



CHAPTER NINE: *Closeout Procedures*

Chapter Summary:

EPA Regions should ensure the recipient begins “closing out” its cooperative agreement after: 1) all administrative and environmental cleanup actions required under the cooperative agreement have been completed, and 2) all funds unused by the recipient have been returned to EPA unless the agreement is terminated for the convenience of the recipient, or non-compliance with EPA requirements. The closeout process can begin as soon as final payment of funds from EPA to the recipient are received and all cleanups funded by and specified in the award are completed unless the agreement is terminated for the convenience of the recipient, or non-compliance with EPA requirements.

This chapter outlines the steps required for concluding a cooperative agreement and also details the procedures to follow if a recipient fails to comply with the terms and conditions of its award.

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9.1 Successful RLF Closeout. After all applicable administrative actions and required work of the cooperative agreement award have been completed, the recipient can choose to close out its RLF program. On final payment of the fund, EPA will begin procedures to closeout the grant. At that point, EPA and the recipient will negotiate a close out agreement.

Closeout is the process EPA follows to ensure that:

- All administrative actions and work required under the cooperative agreement have been completed; and
- EPA closes out or deobligates all funds unused by the recipient.

There are **two fundamental criteria** for closeout:

- Final payment of funds from EPA to the recipient; and
- Completion of all cleanups funded by the award.

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

The recipient can also **continue operation of the RLF and continue to make loans beyond the original RLF period with program income generated by the agreement.** The recipient will establish their own procedures, subject to EPA approval, to close out subgrants and loans. This will be discussed in Section 9.4, *Making Loans Beyond the RLF Program Period*.

9.2 The Closeout Process and Responsibilities. During the closeout process, there are defined responsibilities for both the recipient and EPA. The recipient must complete all environmental cleanup actions, request final payment of funds from EPA, and complete various financial and performance reports. EPA will close out or deobligate any unused funds. EPA is responsible for closing out the cooperative agreement once all the required actions of the award have been completed.

Schedule for Obligating Funds

Closeout could occur at any point between one and five years after the RLF is awarded, depending on the timing of disbursement (i.e., schedule or actual expense) the recipient uses for its loans and subgrants. The recipient must:

- Provide evidence that it is making significant progress towards making loans and subgrants in the amount available under the cooperative agreement through its quarterly progress reports; and

- Request **final payment of award funds from EPA within 90 days of the cooperative agreement end date.**

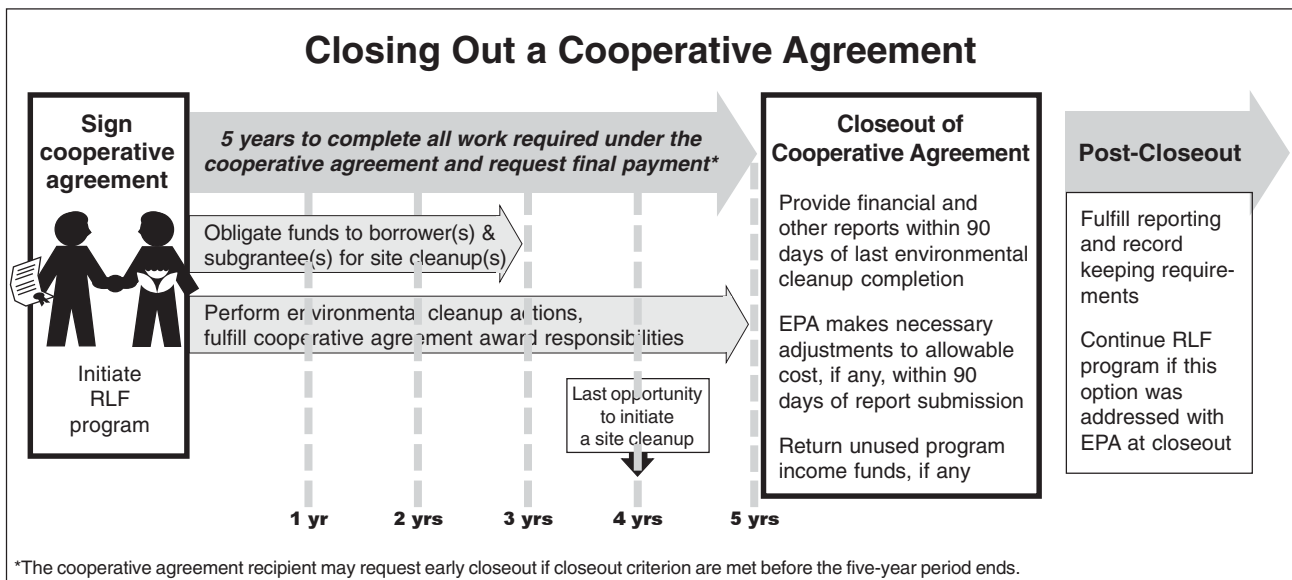


The recipient may request early closeout if closeout criterion are met before the five-year period ends.

During the five-year period, the recipient must also complete all cleanups, and request final payment from EPA. This represents the end of the EPA's cooperative agreement, but not necessarily the end of the RLF itself. Section 9.4, *Making Loans Beyond the RLF Program Period* will discuss the option of continuing an RLF beyond the cooperative agreement.

EPA Regions must require the recipient to use any accrued program income (e.g., fees, repayments of interest, repayments of principal, and other income) before requesting final payment from EPA (see 40 C.F.R. 31.21(f) for the authority regarding the disbursement of program income). At EPA's discretion, the cooperative agreement **may be extended beyond five years if the recipient has an acceptable justification.**

Exhibit 9A – Closing Out a Cooperative Agreement



Each recipient has three years from the cooperative agreement start date to obligate awarded funds to borrowers and subgrantees for site cleanup activities. Accordingly, the last opportunity to begin a site cleanup is one year before the end of the cooperative agreement. The recipient has a maximum of five years to complete all required activities and request final payment of funds from EPA.

Reporting

All financial, performance, and other required reports are due within 90 days of completion of all required work and the cooperative agreement end date. At the request of the recipient, EPA may extend this 90-day time frame. Reports include, but are not limited to:

- Financial performance or progress reports;
- Financial status report (SF 269);
- Final request for payment (SF 270);
- Cleanup reports (with information on cleanup dates);
- Institutional controls, where appropriate;
- Invention disclosure;
- Property profiles;
- Property inventory report including a request for instructions regarding disposition of any property purchased with cooperative agreement funds; and
- A federally-owned property inventory report.

Unused Funds

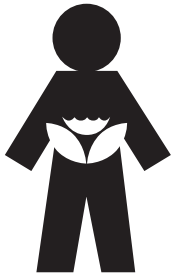
At the end of the cooperative agreement, EPA will deobligate grant funds in accordance with standard agency procedures. Alternatively, the EPA Regions may choose to modify the cooperative agreement to allow the recipient to use remaining funds for other eligible grant activities (e.g., a final subgrant). The EPA Region must ensure that the recipient complies with any requirements in the agreement relating to use of funds at a petroleum site.

If the recipient anticipates receiving program income after the end of the RLF grant period, EPA Regions must address how this will be used as part of a closeout agreement. In addition to eligible brownfields related activities, program income may be used toward eligible brownfields activities as agreed upon by EPA and the recipient. In addition to eligible RLF uses, program income earned after the termination of the agreement may be used toward site assessments and other Brownfields purposes. EPA will monitor the recipient's compliance with the terms and conditions in the agreement regarding disposition of program income earned after the award period. Consequently, the recipient must maintain records documenting the use of post-award program income. EPA can request access to these records or may negotiate post-closeout reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the original agreement.



The closeout of an award does not affect a recipient's responsibility to return any funds due as a result of later refunds, corrections, or other transactions.

9.3 Post-Closeout Reporting and Record Keeping Requirements. After closeout, the recipient, borrowers, and subgrantees may be responsible for maintaining certain records and documents of activities and program income use.



EPA maintains the right to disallow costs and recover funds on the basis of a later audit or other review, after an award has been closed out.

The recipient must maintain appropriate records for a minimum of 3 years after completion of the agreement by each loan (or longer, if income from outstanding loans continues beyond this period) to document compliance with terms and conditions of the program income relating to use of post-award program income. The terms and conditions provide that the recipient must obtain written approval from EPA prior to destroying any records.

The terms and conditions of EPA's cooperative agreement also require that the recipient ensure that **borrowers and subgrantees maintain documentation for at least 3 years** after the RLF agreement, and must obtain written approval from the recipient prior to destroying records. As part of a closeout agreement, EPA Regions may negotiate for the recipient to maintain records for an appropriate period. If program income from outstanding loans continues beyond the closeout of the agreement, Regions must ensure that the recipient follows the terms and conditions of the closeout agreement pertaining to program income.

EPA monitors the recipient's compliance with the terms and conditions in the agreement regarding disposition of program income earned after the award period. EPA may negotiate post-closeout reporting requirements or request access to records relating to the use of post-award program income to verify that it has been used in accordance with the terms and conditions of the closeout agreement.

FAQs:

Q: Will EPA monitor the recipient's loan fund and use of program income beyond the cooperative agreement's closeout?

A: Yes. Formal reporting requirements will end when the agreement is closed out. However, EPA will monitor the terms and conditions in the agreement relating to the disposition of program income earned after the award period. Therefore, the recipient must maintain records documenting the use of post-award program income. EPA may request access to these records or may negotiate post-closeout reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the closeout agreement.

9.4 Making Loans Beyond the RLF Program Period. The recipient may continue its RLF program after its cooperative agreement has ended. If it chooses this option, the recipient must inform EPA during the closeout process. EPA Regions should convey to the recipient that continuation of the RLF beyond the program period is highly recommended and encouraged.

If the recipient chooses to continue operation of the RLF beyond the RLF grant period, it must complete closeout procedures and work with EPA to address program income use and requirements in a closeout agreement.

- The closeout agreement will address eligible uses of program income and environmental cleanup requirements.
- The recipient must **maintain records documenting the use of post-award program income** in accordance with the terms and conditions of the closeout agreement.

9.5 Non-Compliance, Suspension, and Termination. If EPA determines that successful closeout cannot occur because a recipient has failed to comply with the terms and conditions of the cooperative agreement, EPA may take enforcement action (see 40 C.F.R. 31.43). EPA will recover federal funds, if appropriate, under CERCLA § 104(k)(7)(c).

Non-Compliance

Before taking action, EPA **may, but is not required to, give the recipient a reasonable period of time to take the necessary corrective action** to comply with the terms and conditions of the cooperative agreement. For example, should it appear that an award recipient will not take action or that continued operation will place the RLF and its federal assets at risk, EPA may suspend or terminate the cooperative agreement immediately (see 40 C.F.R. 31.43(a)(3) for suspension or termination authority). EPA may also take any of the following actions:

- Temporarily withhold payments;
- Disallow all or part of cost activities; and/or
- Initiate a whole or partial suspension or termination.

EPA may also recover payments that recipients expended in violation of the terms and conditions of the agreement or in violation of applicable laws and regulations.

Temporarily Hold or Suspend Payments

Upon suspension, the recipient and designated fund manager could be:

- Prohibited from any new lending activity;
- Subject to loan servicing and collection efforts; and
- Subject to restrictions on use of other program income.

For more information, see 40 C.F.R. 31.43.

Termination

In the case of termination, EPA has the responsibility, on behalf of the federal government, to **recover its proportionate share of the value of the RLF assets**. RLF assets can include:

- Cash;
- Receivables;
- Personal and real property; and/or
- Notes, or other financial instruments developed through the use of funds.

EPA's **proportionate share** is calculated by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets. If the value of the assets has been reduced by improper or illegal use of cooperative agreement funding, EPA has the **right to compensation** over the fair market value of assets.

Partial termination can occur if a recipient fails to complete the initial round of lending in the time schedule provided in the cooperative agreement. In this situation, the agreement may be partially terminated and the following actions may occur:

- Unused cooperative agreement **funds will be deobligated by EPA;**
- The cooperative agreement **award may be amended to reflect the reduced amount of the cooperative agreement;**
- EPA may **determine whether sufficient funds remain to permit effective RLF operation;** or
- EPA may **terminate the agreement and recover the federal share of its assets** if it determines that the purpose of the cooperative agreement cannot be met.

9.6 Termination for Convenience. The recipient may unilaterally terminate the grant for convenience under 40 C.F.R. 31.44(b). In addition, in cases where EPA determines that the RLF recipient is unable to carry out the agreement effectively due to unanticipated barriers, EPA and the recipient may terminate the agreement for convenience under 40 C.F.R. 31.44(a).

Under CERCLA § 104(k)(7)(c), EPA has unique statutory authority to take action against borrowers or subgrantees who violate or are in violation of a condition of a loan or subgrant or applicable federal law. Although the terms and conditions require the recipient to administer its loan program and take appropriate action in the event of a default, Congress has authorized EPA to take actions to terminate loans and request repayment if the borrower is in violation of a condition of a loan or subgrant. For example, if a borrower or subgrantee used RLF funds for cleanup costs at a site for which it is potentially liable under CERCLA § 107, EPA may take appropriate action under this provision. Regions must consult with their Office of Regional Counsel and EPA Headquarters if action under this provision is being considered.

FAQs:

Q: What happens in the event that a project funded by an RLF loan must be terminated and cleanup is NOT complete?

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

- Documenting the difference between the amount loaned to the borrower and the cost of cleanup that took place prior to the default;
- Securing the site to ensure public safety; and
- Informing EPA and the state.

EPA may be involved in cleanup decisions. The recipient is accountable to EPA should a borrower or subgrantee default on a site. The recipient must ensure borrowers and subgrantees comply with the terms and conditions that arise from the recipient's agreement with EPA.

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Chapter 9 Check List: *Closeout Procedures*

EPA regions must ensure that the recipient recognizes its environmental cleanup responsibilities. This checklist is intended as a tool for recipients to ensure that they have taken all steps necessary towards closing out the RLF.

I. Closeout Responsibilities

- All administrative actions and work required under the cooperative agreement have been completed.
- EPA deobligates all funds unused by the recipient.
- The recipient receives final payment of funds from EPA.
- All cleanups funded by and specified in the award were completed.

Obligation Schedule

EPA must ensure the recipient:

- Provided evidence, through quarterly reports, that significant progress was made towards making loans and subgrants in the amount available under the cooperative agreement.
- Requests final payment of award funds from EPA within 5 years and one quarter of the agreement start date.
- Disburses any accrued program income before requesting final payment from EPA.

Reporting

EPA must ensure the recipient:

- Delivers all financial, performance, and other reports required as a condition of the award within 90 days of completion of all required work, including, but not limited to:
 - Financial performance or progress reports;
 - Financial status report (Standard Form (SF) 269);
 - Final request for payment (SF 270);
 - Cleanup reports (with information on cleanup dates);
 - Invention disclosure;
 - Property profile;
 - Property inventory report including a request for instructions regarding disposition of any property purchased with cooperative agreement funds; and
 - A federally owned property inventory report.

Unused Funds

EPA must ensure the recipient:

- Returns all unused program income to EPA, unless EPA modifies the cooperative agreement to allow those funds to be used in other programs.
- Returns remaining funds not obligated via a loan agreement to EPA (*this is applicable only if the recipient chooses not to continue the RLF*).

II. Post-Closeout Reporting and Record Keeping Requirements

EPA must ensure the recipient:

- Maintains appropriate records for a minimum of 3 years after completion of the RLF agreement.
- Obtains written approval from EPA, prior to destroying records after 3 years.

III. Making Loans Beyond the BCRLF Project Period (If applicable)

- In choosing to continue to make RLF loans beyond the RLF program period, the recipient will (*if the recipient is not continuing operation of the RLF beyond the RLF program period, skip the next two statements*):
 - Address eligible uses of program income and environmental cleanup requirements in the closeout agreement; and
 - Maintain records documenting the use of post-closure program income.

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**Chapter 9 Check List** *(Continued from previous page)***IV. Non Compliance, Suspension, and Termination** *(This is applicable only if the recipient has failed to comply with the terms of the cooperative agreement.)*

- In the case of non-compliance, the recipient was given a reasonable period of time in which to take the necessary corrective action to comply with the terms and conditions of the cooperative agreement.
- In the case of a temporary hold or suspension, the recipient will refer to 40 C.F.R. 31.43 and speak to their RLF Coordinator.
- In the case of termination, any unused cooperative agreement funds will be deobligated.