipients are required to minimize the time-lapse of payment to the recipient by EPA and disbursement of funds from the recipient to subgrantees and borrowers.



EPA has established procedures governing how RLF payments may be transferred to recipients and subsequently disbursed to borrowers to pay for cleanups.

- A **payment** is EPA's transfer of funds to the recipient.
- A **disbursement** is the transfer of funds from the recipient to the borrower or subgrantee.
- An **obligation** by the recipient is the award of a loan or subgrant.

Payment of RLF award funds to recipients must be consistent with federal regulations at 40 C.F.R. 31.21 regarding payment prohibitions, interest on advance restrictions, letter of credit requirements, reimbursement, and making capital advances.

Pre-Payment Requirements

Before payment of RLF funds can be made to recipients, EPA Regions must make sure that certain requirements are being fulfilled. **To ensure proper fund management capability, recipients must certify that:**

- The recipient has an accounting system adequate to identify, safeguard, and account for both RLF funds and program income;
- Lending documents are prepared; and
- Loan documents have been reviewed by legal counsel for compliance with applicable state and local laws, and with the terms and conditions of the award.

Methods of Payment

EPA will make payments to recipients for costs associated with payroll, contractual obligations, or disbursed funds for a loan or subgrant. Payments will be made according to 40 C.F.R. 31.21. Any accrued program income (i.e., fees, repayments of interest, repayments of principal, and other income) must be disbursed before requesting payment from EPA.

The Debt Collection Improvement Act of 1996, P.L. 104-134, requires all federal payments be made via Direct Deposit/Electronic Funds Transfer (DD/EFT). Therefore, a recipient must be enrolled

to receive electronic payments via either the EPA-EFT payment system or the Automated Standard Application for Payments (ASAP). To receive payments via the EPA-EFT payment system, the recipient must enroll by completing the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881). Once enrollment has been established, the recipient must request funds using the U.S. EPA Payment Request Form.

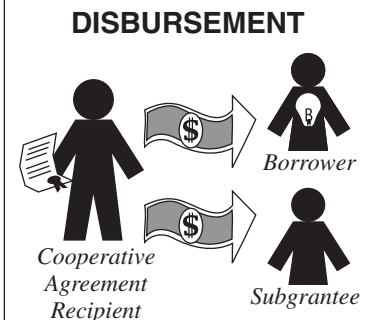
ASAP is an automated payment system managed by the Treasury and the Federal Reserve Bank of Richmond. This system is used by several different agencies as well as EPA. Effective January 2004, recipients can enroll to use ASAP by contacting their EPA Servicing Finance Office (SFO) for enrollment instructions. However, if the recipient is currently enrolled to use ASAP with another agency, the recipient should contact their SFO to request funds be authorized on ASAP.

Methods of Disbursement

The recipient 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.

- An 'actual expense' disbursement approach requires the borrower to submit documentation of the borrower's expenditures (e.g., invoices) to the recipient prior to requesting payment from EPA.
- A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower on the basis of an agreed upon schedule (e.g., progress payments) or, in unusual circumstances, upon execution of the loan. The recipient shall submit documentation of disbursement schedules to EPA.
- If the disbursement schedule of the loan agreement calls for disbursement of the entire amount of the loan upon execution, the recipient 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. Further, the recipient shall include an appropriate provision in the loan agreement which ensures that the borrower uses loan funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

Subgrant funds must be disbursed to the subgrantee in accordance with 40 CFR 31.21 or 40 CFR 30.22, as applicable.



- The recipient may negotiate a predetermined schedule(s) for disbursement to subgrantees provided the schedule minimizes the time elapsing between disbursement by the recipient and the subgrantee's payment of costs incurred in carrying out the subgrant.
- If the disbursement schedule of the subgrant calls for disbursement of the entire amount of the subgrant upon execution, the recipient shall demonstrate to the EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the subgrant. Further, the recipient shall include an appropriate provision in the subgrant agreement which ensures that the subgrantee uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

Final payment and disbursement of award funds must be complete within five years from the agreement start date. Any accrued program income (i.e., fees, repayments of interest, repayments of principal, and other income) must be disbursed before requesting payment from EPA.

Disburse Funds to Maximize the RLF

EPA encourages recipients to maximize the ability of the RLF to support cleanup and redevelopment efforts. If the recipient has accrued program income, that income must be disbursed to borrowers prior to requesting a new payment from EPA. Additionally, the recipient must manage funds to reduce the amount of time between EPA payment of funds to the recipient and their subsequent disbursement to borrowers. The recipient may not obtain payment of cooperative agreement funds to deposit the funds to earn interest, or for investments.

If funds are requested from EPA, but loan agreement signing is delayed, the recipient may hold funds for a reasonable period of time contingent with EPA approval. However:

- The recipient must return the funds to EPA if disbursement to borrowers is unlikely within 30 days.
- Returned funds will then be made available to the recipient for legitimately incurred costs.
- Interest on prematurely drawn down funds is subject to 40 C.F.R. 31.21(i) (interest on advances).

FAQs:

Q: Is there any circumstance under which an RLF recipient could receive the full capitalization level of the loan fund in one payment from EPA?

A: Yes, provided the recipient has entered into a legally binding obligation to disburse the amount of funds requested. EPA may make payments to a recipient only after that recipient has made a loan to a borrower, awarded a cleanup subgrant, or incurred a programmatic expense. Funds to cover a loan made with RLF funds may be provided on the basis of the borrower's actual incurred costs or on a pre-established schedule negotiated with the borrower. It is unlikely that a single lump sum payment will be approved by EPA except under special circumstances such as when a borrower is paying for completed work.

5.10 Using Program Income for Eligible Costs. EPA Regions must ensure that recipients maximize the lending capacity of the RLF and preserve the fund's principal by using program income first for lending purposes or to cover eligible programmatic costs.

Program income is the amount of money received by the recipient, either directly generated by the RLF award, or earned during the period of the award (defined as the time between the effective date of award and ending date of the cooperative agreement). RLF recipients must use program income according to the terms and conditions set forth in their cooperative agreement. Program income includes:

- Principal repayment;
- Interest earned on outstanding loan principal;
- Interest earned on accounts holding RLF program income not needed for immediate lending;
- Loan fees;
- Loan-related charges received from borrowers;
- Other income generated from RLF operations;
- Proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal; and
- Proceeds in excess of the unpaid principal.

All program income from active RLF loans received by recipients must be placed immediately in the RLF and made available for relending. As new loans are made or cleanup subgrants awarded, recipients may request new payments only for the difference, if any, between the amount of program income available for relending and the amount of the new loan or new subgrant.

Fund managers are encouraged to maximize the lending capacity of the RLF, **earn income** to defray programmatic costs, **preserve the fund's principal**, and **maintain the fund for future borrowing needs**.

Recipients may use certain forms of program income to meet their 20% cost-share. Recipients **must not** use principal repayments to meet cost-share obligations because of the goal to maximize the capacity of the RLF. However, certain forms of program income (i.e., fees, interest) may be used. Program income generated from the Clean Water State Revolving Fund and Safe Drinking Water Revolving Fund may also be used to meet Brownfields cost-share requirements and other programmatic expenses. Consult your State Revolving Fund to learn more.

Consistent with the intent of promoting the long-term availability of funds from the revolving loan fund, it is EPA policy that at least 60% of the funds must be used to capitalize the loan pool and for associated programmatic costs. No more than 40% of the funds awarded may be used for cleanup subgrants and eligible programmatic costs. The 60/40 split is subject to change each fiscal year, and the cooperative agreement recipient must follow the requirements of the terms and conditions.

Exhibit 5B – RLF Financial Structure for FY03 and FY04*

Loan Pool	Cleanup Subgrants
At least 60% of EPA funds used to capitalize loan fund and associated eligible programmatic costs.	No more than 40% of EPA funds and associated eligible programmatic costs.

*Note: The percentage may change each fiscal year, and the cooperative agreement recipient must follow the requirements of the terms and conditions.

5.11 Default Loan Provisions. EPA Regions must convey to recipients the importance of working closely with their borrowers in an effort to preclude loan defaults. If a loan default occurs, the recipient must make reasonable efforts to enforce the terms of the loan agreement including seizing the assets pledged as collateral to cover losses on the loan. The recipient must notify EPA and the relevant state authorities.

If certain borrowers are determined to be “high risk,” the recipient may place special terms and conditions in their loan agreements. However, if a loan default occurs, the recipient must take measures to minimize unrecoverable losses to the RLF. Under the Brownfields Law, EPA also has the authority to terminate loans and recover funds. Differences between assets seized and outstanding loan balances are considered unrecoverable losses to the fund. EPA will not make any financial decisions regarding the default of RLF loans, but recipients ultimately must exercise their own discretion regarding loan default.

However, EPA may participate in cleanup decisions regarding the default of RLF loans.

If the cleanup is not complete at the time of default, the RLF recipient is responsible for:

- Documenting the connection between the amount loaned to the borrower (or, in the case of guaranteed loans, the amount paid to the bank or other financial institution) and the cleanup that took place prior to the default; and
- Securing the site (e.g., ensuring public safety) and informing EPA and the state.

FAQs:

Q: When is the recipient liable for cleanup costs if the borrower defaults on the loan or fails to complete the cleanup in compliance with CERCLA requirements?

A: Whether a recipient, RLF participant, borrower, or subgrantee becomes liable for cleanup costs under CERCLA § 107 will depend upon the facts of the particular situation. CERCLA § 107 also may impose liability on past and current owners and operators of facilities, owners and operators of a facility where there is a release or threatened release of hazardous substances, or persons who arranged for disposal, treatment, or transportation of hazardous substances.

The following provisions may limit the liability of RLF participants: Section 107(d)(1) exempts from liability actions “in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan” except as the result of negligence. Section 107(d)(1) exempts from liability state or local government actions “in response to an emergency created by the release or threatened release of a hazardous substance,” except as a result of gross negligence or intentional misconduct. Section 101(20), as revised by the “Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996,” P.L. 104-208, provides that the terms “owner” and “operator” do not include lenders who do not participate in the management of a facility. In addition, Section 101(20)(D) provides that the terms “owner” and “operator” do not include “a unit of state or local government which acquired ownership or control involuntarily...by virtue of its function as sovereign.” Because every situation is unique, recipients should discuss such liability issues with their EPA Revolving Loan Fund Coordinator(s).

Q: Are intra-governmental cleanup subgrants allowed?

A: No. Cleanup subgrants, unlike loans, may NOT be made by the RLF recipient within the same governmental entity that receives the RLF grant (e.g., one department of a city government “subgrants” to another department of the same governmental entity). An RLF recipient may award a subgrant to a separate eligible governmental entity (e.g., a state or county that has an RLF may make a subgrant to a township). Further, eligible governmental entities may apply separately for \$200,000 Cleanup Grants from EPA under Section 104(k)(3)(A)(ii) of CERCLA, as amended by the Brownfields Law.

Q: Will repaid loan funds (principle and interest) be subject to the same restrictions as the initial RLF award funds if used in direct combination with RLF capitalization grant funds?

A: Repaid loan agreement funds are subject to the same terms and conditions as initial grant funds unless different terms and conditions are negotiated.

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Chapter 5 Check List: *RLF Financial Management*

EPA Regions must ensure that the recipient recognizes its financial management responsibilities. This checklist may be used by EPA Regions to assist RLF Fund Managers and recipients. It is recommended that recipients use this checklist to facilitate day-to-day financial management of the BCRLF.

I. Enlist the Services of a Fund Manager

EPA must ensure the recipient:

- Designated a fund manager from within their agency/organization; or have selected a private lender, or other private entity, a qualified non-profit entity, or a qualified government employee to serve as fund manager.

The fund manager will:

- Revolve funds as much as possible to maximize the ability of the RLF to support redevelopment efforts.
- Manage funds to reduce the amount of time between EPA's payment of funds to the recipient and their distribution to the borrower.
- Maximize the amount of money loaned out for redevelopment purposes at all times once the money is awarded.
- Ensure that the RLF is managed to conform with: the cooperative agreement, applicable laws and regulations, and prudent lending practices.

II. Develop Prudent Lending Practices

EPA must ensure the recipient:

- Set interest rates at less than or equal to the market interest rate (but not less than zero).
- Developed a plan for determining repayment terms on individual loans.
- Will obtain adequate and appropriate financial security from borrowers and act diligently to protect the interests of the revolving loan fund through collection, foreclosure, or other recovery actions on defaulted loans.

III. Identify Sources of Capital

EPA must ensure the recipient:

- Understands that they can supplement initial RLF capitalization funds with leveraged capital from other federal agencies; states; political subdivisions; Indian tribes; and private parties.
- Understands that recapitalization of loan funds will come from loan payments, interest payments, and other loan-related charges.

IV. Meet the Cost-Share Requirement

EPA must ensure the recipient:

- Contributes a 20% cost-share of the total cooperative agreement award in the form of cash, labor, materials, or services from non-federal sources.
- Explores other public financing options such as: loans from EDA, HUD, CDBG, SBA, and others; loan guarantees; grants from HUD BEDI, HUD CDBG, DOT, TCSP, USACE and others; equity capital; tax-incentive and tax-exempt financing; and tax-advantage zones.

V. Establish Types of Financial Assistance

EPA must ensure the recipient, through their RLF program, will offer the following types of financial / assistance: /

- Direct loans (both standard and intra-governmental) (_____ % of fund)
- Loan guarantees (_____ % of fund)
- Cleanup subgrants (_____ % of fund)

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Chapter 5 Check List *(Continued from previous page)*

VI. Purchase Insurance

EPA must ensure the recipient: /

- Understands that insurance is an optional expense, but that RLF funds may be used to purchase / environmental insurance if it is used when carrying out cleanup activities.

VII. Develop an Approach for Selecting Borrowers and Subgrantees

EPA must ensure the recipient:

- Develops an approach for selecting standard loan borrowers, and borrowers do not fall under any of the following restrictions:
 - Entities that are potentially liable under CERLCA § 107.
 - Entities that are liable for cleaning up petroleum-only brownfields sites.
 - Entities that are currently suspended, debarred from receiving federal funding, or otherwise declared ineligible.
- Requires the following, if the borrower (or subgrantee) asserts BFPP, CPO, or ILO limitations on liability:
 - The borrower or subgrantee has performed “all appropriate inquiry” on or before acquiring the property.
 - For BFPP or CPO, the borrower is not potentially liable or affiliated with anyone potentially liable for cleanup costs; was not potentially liable, or otherwise liable under CERCLA § 107.
 - The borrower or subgrantee will meet continuing obligations.
- Develops an approach for selecting intra-governmental loan borrowers. In addition to the borrower restrictions listed under a standard loan, the recipient’s fund manager must also demonstrate the following:
 - The borrowing entity has the legal authority to enter into a legally binding obligation to repay.
 - There is an identifiable source of income/repayment. For example, pilot (payment in lieu of taxes) funds, proceeds from tax increment financing (TIF), or funding from the sale of the property.
 - There is an enforcement entity who can ensure that the loan is repaid. For example, the comptroller’s office of the recipient can help avoid potential conflicts of interest.
- Develops an approach for selecting cleanup subgrantees.
 - Offer cleanup subgrants to non-profit organizations or other eligible entities.
 - Offer cleanup subgrants for the purpose of funding cleanup activities at eligible RLF sites owned by the eligible entity or the non-profit organization that receives the grant.
 - Understands that unlike loans, cleanup subgrants may NOT be made within the same governmental entity that receives the RLF grant (i.e., intra-governmental subgrants are not allowed under the RLF program).
- Requires subgrantees who assert BFPP, CPO, or ILO limitations on liability, the following:
 - The subgrantee has performed “all appropriate inquiry” on or before acquiring the property.
 - For BFPP or CPO, the subgrantee is not potentially liable or affiliated with anyone potentially liable for cleanup costs; was not potentially liable, or otherwise liable under CERCLA § 107.
 - The subgrantee will meet continuing obligations.

VIII. Develop an Approach for Selecting Projects

EPA must ensure the recipient:

- Develops a formal protocol for borrowers to demonstrate their projects’ eligibility. This protocol includes:
 - Descriptions of projects that will be financed, how loan monies will be used, and the qualifications of the borrower to make legitimate use of the funds.
 - Explanation of how a project would be consistent with the RLF program objectives and terms and conditions.
 - Project selection criteria is consistent with federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.

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**Chapter 5 Check List** (Continued from previous page)**IX. Establish Borrower and Subgrantee Terms and Conditions**

EPA must ensure the recipient:

- Works with their borrower and/or subgrantee to develop terms and conditions for each loan and/or cleanup subgrant.
- Established terms and conditions that contain loan or subgrant-specific financial requirements.

X. Methods of Payment and Disbursement

EPA must ensure the recipient:

Prior to receiving any cooperative award funds from EPA:

- Has an accounting system adequate to identify, safeguard, and account for both RLF funds and program income;
- Has lending documents prepared; and
- Has loan documents reviewed by legal counsel for compliance with applicable state and local laws, and with the terms and conditions of the award.
- Works with their regional EPA project officer to ensure they are enrolled to receive electronic payments via either:
 - The EPA-EFT payment system; or
 - The Automated Standard Application for Payments (ASAP).

If the recipient chooses to receive payments via the EPA-EFT payment system, they must:

- Enroll by completing the ACH Vendor/Miscellaneous Payment Enrollment Form (Standard Form 3881); and
- Once enrollment has been established, the recipient must request funds using the U.S. EPA Payment Request Form.

If the recipient chooses to receive payments via the Automated Standard Application for Payments (ASAP), they must:

- Enroll to use ASAP by contacting their EPA Servicing Finance Office (SFO) for enrollment instructions (effective January 2004). If the recipient is currently enrolled to use ASAP with another agency, the recipient should contact their SFO to request funds be authorized on ASAP.

Chooses one of two methods to disburse funds to their borrowers:

- Actual Expense
 - The recipient has required their borrower to submit documentation of expenditures.
- Schedule
 - The recipient has agreed upon a disbursement schedule with their borrower.

XI. Using Funding and Program Income for Eligible Costs

EPA must ensure the recipient:

- Replaces all program income from active RLF loans into the RLF for relending.
- Places program income, including proceeds from the sale, collection, or liquidation of a defaulted loan up to the amount of the unpaid principal into their RLF for relending.
- Uses at least 60 percent of RLF funds to capitalize the loan pool and associated eligible programmatic costs, and no more than 40 percent of the funds for cleanup subgrants and associated eligible programmatic costs. (The percentage may change each fiscal year, and the cooperative agreement recipient must follow the requirements of the terms and conditions.)

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**Chapter 5 Check List** *(Continued from previous page)***XII. Default Loan Provisions**

EPA must ensure the recipient:

- Has placed special terms and conditions in the loan agreements of borrowers that they deem “high risk,” in an effort to preclude loan defaults.
- Takes measures to minimize unrecoverable losses to the RLF if a loan default occurs.
- Is responsible for (if the cleanup is not complete at the time of default):
 - Documenting the connection between the amount loaned to the borrower (or, in the case of guaranteed loans, the amount paid to the bank or other financial institution) and the cleanup that took place prior to the default; and
 - Securing the site (e.g., ensuring public safety) and informing EPA and the state.