UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

JAN 10 2001

MEMORANDUM

SUBJECT: **Financial Structure of Cooperative Agreement Funds Under the Brownfields Cleanup Revolving Loan Fund (BCRLF) Program**

FROM: **Timothy Fields, Jr.**
Assistant Administrator

TO: **Superfund National Policy Managers, Regions 1-10**

SUMMARY:

The Brownfields Economic Development Initiative, *Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund, October 2000,* ("The Guidelines") made several changes to the ways a BCRLF pilot may structure cooperative agreement funds.

The changes addressed in this memorandum apply to new BCRLF pilots to be awarded in FY 2001. The changes may, with approval from EPA Regional Offices, also apply to existing BCRLF pilots.

The BCRLF cooperative agreement recipient (CA recipient or "pilot") selected in FY 2001 will be able to structure funding provided by the U.S. EPA as follows:

Loan Pool	Direct Financial Assistance Provided to the CA recipient - IF In Conjunction with a Loan	Administrative Costs
≥70% of EPA funds used to capitalize loan fund	≤ 20% of EPA funds	10% of EPA funds

A BCRLF pilot may also allow nonprofit and governmental borrowers to "discount" set percentages of the amount to be repaid under loan agreements. The CA recipient may, but is not required to, allow nonprofit borrowers to forego repayment of up to 30% of the loan amount. The CA recipient may also allow governmental borrowers to forego repayment of up to 10% of the loan amount.

For purposes of this memorandum, the definitions of terms and acronyms may be helpful. See Attachment 1.

I. BACKGROUND

The Brownfields Economic Development Initiative, *Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund, October 2000,* ("The Guidelines") made several changes to the ways a BCRLF pilot may structure cooperative agreement funds. The purpose of the changes is to create an incentive for new participants in the program and to respond to both Headquarters and Regional concerns as well as efforts to encourage program streamlining. The Guidelines indicate that "sub-grants" may be awarded as an incentive for non-profit or governmental borrowers to participate in the BCRLF program. A "subgrant" is an award of financial assistance from a BCRLF cooperative agreement recipient to another eligible entity as authorized by 40 CFR 31.37.

Following careful consideration of comments from the Regions and other EPA offices, we determined that the use of subgrants while allowable under the assistance regulations, would be burdensome to Regions, BCRLF pilots and borrowers. To streamline this effort, we have restructured the incentives to authorize CA recipient's to "discount" loan repayments by nonprofit and governmental borrowers. This will promote increased program participation by such entities and benefit the BCRLF pilots.

The restructure of pilot financing and the use of loan repayment discounts may, with approval, apply to existing pilots, and will apply to new BCRLF pilots to be awarded in FY 2001. Accordingly, this memorandum addresses the process for amending existing cooperative agreements to permit existing pilots to restructure their funding, and to further clarify appropriate use of funds awarded under the BCRLF.

The Guidelines provide that funding may be structured in the following manner. (See, *Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund, October 2000*, page 2)

- *At least 70% of the funds will be used to capitalize a loan fund.*
- EPA *may provide up to 20% of the cooperative agreement funds to the cooperative agreement recipient* (the "recipient") *as direct financial assistance*; and,
- *10% of the cooperative agreement may be used for general (non-site specific) administrative costs.*

II. USE OF FUNDING TO CAPITALIZE A REVOLVING LOAN FUND AND PROVIDE FOR LOAN DISCOUNTS

A. Loan Fund Capitalization.

The Guidelines provide that "a BCRLF pilot (cooperative agreement recipient) must use at least 70% of the funds provided to capitalize a cleanup loan fund.[1] In certain situations, the CA recipient may "discount" a specified percentage of the loan amount that non-profit or governmental (state, tribal, or political subdivision of a state) borrowers are required to repay. The amount of the discount must be reflected in the terms of the loan agreement between the CA recipient and the borrower.

1. Loan Repayment Discounts for Nonprofit organizations

A CA recipient may offer an incentive to eligible nonprofit borrowers (see definition above) by "discounting" the loan repayment amount by up to 30% of the full loan. For example, if the CA recipient loaned $100,000 to a nonprofit borrower to clean up a brownfields property the borrower would repay only $70,000 plus interest to recapitalize the BCRLF. The 30% of the loan amount that has been discounted only could be used to carry out allowable cleanup activities in compliance with terms of loan agreement such as compliance with CERCLA, the NCP, the Davis-Bacon Act and other cross cutting requirements applicable to the borrower. As with any loan, the CA recipient remains accountable for the proper expenditure of cooperative agreement funds, including ensuring that the borrower carries out the cleanup in accordance with Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the National Oil and Hazardous Substances Contingency Plan (NCP).

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[1] Capitalization of the loan fund refers to the obligation of EPA assistance funds as "seed capital" for the CA recipient's loan program. A loan program "revolves" when it uses loan repayments (principal, plus interest, and fees) to make new loans for the same authorized purposes.

2. Loan Repayment Discounts to governmental borrowers.

A CA recipient may also offer an incentive to eligible governmental borrowers (see definition above) by "discounting" the loan repayment amount by up to 10% of the full loan. This discount is authorized in a "intra-governmental loan" situation.[2] Again, the 10% of the loan amount that has been discounted only could be used to carry out allowable cleanup activities in compliance with terms of loan agreement such as compliance with CERCLA, the NCP, the Davis Bacon Act and other cross cutting requirements applicable to the borrower.

3. Disposition of Program Income from Discounted Loans

The CA recipient must treat repayments of principal, interest and fees from discounted loans in accordance with the terms and conditions of the assistance agreements. Whether the interest applies to the entire loan, or only to the percentage of loan repayments due after discounting is a matter of negotiation between the CA recipient and the borrower.

III. USE OF DIRECT FINANCIAL ASSISTANCE FUNDING TO THE COOPERATIVE AGREEMENT RECIPIENT

A. Use of Direct Financial Assistance Funding.

The Guidelines indicated that EPA may provide up to 20% of the cooperative agreement funds to the cooperative agreement recipient as direct financial assistance. These funds may be used ONLY by the cooperative agreement recipient and ONLY in combination with a loan. These funds may NOT be used as a "sub-cooperative agreement" or "subgrant." Upon application for a loan by a borrower, the cooperative agreement recipient may use this direct financial assistance to carry out any site-specific "lead agency" responsibilities related to that loan. Program income received from fees, loan repayments and interest on loans received by the cooperative agreement recipient may be used for direct financial assistance in the same proportion (e.g., 20%) as provided by this memorandum for new pilots or existing pilots choosing to restructure.

B. Examples of Direct Financial Assistance Activities.

These funds may be used by the CA recipient to carry out site-specific lead agency responsibilities including brownfields site manager responsibilities. (See Guidelines pages 13 and 14). For example, this direct financial assistance could be used to fund the preparation of an engineering evaluation/cost analysis (EE/CA) or its equivalent. Other lead agency responsibilities for which these funds may be used include:

- determining whether BCRLF cleanup activities at a particular site are authorized by CERCLA and the NCP based on site evaluation (described in the NCP at 40

[2] Referred to informally as "lending to yourself".

C.F.R. § 300.410) and on current site conditions;

- ensuring that a BCRLF cleanup meets applicable or relevant and appropriate requirements under Federal and State environmental laws, as required by 40 C.F.R. § 300.415(j);

- ensuring that the NCP public participation requirements (see, 40 C.F.R. § 300.415(n)) are met. This includes ensuring the availability of documents, providing adequate public comment periods, and designating a spokesperson to inform the community of actions taken, respond to inquiries, and provide information;

- establishing an administrative record for each site, as required by 40 C.F.R. § 300.800(a);

- working with the Fund Manager, as loan agreements are developed, to ensure that all environmental response requirements will be met and that BCRLF funds are used only for authorized activities;

- ensuring the adequacy of each BCRLF cleanup as it is implemented, including confirmation sampling (development of the Quality Assurance Project Plan (QAPP) and actual sampling.)

- ensuring that a site is secure and that it poses no immediate threat to human health or the environment, if a borrower is unable or unwilling to complete a BCRLF cleanup.

C. U.S. EPA Payment of Financial Assistance to Pilot Cooperative Agreement Recipients

Payments for direct financial assistance to a cooperative recipient are made in accordance with standard cooperative agreement payment procedures. Again, the recipient must minimize the time that elapses between payment by EPA and disbursements for allowable costs.

IV. USE OF FUNDING FOR ADMINISTRATIVE COSTS:

A. Administrative Costs.

For new BCRLF pilots, 10% of the cooperative agreement may be used for general (non-site specific) administrative costs. For example, the recipient may use these funds for establishing administrative infrastructure of the revolving loan program. This may include costs related to processing loan applications, conducting credit checks, outreach to potential borrowers and loan administration. Program income received from fees, loan repayments and interest on

loans received by the cooperative agreement recipient may be used for administrative costs in the same proportion (e.g., 10%) as provided by this memorandum for new pilots or existing pilots choosing to restructure.

B. U.S. EPA Payment of Financial Assistance to Pilot Cooperative Agreement Recipients for Administrative Costs

Payments to the recipient are in accordance with standard 40 CFR 35.6280 payment procedures.

V. APPLICATION OF FUNDING CHANGES TO EXISTING BCRLF PILOTS:

Existing pilots are NOT required to restructure their U.S. EPA funding support to take advantage of the incentives described in this memorndum. BCRLF pilots awarded prior to FY 2001 may choose to amend their cooperative agreements and their workplans to restructure the funding provided to capitalize a revolving loan fund to include funding support as direct financial assistance, administrative costs and loan repayment discounts.[3] If restructuring is sought, the EPA region should work with the Pilot to develop amended cooperative agreements, workplans, budgets and terms and conditions. Regional offices should consult with Headquarters during the restructuring process.

Existing pilots will not be receiving additional funding from the EPA, other than possible supplemental funding upon meeting established criteria for such supplemental funding. Any amendments will only apply to the division of funds from EPA to capitalize the revolving loan fund, funds used as direct financial assistance, and funding for administrative costs. It does not apply to loans already signed and executed. Thus, existing loans may not be restructured to provide for loan repayment discounts. The purpose of authorizing loan repayment discounts is to create an incentive for new participants in the program. Existing borrowers do not fall into this category.

Sample language to amend cooperative agreements and workplans for existing pilots is provided in an attachment to this memorandum. See Attachment 2.

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[3] Existing pilot agreements may provide for up to 15% administrative costs. A restructured agreement would redistribute funding between the 20% direct financial assistance and 10% administrative costs categories. However, the 20% in direct financial assistance is available only for site-specific "lead agency" costs associated with a particular loan.

VI. APPLICATION OF FINANCIAL RESTRUCTURING TO NEW AND EXISTING PILOTS

Both new and existing pilots that select the financial restructuring set forth in this memorandum, will be required to distribute program income in the same proportions.

If you have any questions regarding this memorandum, please contact either Linda Garczynski, (202) 260-1223, or Barbara Bassuener, (202) 260-9347.

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ATTACHMENT 1.

DEFINITIONS AND ACRONYMS

For purposes of this memorandum, the definitions and acronyms below may be helpful.

(a) **Brownfields Cleanup Revolving Loan Fund (BCRLF)**

(b) **Borrower**

A borrower is a public or private entity that uses BCRLF funds for cleanup and cleanup-related activities, and agrees to the terms of a loan agreement between itself and the cooperative agreement recipient.

(1) **Nonprofit Borrower**

Organizations which meet the definition of a nonprofit entity in Paragraph 4 of OMB Circular A-122. Exceptions may be made for colleges and universities and nonprofit hospitals on a case by case basis.

(2) **Governmental Borrower**

Includes States, tribes and political divisions. Governmental units are defined at 40 CFR 35.6015, Indian Tribes are defined at 40 CFR 35.6015(a)(23); political subdivisions are defined at 40 CFR 35.6015(a)(31); and, states are defined at 40 CFR 35.6015(a)(44).

(c) **Comprehensive Environmental Response, Compensation, and Liability Act 1980**

CERCLA, also known as "Superfund," is a Federal law that governs the investigation and cleanup of sites. The BCRLF demonstration pilot program is funded under §104(d)(1) of CERCLA.

(d) **Cooperative Agreement Recipient (CA recipient or "pilot")**

(e) **Engineering Evaluation/Cost Analysis (EE/CA).**

Cooperative agreement recipients are required to prepare an EE/CA or its equivalent as part of the BCRLF response selection. (see NCP at 40 CFR §300.415(b)(4)(I).

(f) **Loan Capitalization**

Capitalization of the loan fund refers to the obligation of EPA assistance funds as "seed capital" for the CA recipient's loan program. A loan program "revolves" when it uses loan repayments
(principal, plus interest, and fees) to make new loans for the same authorized purposes.

(g) **Loan Discount**

A decision by the CA recipient to allow a borrower to repay less than the full amount of a loan, subject to certain restrictions. These restrictions include a 30% discount of the amount to be repaid by nonprofit borrowers and 10% discount for governmental borrowers. Additionally,

the discounted amount must be expended under the same conditions as the loan itself (including compliance with CERCLA the NCP, and other statutory obligations.

(h) **National Oil and Hazardous Substances Pollution Contingency Plan (NCP)**

40 CFR Part 300, is the Federal regulation that governs the cleanup of releases of hazardous substances, pollutants, and contaminants under CERCLA.

ATTACHMENT 2.

DRAFT LANGUAGE TO AMEND EXISTING BCRLF COOPERATIVE AGREEMENTS

Amendment No. _____ to Cooperative Agreement No. _____.

For purposes of this amendment, the following definitions of terms are applicable.

(a) **Brownfields Cleanup Revolving Loan Fund (BCRLF)**

(b) **Borrower**

A borrower is a public or private entity that uses BCRLF funds for cleanup and cleanup- related activities, and agrees to the terms of a loan agreement between itself and the cooperative agreement recipient.

(1) **Nonprofit Borrower**

Organizations which meet the definition of a nonprofit entity in Paragraph 4 of OMB Circular A-122. Exceptions may be made for colleges and universities and nonprofit hospitals on a case by case basis.

(2) **Governmental Borrower**

Includes States, tribes and political subdivisions. Governmental units are defined at 40 CFR 35.6015, Indian Tribes are defined at 40 CFR 35.6015(a)(23); political subdivisions are defined at 40 CFR 35.6015(a)(31); and, states are defined at 40 CFR 35.6015(a)(44).

(c) **Cooperative Agreement Recipient (CA recipient or "pilot")**

(d) **Engineering Evaluation/Cost Analysis (EE/CA).**

Cooperative agreement recipients are required to prepare an EE/CA or its equivalent as part of the BCRLF response selection. (see NCP at 40 CFR §300.415(b)(4)(i).

(e) **Loan Capitalization**

Capitalization of the loan fund refers to the obligation of EPA assistance funds as "seed capital" for the CA recipient's loan program. A loan program "revolves" when it uses loan repayments (principal, plus interest, and fees) to make new loans for the same authorized purposes.

(f) **Loan Discount**

A decision by the CA recipient to allow a borrower to repay less than the full amount of a loan, subject to certain restrictions. These restrictions include a 30% discount of the amount to be repaid by nonprofit borrowers and 10% discount for governmental borrowers. Additionally, the discounted amount must be expended under the same conditions as the loan itself (including compliance with CERCLA the NCP, and other statutory obligations.

1. Funds available to (name of recipient) under Cooperative Agreement No. _____ as of (date) may be used as follows:

(a) At least 70% of the funds must be used by (name of recipient) to provide loans in accordance with Item 4 of this Amendment.

(b) Up to 20% of the funds may be used by (name of recipient) as direct financial assistance in accordance with Item 5 of this Amendment.

(c) No more than 10% of the funds may be used by (name of recipient) for general (non-site-specific) direct administrative costs in accordance with Item 6 of this agreement.

2. This amendment does not affect loans that (name of recipient) has already made with funding form Cooperative Agreement No. _____.

3. This amendment does not affect (name of recipient's) indirect cost rate for Cooperative Agreement No. _____.

4. The CA recipient may, but is not required to, allow nonprofit borrowers to forego repayment of up to 30% of the loan amount. The CA recipient may also allow governmental borrowers to forego repayment of up to 10% of the loan amount.

(a) The loan repayment amount that has been discounted may only be used by the borrower to carry out allowable clean up activities in compliance with terms of loan agreement such as compliance with CERCLA, the NCP, the Davis-Bacon Act and cross-cutting requirements applicable to the loan.

(b) The CA recipient remains accountable for the proper expenditure of cooperative agreement funds, including ensuring that the borrower carries out the cleanup in accordance with CERCLA and the NCP.

5. Direct Financial Assistance.

(a) (Name of Recipient) may use up to 20% of the remaining cooperative agreement funds for costs incurred for site-specific activities necessary to carry out (Name of Recipient) responsibilities as the lead agency. Funds may only be expended for lead agency activities, as described in 5(b) below, directly related to the cleanup of a site where the cleanup is being financed, all or in part, with a loan with funds from Cooperative Agreement No. _____. [However, direct financial assistance in (b) does not include use of these funds by the pilot for cleanup costs (e.g. moving contaminated soil off the site)]. [4]

(b) All costs charged to Cooperative Agreement No. _____ as site-specific direct financial assistance must finance lead agency activities (including brownfields site manager responsibilities) that are necessary for (Name of recipient) to carry out its

[4] Optional

responsibilities under Section 104 of CERCLA and the NCP. Examples of these activities include:

i. determining whether BCRLF cleanup activities at a particular site are authorized by CERCLA and the NCP based on site evaluation (described in the NCP at 40 C.F.R. § 300.410) and on current site conditions;

ii. ensuring that a BCRLF cleanup meets applicable or relevant and appropriate requirements under Federal and State environmental laws, as required by 40 C.F.R. § 300.415(j);

iii. ensuring that the NCP public participation requirements (see, 40 C.F.R. § 300.415(n)) are met. This includes ensuring the availability of documents, providing adequate public comment periods, and designating a spokesperson to inform the community of actions taken, respond to inquiries, and provide information;

iv. establishing an administrative record for each site, as required by 40 C.F.R. § 300.800(a);

v. working with the BCRLF Fund Manager, as loan agreements are developed, to ensure that all environmental response requirements will be met and that BCRLF funds are used only for authorized activities;

vi. ensuring the adequacy of each BCRLF cleanup as it is implemented, including confirmation sampling (development of the Quality Assurance Project Plan (QAPP) and actual sampling.)

vii. ensuring that a site is secure and that it poses no immediate threat to human health or the environment, if a borrower is unable or unwilling to complete a BCRLF cleanup.

viii. preparing an EE/CA or its equivalent.

(c) All transactions involving the acquisition of products and services (including consulting services) with direct financial assistance under Item 5 of this amendment must be conducted in accordance with the procurement requirements of 40 CFR Part 35, Subpart O and other applicable provisions of Cooperative Agreement No. _____.

6. Non-Site-Specific Administrative Costs.

Up to 10% of the funds remaining under Cooperative Agreement No. _____ may be used for non-site-specific administrative costs that are allowable under CERCLA §104, 40 CFR Part 31, 40 CFR Part 35, Subpart O and OMB Circular A-87. For example, the recipient may use

these funds for establishing administrative infrastructure of the revolving loan program. This may include costs related to processing loan applications, conducting credit checks, outreach to potential borrowers and loan administration

7. Program Income.

Up to 20% of the program income received from fees, loan repayments and interest on loans and other sources received by the cooperative agreement recipient may be used for site-specific lead agency costs as described in paragraph 5 b., above. Up to 10% of the program income may be used for administrative costs described in paragraph 6, above. The remaining 70% or more of program income must be used for making new loans, which may include discounted repayment mechanism for nonprofit and governmental borrowers, subject to the limitations in paragraph 4.