



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

*Cleaning up and revitalizing land
Operating effectively and efficiently*

Improved Management of the Brownfields Revolving Loan Fund Program Is Required to Maximize Cleanups

Report No. 17-P-0368

August 23, 2017



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Abbreviations

ACRES	Assessment, Cleanup & Redevelopment Exchange System
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
OBLR	Office of Brownfields and Land Revitalization
OIG	Office of Inspector General
OMB	Office of Management and Budget
RLF	Revolving Loan Fund
U.S.C.	United States Code

Cover photos: **Top left**—Rooftop garden of a 12,000-square-foot grocery store built on a former brownfield site in Albuquerque, New Mexico, Region 6. The site was remediated in 2008 using EPA Brownfields RLF funds. (EPA photo)

Top right—A residential building project on a former brownfield site in Sioux City, Iowa, Region 7. The site was remediated using EPA Brownfields RLF funds. (EPA OIG photo)

Bottom right—Construction of the 12,000-square-foot grocery store in Albuquerque, New Mexico, Region 6. (EPA photo)

Bottom left—A building with an office, lab and production development was built on a former brownfield site in Philadelphia, Pennsylvania, Region 3. (EPA photo)

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At a Glance

Why We Did This Review

The Office of Inspector General (OIG) conducted this audit to determine whether the EPA's Brownfields Revolving Loan Fund (RLF) recipients are using program income to capitalize a revolving loan fund, and to loan and grant money for brownfield remediation after the cooperative agreements are closed.

RLF cooperative agreements provide funding for a recipient to capitalize a RLF, and to provide grants to carry out cleanup activities at brownfield sites. These activities often generate program income through various sources, which may continue after the closeout of cooperative agreements.

The EPA envisioned that money from repayment of loans would provide a community with capital to address additional brownfield remediation and cleanup.

This report addresses the following:

- *Cleaning up and revitalizing land.*
- *Operating effectively and efficiently.*

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Improved Management of the Brownfields Revolving Loan Fund Program Is Required to Maximize Cleanups

What We Found

Approximately \$10.9 million available to clean up brownfields is not being used as intended. Contaminated brownfield properties are not being cleaned up and redeveloped for 10 of the 20 closed Brownfields RLF cooperative agreements reviewed. The recipients of the cooperative agreements have not re-loaned or spent program income collected after the closeout agreement was signed.

For 10 of the 20 closed Brownfields RLF cooperative agreements reviewed, approximately \$10.9 million available to clean up brownfields is not being used as intended.

The U.S. Environmental Protection Agency's (EPA's) 2008 Revolving Loan Fund Grant Program Administrative Manual states the following: "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."

We found confusion among EPA regions and RLF recipients, and dissimilarities in terms and conditions, leading to inconsistencies in program application. Program income was not maximized by depositing funds into an interest-bearing account, and sources of program income were excluded from the terms and conditions of cooperative agreements and closeout agreements. Another source of confusion was knowing when post-closeout program income was used, and when a closeout agreement can be terminated. These issues resulted in inconsistencies that could potentially affect the long-term sustainability of the Brownfields RLF Program.

We also found that the EPA's Office of Brownfields and Land Revitalization's data management system did not meet federal standards. In addition, some regional project officers could not review annual reports for RLF recipients. We questioned over \$2.7 million from three recipients.

Recommendations and Planned Agency Corrective Actions

We recommend that the Assistant Administrator for Land and Emergency Management make improvements to the Brownfields RLF Program income usage requirements, and remove confusion and dissimilarities among EPA regions and RLF recipients. We also recommend that EPA Regions 1 and 10 question Brownfields RLF funds. The EPA agreed with 22 of the 23 recommendations. We consider the agency's planned corrective actions to be acceptable for 22 recommendations. One recommendation remains unresolved pending the EPA providing clarification on the corrective actions taken.



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

THE INSPECTOR GENERAL

August 23, 2017

MEMORANDUM

SUBJECT: Improved Management of the Brownfields Revolving Loan Fund Program
Is Required to Maximize Cleanups
Report No. 17-P-0368

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Barry Breen, Acting Assistant Administrator
Office of Land and Emergency Management

Deborah Szaro, Acting Regional Administrator
Region 1

Michelle Pirzadeh, Acting Regional Administrator
Region 10

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY16-0155. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, your offices provided planned corrective actions and completion dates in response to OIG Recommendations 1, 3 through 17, 19, 21 and 23. These recommendations are considered open pending implementation of the corrective actions.

The EPA did not concur with Recommendation 2, and proposed an alternative corrective action. The OIG believes the alternative corrective action addresses much of the intent of the recommendation. However to resolve the remaining concerns, as instructed by EPA Manual 2750, the OIG will meet with the EPA within 30 days of the issuance of the final report to discuss resolution.

The EPA agreed with Recommendations 18, 20 and 22, and will review documentation on questioned costs. The aggregate value of the questioned costs in this report exceeds \$250,000. Therefore, in accordance with EPA Manual 2750, Recommendation 22 will require the agency to submit a proposed Management Decision to the OIG for concurrence before it is issued to the recipient, and within 120 days of the final report.

Your responses will be posted on the OIG's public website, along with our memorandum commenting on your responses. The responses should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final responses should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1

Introduction

Purpose

We conducted this audit to determine whether the Brownfields Revolving Loan Fund (RLF) recipients are using program income to capitalize a RLF, and to loan and grant money for brownfields remediation after the cooperative agreements are closed.

Background

The 2002 Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Law) states that a brownfield site is defined as real property, the expansion, redevelopment or reuse of which may be complicated by a hazardous substance, pollutant or contaminant. This definition can apply to a wide variety of sites, including industrial properties, former gas stations, warehouses and residential buildings.

The U.S. Environmental Protection Agency (EPA) estimates there are more than 450,000 brownfields in the United States. In designing the Brownfields Program, the EPA wanted to empower states, communities and others to work together to prevent, assess, safely clean up and reuse brownfields.

Beginning in the mid-1990s, the EPA provided money to local governments that launched hundreds of 2-year brownfields pilot projects, and developed guidance and tools to help states, communities and other stakeholders clean up and redevelop brownfields sites. The EPA determined that 40 Code of Federal Regulations (CFR) 31.25 (g)(2) permitted the funding for the Brownfields RLF Program to carry out remediation activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Section 104(d).

The Brownfields Law codified many of the EPA's practices, policies and guidance. The Brownfields Law provided new tools for the public and private sectors to promote sustainable brownfields cleanup and reuse. In addition, the Brownfields Law amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to expand potential federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, job training, research and technical assistance. The EPA began implementing RLF activities under the Brownfields Law in fiscal year (FY) 2003.

Brownfields RLF Grants awarded in the form of cooperative agreements serve as the foundation of the EPA's Brownfields Program. Cooperative agreements

permit the EPA project officer to be substantially involved in overseeing the recipient's work.¹

Cooperative agreements provide funding for a recipient to capitalize a RLF and to provide loans and grants to carry out remediation activities at brownfield sites. Through these cooperative agreements, the EPA seeks to strengthen the marketplace and encourage stakeholders to leverage the resources needed to clean up and redevelop brownfields. The RLFs generate program income through loan principal repayments, interest and program fees during the life of the agreements, and after the cooperative agreement is closed. When loans are repaid, the loan amount is returned to the fund and intended to be lent to other borrowers; thereby, providing an ongoing source of capital within a community.

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 cooperative agreement. The closeout process can begin as soon as final payment of funds from the EPA to the recipient is received, and all cleanup activities funded by the award are completed, unless the agreement is terminated for the convenience of the recipient or for noncompliance with EPA requirements.

Based on the terms and conditions of the cooperative agreements, the recipient must negotiate a closeout agreement with the EPA to govern the use of program income after closeout. Eligible uses include continuing to operate a RLF for brownfields cleanup and/or other brownfields activities. The EPA prefers the continued operation of a RLF for brownfields cleanup instead of other brownfields activities. Closeout agreements will terminate when either the recipient has expended all funds or wishes to discontinue their agreed-to, post-closeout activities.

Responsible Offices

The EPA's Office of Brownfields and Land Revitalization (OBLR), within the Office of Land and Emergency Management, manages the Brownfields RLF Program and issues guidance to EPA regions. The EPA's grants management offices award cooperative agreements. The grants management offices along with regional programs conduct monitoring. Regional project officers have primary responsibility for grants management and oversight.

Scope and Methodology

We conducted this performance audit from April 2016 to June 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit

¹ Brownfields RLF Grants will be referred to as cooperative agreements for the remainder of the report.

objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

To determine whether recipients are using program income to capitalize a RLF, and to loan and grant money for brownfields remediation after the cooperative agreements are closed, we reviewed the relevant laws, regulations, guidance, and the terms and conditions of the cooperative agreements. We judgmentally selected and reviewed 20 closed Brownfields RLF cooperative agreements that cover all 10 EPA regions (Appendix A). We also judgmentally selected a second sample of 22 closed cooperative agreements that had no closeout agreements issued, to validate the information that OBLR provided to us. This information is summarized in Appendix A.

We conducted interviews with OBLR management and staff to discuss closeout policies, cooperative agreement terms and conditions, use of program income, and other areas related to our audit. We interviewed project officers and program managers from all 10 EPA regional offices to discuss closeout agreements, program income, recipient reports, etc. In addition, we interviewed all recipients to discuss use of program income, closeout agreements, and other areas related to our audit.

Chapter 2

Unused Program Income

For 10 of the 20 Brownfields RLF cooperative agreement recipients² reviewed, approximately \$10.9 million in funds were unused. The EPA's 2008 Revolving Loan Fund Grant Program Administrative Manual states the following: "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."

According to recipients, program income remained unused because of market conditions, economic downturn, and receiving funds from additional open Brownfields RLF cooperative agreements. The EPA envisioned that when loans are repaid, the money would be re-loaned to provide capital within a community to address brownfields remediation and cleanup. Almost \$10.9 million is not being used as intended to clean up and redevelop brownfields properties.

Brownfields Revolving Loan Funds Should Not Remain Idle

The Brownfields Law was designed in part to promote the cleanup and reuse of brownfields, and to provide financial assistance for brownfields revitalization by providing grants for the capitalization of RLFs for the remediation of brownfields sites.

As noted above, the EPA's Revolving Loan Fund Grant Program Administrative Manual says EPA regions should encourage recipients to maximize the amount of money loaned out for cleanup, and RLF funds should not remain idle. In addition, 40 CFR Part 31.21, subparagraph (f) states the following:

(f) Effect of program income, refunds, and audit recoveries on payment.

(1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

² Brownfields RLF cooperative agreement recipients will be referred to as "recipients" for the remainder of the report.

However, two EPA memorandums titled, “Brownfields Revolving Loan Fund Cooperative Agreement Closeout Agreements,” which were dated March 11, 2010, and June 10, 2015, stated the following:

In certain circumstance where the recipient has both remaining EPA funding and accrued program income, the EPA regions may also want to request an exception from the grant regulation in 40 CFR 31.21 (f)(2). This regulation requires accrued program income to be used prior to drawing down the unobligated balance of RLF cooperative agreement funds.



This construction site—a former brownfield site in Albuquerque, New Mexico—later became a 12,000-square-foot grocery store. (EPA photo)

Program Income Is Not Re-Loaned or Spent After Closeout

For 10 of the 20 Brownfields RLF closed cooperative agreements reviewed, the recipient has not re-loaned or spent any program income collected after the closeout agreement was signed, which totals almost \$10.9 million. For these cooperative agreements, the recipients made loans with funds originally awarded with the EPA cooperative agreement. Table 1 shows these loans have either been fully repaid or are currently being repaid and include the following highlights:

- Three recipients have collected on all loans issued and hold \$2.2 million of unused program income.
- Seven recipients have an \$8.7 million balance of program income not being used and continue to receive repayments.

Table 1: Available program income not spent or re-loaned

All loans repaid				
	Recipient	EPA Region	Amount of program income unused	Date when all loans were repaid
1	Philadelphia, Pennsylvania	3	\$657,424	December 2013
2	Nevada Department of Conservation and Natural Resources	9	835,731	December 2012
3	New Mexico Environment Department	6	731,965	December 2014
	Total of the three recipients		\$2,225,120	
Additional loan repayments are currently being collected				
	Recipient	EPA Region	Program income balance*	Repayments began
1	Clearwater, Florida	4	\$454,179	July 2014
2	Ohio Department of Development	5	3,749,290	April 2009
3	Cuyahoga County, Ohio	5	610,933**	July 2006
4	Michigan Department of Environmental Quality	5	390,403	December 2012
5	Sioux City, Iowa	7	794,805	June 2011
6	Colorado Department of Public Health and Environment	8	2,497,495	August 2004
7	Bridgeport, Connecticut	1	173,167	February 2014
	Total of the seven recipients		\$8,670,272	
	Total		\$10,895,392	

*This program income balance reflects the latest information that the recipient provided to the EPA's Office of Inspector General (OIG) as of November 16, 2016.

**Includes program income from two EPA Brownfields RLF cooperative agreements. On January 9, 2017, Cuyahoga County staff told us they had reconciled the county's account, and they believe there is a program income balance of approximately \$354,000. Since our data collection and analysis was completed on November 16, 2016, we are unable to confirm this information.

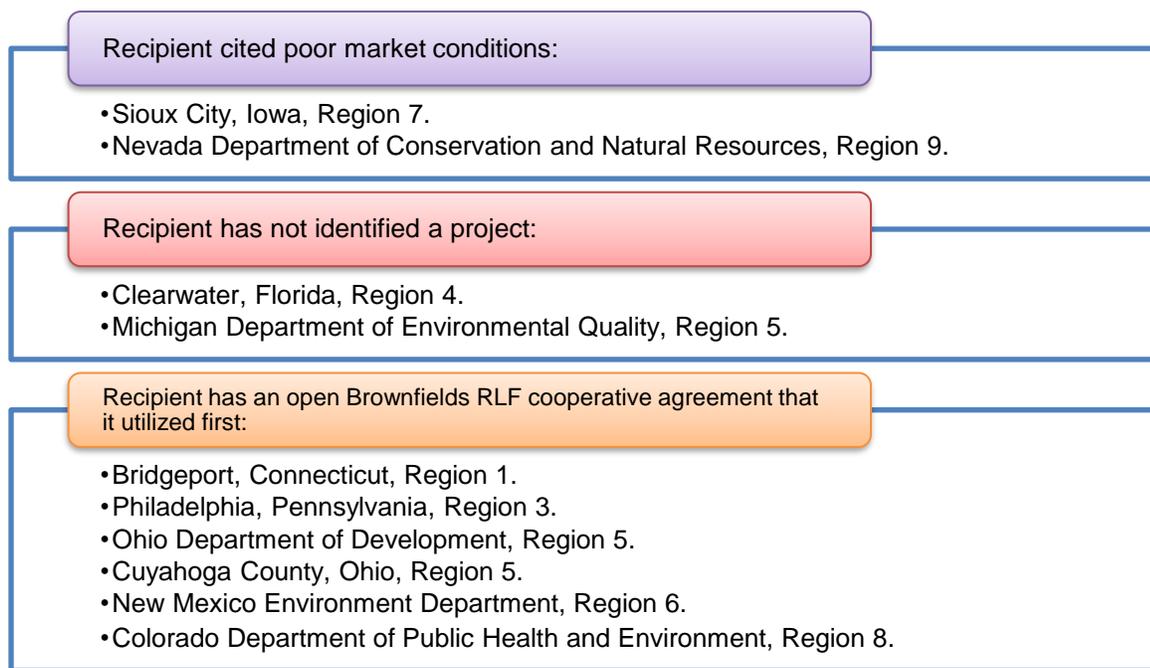
Source: OIG analysis of recipient data.

For the remaining 10 recipients who have spent program income, six recipients made loans with program income totaling over \$1.25 million, and four recipients spent program income but have not made any loans. Program income remains available to loan or spend for some of these 10 recipients.

Reasons for Not Spending Program Income

The 10 recipients listed in Table 1 provided varying reasons for not spending program income. Three of the explanations are described in Figure 1.

Figure 1: Explanations for not spending program income



Source: OIG interviews of recipients.

The EPA envisioned that when loans are repaid, the money would be re-loaned to provide capital within a community to address brownfields remediation and cleanup. However, the EPA has not issued a policy to this effect. Approximately \$10.9 million is not being used as intended; and conceivably, contaminated brownfields properties are not being cleaned up and redeveloped.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

1. Develop a policy to reduce balances of available program income of Brownfields Revolving Loan Funds being held by recipients. The policy should establish a timeframe for recipients to use or return the funds to the EPA.
2. Develop a policy to require a recipient's balance(s) of Brownfields Revolving Loan Fund program income be used before awarding additional funds, as required by regulation.

Agency Response and OIG Evaluation

The EPA agreed with Recommendation 1 and will work with EPA regions to develop a policy for monitoring the accumulated program income of cooperative agreements. The policy will also establish actions to be taken in certain timeframes to reduce the balance of program income or require the return of funds to the EPA as appropriate. The EPA provided an estimated completion date of March 31, 2018, for the corrective action. We consider the agency's planned corrective actions to be acceptable.

The EPA did not concur with Recommendation 2, and proposed that OBLR develop a policy to provide guidance for EPA regions negotiating terms and conditions for supplemental funding amendments, and new awards to recipients who have large balances of program income on closed-out agreements. The policy would require actions on the part of the recipient to reduce program income balances. The OIG accepts the concept of developing a policy, but the wording is missing specificity. The OIG would like more clarification on "large balances" and clarification on the types of actions that the recipient will take to reduce program income balances. Recommendation 2 remains unresolved pending the EPA clarifying the corrective actions taken.

Chapter 3

Inconsistencies in Program Application

To promote the long-term viability of the Brownfields RLF program, it is crucial for the EPA and its recipients to maximize the amount of program income earned. It is also crucial for the EPA and its recipients to know when program income is considered expended. However, we found instances of confusion among regions and recipients, and dissimilarities in terms and conditions of the cooperative agreements and closeout agreements. This led to inconsistencies in program application.

Program income was not placed in an interest-bearing account resulting in the lost opportunity for at least \$77,000 of revenue. RLF funds were also not maximized when sources of program income were excluded from the terms and conditions of cooperative agreements and closeout agreements. Another source of confusion involved not having a clear understanding of the term “expenditure,” or when a closeout agreement can be terminated. These issues resulted in inconsistencies that affect the long-term sustainability of the Brownfields RLF program.

Inconsistent Terms and Conditions and Recipient Requirements

Terms and Conditions Should Require That Program Income Be Deposited Into an Interest-Bearing Account

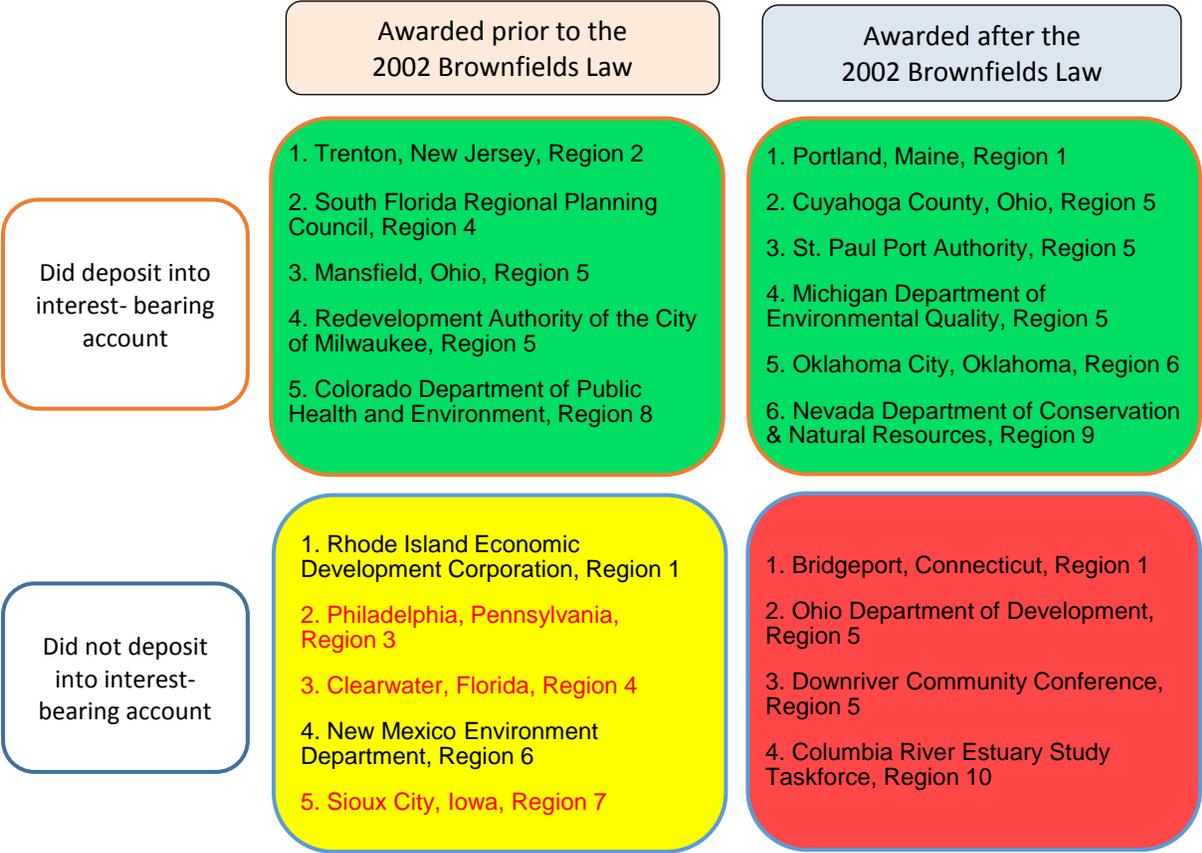
The EPA Revolving Loan Fund Terms and Conditions for 2003, and for 2007 through 2015, say the cooperative agreement recipient must deposit advances of grant funds and *program income* (emphasis added) in an interest-bearing account. The terms and conditions also say that interest earned on program income is considered additional program income. (The EPA did not provide the EPA Revolving Loan Model Terms and Conditions for 2004 through 2006.) According to the 2007–2015 Revolving Loan Fund Model Terms and Conditions, the terms and conditions apply to Brownfields RLF capitalization grants awarded from FY 2003 onwards (after the implementation of the 2002 Brownfields Law³), and to those that chose to transition to the law.

Per OBLR, the model terms and conditions for Brownfields RLF cooperative agreements awarded prior to the implementation of the 2002 Brownfields Law did not include an express requirement for recipients to deposit program income into interest-bearing accounts. The May 1998 Brownfields Cleanup Revolving Loan Fund Grant Administrative Manual also did not include guidance for EPA regions to recommend that program income be deposited into interest-bearing accounts. However, the terms and conditions for cooperative agreements awarded prior to

³ The Terms and Conditions apply to Brownfields RLF capitalization grants awarded under CERCLA 104(k) and those that chose to transition to 104(k). They do not apply to pre-FY 2003 grants subject to 104(d).

the implementation of 2002 Brownfields Law did require recipients to treat interest earned on program income as additional program income. Unless the fees or other expenses necessary for maintaining an interest-bearing account were excessive, it would have been in the recipient’s best interest to deposit program income into an interest-bearing account.

Figure 2: Program income being deposited into interest-bearing accounts



Source: EPA OIG figure.

Cooperative Agreement Terms and Conditions Are Inconsistent

Of the 20 cooperative agreements in our sample, 10 were required to include terms requiring the recipient to deposit program income into an interest-bearing account because these cooperative agreements were issued after the 2002 Brownfields Law was implemented (Figure 2—two boxes on right side). However, four of the 10 recipients that were required to deposit program income into an interest-bearing account did not (Figure 2—lower right, red box), and the potential for additional revenue of at least \$50,000 was missed for Brownfields RLF

activities from July 2010 through June 2016.⁴ Although the remaining 10 cooperative agreements were not required to deposit funds into an interest-bearing account because the awards were made prior to the implementation of the 2002 Brownfields Law, five recipients did (Figure 2–top left green box).

Five of the 10 recipients awarded prior to implementation of the 2002 Brownfields Law did not deposit program income into an interest-bearing account (Figure 2–lower left, yellow box). For the five recipients, we used recipient-provided interest rates from July 2010 through June 2016, and RLF monthly account balances, to estimate lost interest revenue. We found that approximately \$27,000 of interest revenue was lost for the four recipients that did not deposit program income into an interest-bearing account:

- Philadelphia, Pennsylvania, Region 3.
- Clearwater, Florida, Region 4.
- New Mexico Environment Department, Region 6.
- Sioux City, Iowa, Region 7.

No estimate was calculated for the Rhode Island Economic Development Corporation due to comingling of funds.

Three recipients received supplemental funding after the implementation of the 2002 Brownfields Law, and the accompanying modifications could have added the requirement to deposit program income into an interest-bearing account (Figure 2–lower left, yellow box, red text).

Inadequate Oversight Creates an Uneven Playing Field

For the 10 cooperative agreements awarded prior to implementation of the Brownfields Law, there was no requirement for the closeout agreements to include the requirement that program income be deposited into an interest-bearing account. However, these closeout agreements were signed after the signing of the Brownfields Law, and could have included the language.

The four recipients awarded a cooperative agreement after the passing of the Brownfields Law (Figure 2–lower right, red box), and did not deposit program income into an interest-bearing account, provided varying reasons as shown in Table 2.

⁴ This estimate is based on recipient-provided interest rates from July 2010 through June 2016, and RLF monthly account balances for each recipient for this timeframe. The estimate excludes Bridgeport, Connecticut, because we had insufficient information about the city to calculate an estimate.

Table 2: Reasons program income was not deposited into an interest-bearing account

	Recipient	EPA Region	Explanation
1	Bridgeport, Connecticut	1	The recipient stated that the repayments were not in an interest-bearing account, so no interest was earned on idle funds. Region 1 confirmed the requirement was not included in the modification, and does not know the reason why the terms and conditions were not updated.
2	Ohio Department of Development	5	The recipient stated that Brownfields RLF program income was intentionally deposited into a fund that did not earn interest. Ohio's Accounting System Team would not allow a separate fund for every federal program, unless it is governed under the Cash Management Improvement Act, or if it was related to the American Recovery and Reinvestment Act. Therefore, the cooperative agreement was recorded into the Federal Special Fund, along with other federal grants.
3	Downriver Community Conference	5	The recipient said that it followed the direction of an EPA grant coordinator, who has since retired.
4	Columbia River Estuary Study Taskforce	10	The recipient stated that she thought there were issues with government funds in interest-bearing accounts. The recipient said they were careful to not open accounts that accrue interest because they knew this could be a problem.

Source: OIG analysis of recipients and EPA regional staff.

With numerous versions of cooperative agreements and closeout agreements, the agreements can be confusing to recipients and regional staff. There should be a level playing field in all documentation. By not requiring cooperative agreements and closeout agreements to include language that requires recipients to deposit program income into an interest-bearing account, opportunities are lost to maximize the amount of money that could be available for use on Brownfields RLF activities. For seven of our sample recipients, the amount of potential interest lost from July 2010 through June 2016 was approximately \$77,000.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

3. Create a policy to require any new amendments to cooperative agreements include the term and condition to deposit program income into an interest-bearing account.
4. Develop a policy to require any new closeout agreements include the term and condition to deposit program income into an interest-bearing account.
5. Develop a plan, and implement a policy, that requires all recipients to maintain program income, and requires revolving loan funds to be maintained in interest-bearing accounts.

Agency Response and OIG Evaluation

The EPA agreed with all three recommendations and provided corrective actions and completion dates. The EPA will develop policies that require (1) any new amendments to cooperative agreements include the term and condition to deposit program income into an interest-bearing account; (2) any new closeout agreements include the term and condition to deposit program income into an interest-bearing account; and (3) all recipients to maintain program income, and requires revolving loan funds to be maintained in interest-bearing accounts. The EPA provided an estimated completion date of March 31, 2018, for the corrective actions. We consider the agency's planned corrective actions to be acceptable.



Completed 12,000-square-foot grocery store sits on a former brownfield site in Albuquerque, New Mexico. (EPA photo)

Program Income Definitions Vary

Program Income Needs to Be Inclusive of All Sources

Per 40 CFR Part 31.25 (b), program income is gross income earned from a grant agreement during the grant period (between the effective date of the award and the ending date of the award reflected in the final financial report), or generated from grant-supported activities.

The Revolving Loan Fund Grant Program Administrative Manual defines program income in the following manner:

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.

The manual also says that program income includes the following elements:

- 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.
- Proceeds in excess of the unpaid principal.

In an August 11, 2016, response to OIG inquiries, OBLR confirmed our understanding about the long-term nature of the Brownfields RLF Program. While cooperative agreements may close, or the closeout agreement may be terminated, as long as the recipient has program income remaining and/or outstanding loans that are generating program income, the program income must be maintained in an RLF and used for Brownfields cleanup or other Brownfields activities. OBLR further clarified that program income must be maintained in an RLF and used for Brownfields cleanup or other Brownfields activities. This is consistent with the closeout agreement language outlined in the terms and conditions of the cooperative agreement or in any instructions the EPA provides to a cooperative agreement recipient. These instructions are provided when a closeout agreement is terminated with program income remaining, or if additional program income will be generated in the future.

OBLR clearly states that as long as the recipient has program income, the income must be maintained in an RLF and used for brownfields cleanup or other brownfields activities. Table 3 shows excerpts from the Brownfields Law and sections of the Code of Federal Regulations that support OBLR’s statement.

Table 3: Law and regulations related to OBLR’s statement

Criteria	Section related to OBLR statement
Brownfields Law	Grants and loans for Brownfield remediation: (A) Grants provided by the President - the President shall establish a program to provide grants to (i) eligible entities, to be used for capitalization of revolving loan funds . (<i>Emphasis added</i>)
2 CFR 1500.7(c)	Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other Brownfield purpose as outlined in their closeout agreement.

40 CFR Part 31.25(h)	There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.
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Sources: Small Business Liability Relief and Brownfields Revitalization Act, and the Code of Federal Regulations.

In addition, during a meeting with Region 5 staff, an August 7, 2006, email from the EPA’s Office of General Counsel was mentioned, which includes the following text: “First, the law authorizes RLF recipients to make both loans and subgrants.”

The email also references U.S. Senate Report 107-2, dated March 12, 2001, p.7, which supports the idea that it is desirable for RLFs to be maintained long-term. The Office of General Counsel email stated the following in referencing the Senate report:

...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.’

Inconsistencies in Program Income Definitions Span Multiple Regions

For five of 20 recipients in our sample, the definitions of program income varied among the cooperative agreements, modifications and closeout agreements, as shown in Table 4.

Table 4: Variance in definition of program income

	Recipient	EPA Region	Variance between agreements
1	Portland, Maine	1	The closeout agreement definition limited program income to loan repayments, interest payments and program fees.
2	Rhode Island Economic Development Corporation	1	
3	Trenton, New Jersey	2	
4	Bridgeport, Connecticut	1	The cooperative agreement and modifications did not define program income. The closeout agreement defined program income in two formats. First, accrued program income as loan principle repayments, interest payments, and program fees. Secondly, future program income as current and future loans and subgrants.
5	Philadelphia, Pennsylvania	3	The closeout agreement definition of program income did not include interest earned on program income, while the cooperative agreement definition did include interest earned.

Source: OIG analysis of EPA and recipient data.

EPA Region 5 did not apply OBLR’s definition of program income subsequent to closeout of cooperative agreements, excluding loan repayments paid after the cooperative agreement is closed. The Region 5 branch chief provided the following statement and references from 40 CFR 31.25(h) to the OIG team:

Per paragraph (h), I believe that making closeout agreements an explicit part of the grant terms and conditions, we are going a long way to clearing up past confusion as the citation clearly allows certain grant conditions to be carried forward from the agreement (original CA). It is also just as clear that ‘program income’ as defined, is earned only during the original award period. Money repaid after grant closeout on loans made prior to closeout is program income. Loan repayments made on loans made subsequent to closeout and maybe made initially with program income, are—just loan repayments...*unless* we want to also add a further condition to the newly explicit close out term and condition, that for purposes of the closeout agreement *all* future loan repayments are considered ‘program income.’ This way, grantees are made aware, upfront, of their long-term, continuing obligations.

Six of 20 recipients in our sample provided varying answers as to when Brownfields RLF recipients no longer need to continue to operate the revolving loan fund with the program income⁵, as shown in Table 5. All six recipients are located in EPA Region 5.

Table 5: Recipient responses to when funds lose restrictions on program income

	Recipient	Response
1	Mansfield, Ohio	Restrictions continue as long as there is program income.
2	Michigan Department of Environmental Quality	
3	Ohio Department of Development	Did not know when restrictions on program income ceases.
4	Cuyahoga County, Ohio	
5	St. Paul Port Authority	Restrictions cease when loans revolved once.
6	Redevelopment Authority of the City of Milwaukee	On the 3-year anniversary of the closeout agreement, all current and future funds lose their restrictions.

Source: OIG interviews of recipients.

Region 5 staff provided varying answers as to when Brownfields RLF funds lose restrictions on program income. Only one of five Region 5 project officers said something similar to OBLR’s guidance regarding restrictions on the use of program income, which stated the recipient can terminate the closeout agreement, or can continue revolving that money and continue operating the program. The project officer also said that as long as there is program income, restrictions

⁵ OBLR stated that while the cooperative agreements may close, or the closeout agreement may be terminated, as long as the recipient has program income remaining and/or outstanding loans that are generating program income, the program income must be maintained in an RLF and used for Brownfields cleanup or other Brownfields activities.

apply. We received the following responses from the four remaining Region 5 project officers:

- Restrictions ceased at closeout of the cooperative agreement. This project officer is responsible for three of the seven Region 5 recipients in our sample.
- Did not know when restrictions on program income ceases.
- At termination of the closeout, program income lost its federal terms and condition, and reverted to the recipient with the EPA having no authority.
- No federal requirements are still in effect after the award closes, except for those outlined in the closeout agreement. The closeout agreement was silent on this topic.

Unclear or Inconsistent Application of Guidance Causes Confusion

OBLR headquarters staff indicated that while OBLR issues the guidance, EPA regions are responsible for closeout agreement reviews. The original cooperative agreements' terms and conditions contain rules the regions are supposed to follow when closing a cooperative agreement. The following examples are of EPA regions that do not apply the guidance, or are not including the correct cooperative agreement terms and conditions when developing agreements.

- Region 1 project officer did not know why the terms and conditions of the cooperative agreement were incomplete and said this was an administrative error.
- Regions 1 and 2 project officers said they used a template to create the closeout agreements. There is no template included in any of the guidance that OBLR provides.
- Region 3 project officer said the omission of interest earnings in the definition of program income was an oversight.

Moreover, Region 5 project officers and recipients provided varying definitions for when the federal restriction on program income ceases. OBLR has either not fully defined program income to Region 5, or has allowed Region 5 to continue to operate the program in an improper manner.

In response, Region 5 said that its "implementation and interpretation of national statute and policy regarding program income was consistent with the policies and guidance applicable at the time that the closeout agreements were negotiated." Region 5 believes that whatever the apparent differences, these differences were

based largely upon a lack of national policy; not any unique definition or treatment of program income in the region.

According to OBLR, Region 5 has awarded 114 cooperative agreements for a total of \$157,461,967 in the Brownfields RLF Program—more than any EPA region. Region 5 has also negotiated over 40 percent of the closeout agreements nationwide.



Source: EPA OIG graphic summarizing EPA Region 5 cooperative agreements.

When program income definitions vary, this creates confusion for recipients about what should be categorized as program income. Some recipient closeout agreement definitions were limited to loan principal repayments, interest payments, and program fees from the definition. Another recipient’s cooperative agreement did not provide any definition of program income. This variance effectively eliminates additional program income streams that could augment the Brownfields RLF Program, and reduces funds for future Brownfields RLF activities. In addition, the recipient may not be able to sustain a RLF without maximizing assets in the fund.

When a region applies a different definition to post-closeout loan payments, and does not define those payments as program income, there is no requirement for recipients to spend the funds on Brownfields RLF-related activities. In addition, when post-closeout program income is not used on Brownfields RLF activities, recovered funds cannot revolve, and the essence of the RLF program is lost.



EPA Brownfields grants funded asbestos removal from an abandoned building, clearing the way for its demolition in Gary, Indiana. (EPA photo)

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

6. Develop a policy to require any new closeout agreements to include a program income definition that is consistent with the Revolving Loan Fund Grant Program Administrative Manual.

7. Develop and implement a policy that provides an explicit definition of program income for regions to distribute to existing recipients.
8. Develop and implement required training for all regional Brownfields Revolving Loan Fund staff. Have the training include all program policy and guidance relating to maintaining a Brownfields Revolving Loan Fund after the cooperative agreement is closed if program income exists.
9. Track staff completion of required training.

Agency Response and OIG Evaluation

The EPA agreed with all four recommendations and provided corrective actions and completion dates for the four recommendations. For Recommendations 6, 7 and 8, the EPA will develop policies consistent with the wording in the recommendations. For Recommendation 9, the EPA will work with regional staff to track completion of required training. For Recommendations 6 and 7, the EPA provided an estimated completion date of March 31, 2018, for the corrective actions. For Recommendations 8 and 9, the EPA provided an estimated completion date of September 30, 2018. We consider the agency's planned corrective actions to be acceptable.

Variance in Termination Clause and Expenditure Definition

Definition of Termination Needed for Closeout Agreements

According to the EPA's Office of General Counsel, closeout agreements terminate when either the recipient has expended all funds, or the recipient wishes to discontinue their agreed-to, post-closeout activities. In the latter case, if the terms of the closeout agreement are silent on post-closeout program income, then the EPA must renegotiate the closeout agreement with the recipient to provide for the return of the money to the EPA. A portion of the returned funding, up to the amount the EPA capitalized for the RLF grant, may be returned to the program's State and Tribal Assistance Grant appropriation. The remainder would go to miscellaneous receipts of the U.S. Department of the Treasury, as required by 31 U.S.C. § 3302. The EPA's Office of General Counsel also explained that RLF funds must be used for purposes outlined in the terms and conditions of the cooperative agreement and closeout agreement.

The EPA's 2007 and 2010 memorandums, titled "Brownfields Revolving Loan Fund Cooperative Agreement Closeout Agreements," do not address termination clauses, and it is unclear where the language included in some closeout agreements originated.

According to OBLR, “expended all funds” means the recipient has used all post-closeout income for authorized purposes and is not anticipating any additional post-closeout program income to be generated, such as loan repayments, fees or interest. Under the terms and conditions of the closeout agreement, the recipient may not use program income for administrative costs. OBLR said that program income may only be used for the following:

- a. Loans
- b. Cleanup Subawards
- c. Phase I Environmental Site Assessments at Brownfield sites performed in accordance with EPA All Appropriate Inquiries Final Rule or American Society for Testing and Materials E1527-13 (or the most current version)
- d. Phase II Environmental Site Assessments and cleanup planning activities at Brownfield sites, and
- e. Programmatic costs to manage and oversee the work being performed

OBLR’s new FY 2016 terms and conditions address when the closeout period terminates:

Termination of this closeout agreement occurs when all program income has been expended. The cooperative agreement recipient shall notify EPA’s Award Official in writing when this occurs and certify that all funds have been expended in accordance with the terms and conditions of this closeout agreement. The notification should provide the relevant grant information specified in Section 8 a. of this closeout agreement. The Agency has 90 days from receipt of this notification to submit any objections to the termination of this closeout agreement. If the Agency does not object within that time period, then this closeout agreement will terminate with no further action.

Inconsistent Application of Termination Clauses and Expenditure Definition

For the 20 closeout agreements in our sample, there were no common uniform termination clauses. For 15 of the 20 closeout agreements, one of two predominant versions were used. Eight agreements used one version, and seven agreements used different wording (Table 6).

Table 6: Types of termination clauses used by more than one recipient in closeout agreements

Wording of termination clause		Recipient	EPA Region
"Termination of this closeout agreement occurs when all retained program income has been expended."	1	Bridgeport, Connecticut	1
	2	Rhode Island Economic Development Corporation	1
	3	Portland, Maine	1
	4	Trenton, New Jersey	2
	5	Clearwater, Florida	4
	6	Oklahoma City, Oklahoma	6
	7	New Mexico Environment Department	6
	8	Nevada Department of Conservation & Natural Resources	9
"After three full years of the expenditure by cooperative agreement recipient of the program income subject to this agreement, cooperative agreement recipient may terminate this agreement by certifying to U.S. EPA that they have expended program income funds from Cooperative Agreement in compliance with this agreement."	1	South Florida Regional Planning Council	4
	2	Ohio Department of Development	5
	3	Downriver Community Conference	5
	4	Cuyahoga County, Ohio	5
	5	St. Paul Port Authority	5
	6	Mansfield, Ohio	5
	7	Michigan Department of Environmental Quality	5

Source: OIG analysis of EPA and recipient data.

In addition, the following four recipients each had unique wording in their termination clauses:

- Philadelphia, Pennsylvania, Region 3.
- Redevelopment Authority of the City of Milwaukee, Region 5.
- Sioux City, Iowa, Region 7.
- Columbia River Estuary Study Taskforce, Region 10.

The closeout agreement for the Colorado Department of Public Health and Environment, Region 8, did not include a termination clause.

OBLR has addressed when the closeout period terminates with the new FY 2016 terms and conditions for cooperative agreements. The FY 2016 terms and conditions are the first to include this clause. None of the previous cooperative agreements included the clause. There will be a gap that has not been addressed between the new cooperative agreements that include the new clause and the cooperative agreements that do not include the clause.

According to data provided by OBLR, there are 433 open and closed cooperative agreements. As a result, there are 433 cooperative agreements and closeout agreements that do not have clear terms and conditions concerning when the closeout period terminates.

For 17 of the 20 recipients, the closeout agreement's termination clauses include the term "expended" or "expenditure." When we interviewed 11 regional project officers, five provided a definition of "expended" or "expenditure" similar to

OBLR’s definition. The remaining six project officers and one branch chief from four regions did not know the definition of “expended” as worded in the termination clause, or had a different interpretation than OBLR (Table 7).

Table 7: Regional interpretations of expended or expenditure

EPA Region	Interpretation
2	Project officer did not know the definition of “expended.”
3	Staff believed that “expended” meant “once a loan or subgrant is made.” Staff said a loan means “expended” as well.
5	A branch chief believed that, per the definition, program income was “expended” after it has been expended one time. Two project officers believed that program income was expended once it revolved or cycled through once. One project officer believed that “expenditure” referred to programmatic funding.
9	Staff member believed that “expended” meant it can be loaned out (e.g., loan it out, subgrant it, or activities where it never comes back like assessments).

Source: OIG analysis of the EPA responses.

Of the 20 recipients, 16 were asked for an interpretation of “expended” or “expenditure”, and a mix of responses were received that fell into three categories: (1) the recipient interpretation fit the criteria; (2) the recipient did not know what “expended” explicitly meant; or (3) the recipient thought once the funds had “revolved once,” meaning they had been lent one time, the funds had been expended.

Regional Staff Are Unclear When a Closeout Agreement Is Terminated or When Funds Are Considered Expended

OBLR and regions do not have the same understanding of when a closeout agreement will terminate. According to OBLR, closeout agreements will terminate when either the recipient has expended all funds, or it wishes to discontinue its agreed-to, post-closeout activities. “Expended all funds” means the recipient has used all post-closeout income for authorized purposes and is not anticipating any additional post-closeout program income to be generated, such as loan repayments, fees or interest.

Termination clauses in closeout agreements contradict the opinion of OBLR, and there is no required format or specific language for the content in closeout agreements, including the termination clauses. OBLR said the program did not have a required format or specific language for closeout agreements; therefore, closeout agreements may vary in content and wording from region to region, and from cooperative agreement to cooperative agreement.

There is a risk that recipients will not spend program money on brownfields remediation and cleanup because of the confusion that happens when there is no clear understanding of when closeout agreements close, and what should happen

with any unexpended funds. Without a uniform termination clause for all closeout agreements, regional staff and recipients have an unclear interpretation of when a closeout agreement can be terminated. With six different versions of termination clauses in our sample, and one closeout agreement without a termination clause, it is likely that other different versions exist throughout the Brownfields RLF Program.

When regional staff and recipients do not know the definition of “expended,” or have a clear understanding of the word, then regional staff and recipients do not know when all post-closeout program income has been used for authorized purposes, or when a closeout agreement can be terminated.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

10. Require any new closeout agreement to include a standard term and condition describing the requirements that need to be met to terminate the agreement, and discontinue the agreed-to, post-closeout Brownfields Revolving Loan Fund activities.
11. Develop and implement a methodology that will align recipients with the same termination terms and conditions.
12. Provide an explicit definition of “expenditure” for EPA regions to distribute to recipients.

Agency Response and OIG Evaluation

The EPA agreed with Recommendations 10 and 12. The EPA provided corrective actions consistent with the wording of the recommendations. For Recommendation 10, the completion date is March 31, 2018. For Recommendation 12, the completion date is December 31, 2017. We consider the agency’s planned corrective actions to be acceptable.

The EPA partially concurred with Recommendation 11. The EPA stated that it is beyond the EPA’s authority to unilaterally change the terms and conditions of older cooperative agreements. The EPA also said it will work to implement a methodology that seeks to maximize the number of agreements with consistent national model terms and conditions by working with recipients to negotiate bilateral modifications of the terms and conditions of their agreements. For Recommendation 11, the EPA provided an estimated completion date of September 30, 2018. Based on the EPA statement, the OIG removed the word “all” from Recommendation 11. We consider the agency’s planned corrective actions to be acceptable.

Chapter 4

Program Data Is Unavailable or Unused

OBLR needs more information to adequately monitor closed Brownfields RLF cooperative agreements and associated program income. OBLR required more than 2 months to provide us with information that we requested on open and closed Brownfields RLFs. The information OBLR provided contained errors and was incomplete. Eleven of the 20 recipients in our sample did not submit required annual reports regarding the use of program income, or they submitted late and multiyear summary reports. The Office of Management and Budget (OMB) Circular A-123 states that federal leaders and managers are responsible for the following:

[E]stablishing and achieving goals and objectives, seizing opportunities to improve effectiveness and efficiency of operations, providing reliable reporting, and maintaining compliance with relevant laws and regulations.

However, OBLR does not have a data system to retain key program information, and sometimes the needed information is not being obtained. Thus, OBLR cannot provide complete and accurate information sufficient to monitor program income generated from closed Brownfields RLF cooperative agreements, or know that program goals have been achieved.

Missing or Hard-to-Retrieve Data

Regions Should Verify Data Quality

OMB Circular A-123 policy states the following:

Federal leaders and managers are responsible for establishing goals and objectives around operating environments, ensuring compliance with relevant laws and regulations, and managing both expected and unexpected or unanticipated events.

While not mandatory, as of August 2013, the Assessment, Cleanup, and Redevelopment Exchange System (ACRES) allows a recipient to input post-closeout program income. ACRES is an online database for recipients to electronically submit data directly to the EPA. On November 11, 2014, the EPA provided “ACRES 5 Training for the EPA Project Officer,” which instructed project officers that they are responsible for checking the accuracy and consistency of data being reported into ACRES. Project officers are also responsible for checking that the data meets OBLR’s data quality standards.

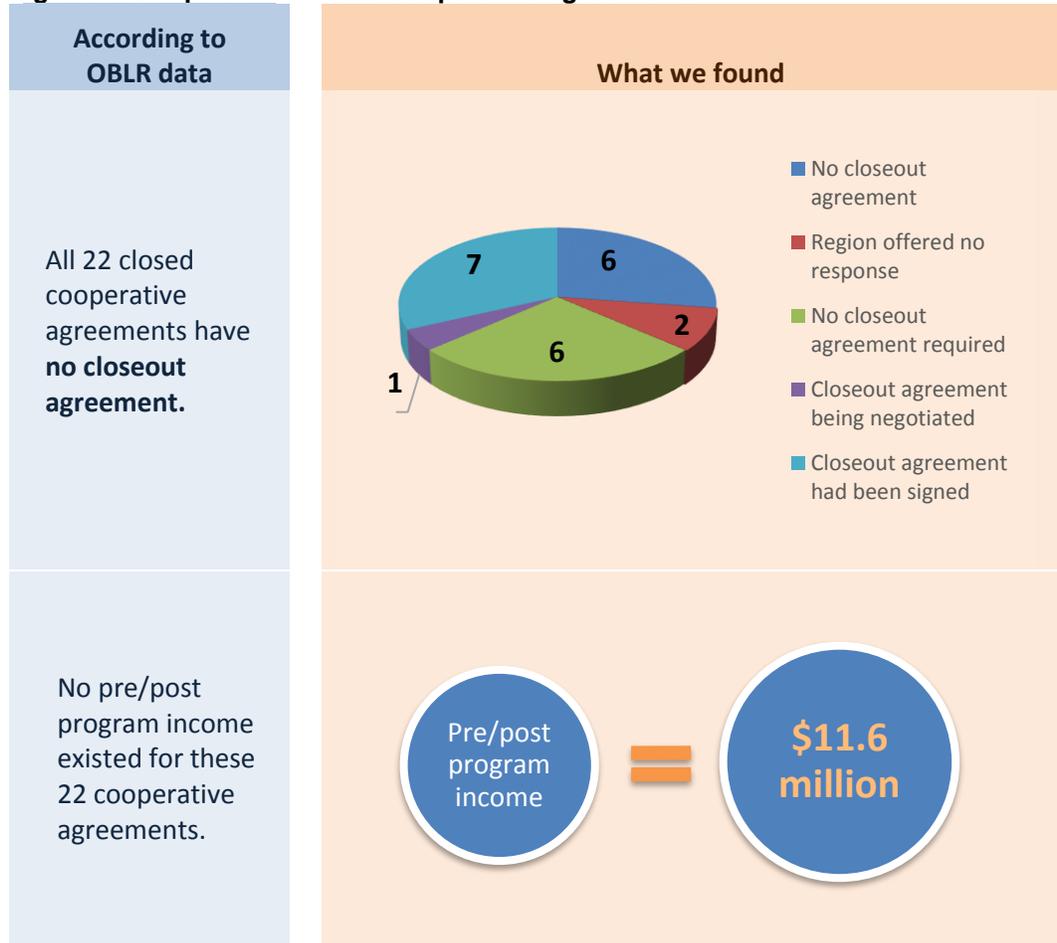
Cooperative Agreement Information Is Inconsistent and Not Readily Available

On April 27, 2016, the EPA OIG issued a notification memorandum that requested a listing of all open and closed cooperative agreements. OBLR provided the completed spreadsheet to the OIG on June 29, 2016. The EPA took 63 days, just over 2 months, to provide the completed data. OBLR staff said this task required a lot of effort, and retrieving the requested data was time-consuming for them and EPA regions.

Part of the data was obtained from the ACRES database by the agency's ACRES contractor. OBLR then asked EPA regional offices to verify the information from the ACRES database, and to input data not available in ACRES. After submitting the spreadsheet to the OIG, OBLR could not confirm the validity of the information in the spreadsheet because EPA regional project officers track the information.

We selected a second sample of 22 closed cooperative agreements with no closeout agreements issued, to validate the information OBLR provided to us, which is summarized in Appendix A. OBLR's spreadsheet listed 143 closed cooperative agreements with no closeout agreements issued. For six of the 22 closed cooperative agreements in our second sample, EPA regional project officers could not confirm there was not a closeout agreement. For seven of the 22 closed cooperative agreements, a closeout agreement existed. This was contrary to what OBLR reported. The spreadsheet also showed that for these 22 closed cooperative agreements, no pre- or post-program income existed. However, we found \$11.6 million (rounded) in pre- or post-closeout program income for 13 of the 22 cooperative agreements reviewed (Figure 3).

Figure 3: Sample of 22 closed cooperative agreements



Source: EPA OIG-generated figure.

Inefficient Data Collection Affects Ability to Assess Revolving Loan Fund Performance

There were a variety of reasons why it took 2 months for the EPA to provide the requested information. ACRES did not contain all the information we requested. As a result, OBLR had to ask EPA regional offices for this information. The information the regions provided was inaccurate and incomplete because the project officers could not locate the grant files, the grant files were held off-site, or the regional project officers retired and the closed cooperative agreements were not reassigned. Also, recipients are not required to report program income into ACRES, and OBLR is not able to verify a region’s data because the data is held by the project officer.

OBLR’s supervisory analyst informed us that it was not feasible to modify ACRES so that it could be a data source for tracking post-closeout program income. OBLR does not have the needed resources. However, OBLR managers agreed that they need to address the problem of tracking post-closeout agreement

program income and brownfields activity, and they are looking at other options that may be feasible.

OBLR does not have efficient data collection methods relating to closed cooperative agreements with pre- or post-program income. This information is vital to OBLR so that it can have complete and accurate information about its program. Insufficient available data makes it difficult to know whether (1) programmatic goals and objectives have been achieved; (2) there are opportunities to improve effectiveness and efficiency of operations; and (3) reliable information is being used to report on the accomplishments of the program.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

13. Require regional project officers, through a policy, to be assigned and maintain information on all closed cooperative agreements with pre- and post-program income.
14. Develop and implement a method for the Office of Brownfields and Land Revitalization to track closed cooperative agreements with pre- and post-program income.
15. Develop a policy to require terms and conditions in the cooperative agreement and/or the closeout agreement to require all recipients to report program income.

Agency Response and OIG Evaluation

The EPA agreed with all three recommendations. The EPA provided corrective actions consistent with the wording of the recommendations. For Recommendations 13 and 15, the completion date is March 31, 2018. For Recommendation 14, the completion date is September 30, 2018. We consider the agency's planned corrective actions to be acceptable.

Regional Offices Should Improve Monitoring of Recipient Program Income

Regions Should Review Audit Reports and Address Problematic Findings

The EPA's Revolving Loan Fund Grant Program Administrative Manual requires EPA regions to monitor the recipient's compliance with the closeout agreement regarding disposition of program income earned after the award period. The EPA

also has the Office of Grants and Debarment's Assistance Agreement Almanac, Chapter 4.5, titled "Compliance and Performance Issues," which is the current policy should a recipient not comply with the terms and conditions of their agreement. Also, closeout agreements for the closed cooperative agreements we reviewed required recipients to provide an annual report to the EPA on the use of the retained program income.

Annual Reports Are Not Always Submitted or Reviewed

EPA regions should improve monitoring of recipient program income via the required reports from recipients. Eleven of the 20 recipients in our sample did not submit required annual reports, or submitted them late or in a multiyear summary report. Four of the 10 recipients did not submit any annual reports:

- Rhode Island Economic Development Corporation, Region 1.
- Cuyahoga County, Ohio, Region 5.
- Mansfield, Economic Development Department, Region 5.
- Sioux City, Iowa, Region 7.

In one instance, Sioux City, Iowa, EPA staff reminded the recipient to submit annual reports as required by the closeout agreement. The Region 7 project officer reminded Sioux City, Iowa, in February 2014 and October 2015 about the lack of required reports. The recipient's staff said they did not submit any of the required reports due to an oversight. As a result of the OIG's on-site visit, the recipient provided the required report to Region 7 in June 2016.

For two recipients: Trenton, New Jersey, Region 2; and Philadelphia, Pennsylvania, Region 3; their first reports were not yet due at the time of the audit. Six recipients did submit timely reports:

- Ohio Department of Development, Region 5.
- Michigan Department of Environmental Quality, Region 5.
- St. Paul Port Authority, Region 5.
- Oklahoma City, Oklahoma, Region 6.
- Colorado Department of Public Health and Environment, Region 8.
- Columbia River Estuary Study Taskforce, Region 10.

Even when recipients submitted annual reports, in at least one case, the region missed identifying potential areas of concern. In June 2011, the Columbia River Estuary Study Taskforce submitted an annual report that stated the taskforce was borrowing \$25,000 for administrative purposes, and further stated the fund is not earning interest income and is subject to sizeable bank fees. The closeout agreement between Region 10 and the Columbia River Estuary Study Taskforce stated that program income must be used for Brownfields RLF-related activities (e.g., inventorying or assessing brownfields sites, developing and evaluating site cleanup or reuse alternatives, cleaning up brownfields sites, public outreach, and

staff time to manage and report on the funds and these activities). The cooperative agreement awarded to the taskforce also stated that program income must be deposited into an interest-bearing account, and interest earned on the program income is considered additional program income.

Monitoring receipt of the required reports is essential. The following recipients did not submit annual reports and were not aware that program income was available for Brownfields RLF activities:

- Cuyahoga County, Region 5.
- Rhode Island Economic Development Corporation, Region 1.

Regions Are Unaware of Program Income Status After Cooperative Agreement Closeout

EPA regions focus on open Brownfields RLF cooperative agreements rather than program income generated from closed cooperative agreements. The EPA acknowledges that it is not under obligation to manage closeout agreements in the same manner that it oversees open cooperative agreements. However, as mentioned above, EPA guidance requires EPA regions to monitor the recipient's compliance with the closeout agreement when it comes to the disposition of program income earned after the award period. For the EPA to understand how program income is spent, the EPA must monitor the recipient of required annual reports and familiarize itself with the types of activities funded by that program income.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

16. Create a method for the Office of Brownfields and Land Revitalization, and EPA regional managers, to track compliance with reporting requirements for closed cooperative agreements.
17. Train regional Brownfields Revolving Loan Fund project officers and managers on the Office of Grants and Debarment's Assistance Agreement Almanac, Chapter 4.5, titled "Compliance and Performance Issues," to include the roles and responsibilities of the project officer, and instruction on enforcement actions available to the EPA if a recipient does not comply.

Agency Response and OIG Evaluation

The EPA agreed with the two recommendations. The EPA provided corrective actions consistent with the wording of the recommendations. For Recommendations 16, the completion date is June 30, 2018. For Recommendation 17, the completion date is September 30, 2018. We consider the agency's planned corrective actions to be acceptable.

Chapter 5

Financial Management Procedures Did Not Meet Federal Standards

Federal regulations require grantees to provide accurate, current and complete disclosure of financial results of financially assisted activities. The Columbia River Estuary Taskforce did not have adequate controls to make sure that costs claimed were allowable under federal cost principles. Further, the Rhode Island Economic Development Corporation, and Bridgeport, Connecticut, did not maintain separate accounting records for their Brownfields RLF; therefore, they could not show how program income was expended. These recipients did not maintain federal requirements for financial recording. We question unsupported costs of over \$2.7 million from these three recipients.

Columbia River Estuary Study Taskforce, Region 10

EPA Region 10 Should Require Recipients to Maintain Proper Financial Records

The closeout agreement between the EPA and the Columbia River Estuary Study Taskforce states that the taskforce will do the following:

...use post-closeout program income to continue to perform or fund Brownfields-related activities such as inventorying or assessing Brownfields sites, developing and evaluating site cleanup or reuse alternatives, cleaning up Brownfields sites, public outreach related to Brownfields and staff time to manage and report on the funds and these activities.

Per 40 CFR Section 31.20, Standards for Financial Management Systems, specifically 31.20(b) and 31.20(b)(1), there are requirements that grantees and subgrantees must meet in their financial reporting standards:

Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

The regulation also states, “Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities.”

According to 2 CFR 200.339 (a)(1) and (a)(2), the EPA can terminate an award for cause if the recipient fails to comply with the terms and conditions of the

agreement. Also, when a recipient has a history of failure to comply with regulations, or the agreement terms and conditions, the EPA can require payments as reimbursements rather than advance payments⁶.

Funds May Have Been Used Inappropriately

The OIG questions how the Columbia River Estuary Study Taskforce expended \$103,968 in EPA Brownfields RLF program income reported in its profit and loss statements as program income generated by the EPA Cooperative Agreement BF-97070501. There is a difference of \$56,166.04 between what is reported as net income in the profit and loss statement dated September 1, 2016, and the total cash balance in the QuickBooks “All Transactions” report dated August 30, 2016. In addition, the Columbia River Estuary Study Taskforce also did the following:

- Borrowed \$25,000 from its RLF to pay for administrative purposes.
- Posted a charge of \$8,730.26, “To bring us into balance with the QB P&L by Class which the auditor ...” Staff could not fully explain the charge and were unable to find documentation supporting the charge.

Poor Financial Records and Misuse of Funds Go Undetected

A Taskforce manager said the QuickBooks report was not correct because of the way the past Taskforce accountant made journal entries that somehow did not tie into the EPA account. The Taskforce manager said there is no way to go back and correct the journal entries, because it is unclear what the accountant was doing.

Also, Taskforce management said that it was facing financial difficulties in 2010 and 2011; therefore, it borrowed from Brownfields RLF funds to pay for overhead expenses. A Taskforce manager thought EPA Region 10 approved the loan. As of September 21, 2016, the Taskforce had repaid all but \$1,500 of the loan.

The financial records were incomplete; therefore, we question the use of \$103,968. When recipients use program income for costs unrelated to Brownfields RLF activities, the RLF has less money available to provide loans and subgrants to carry out cleanup activities at brownfield sites. When loans are repaid, the loan amount is returned to the fund and re-lent to other borrowers, providing an ongoing source of capital within a community.

⁶ This is according to 2 CFR 200.207 and 2 CFR 200.338.

Recommendations

We recommend that the Regional Administrator, Region 10:

18. Question the unsupported use of \$103,968 in EPA Brownfields Revolving Loan Fund revenue reported by the Columbia River Estuary Study Taskforce in its profit and loss statements, and recover any remaining program income.
19. Place the Columbia River Estuary Study Taskforce on a reimbursement basis for all EPA grants and agreements.

Agency Response and OIG Evaluation

The EPA agreed with Recommendations 18, and will review documentation on questioned costs. The Region 10 RLF Lead has been in communication with the Columbia River Estuary Study Taskforce staff to resolve this issue. The aggregate value of the questioned costs in this report exceed \$250,000. Therefore, in accordance with EPA Manual 2750, Recommendation 18 will require the agency to submit a proposed Management Decision to the OIG for concurrence before it is issued to the recipient, and within 120 days of the final report.

The EPA agreed with Recommendation 19, and provided corrective action and a completion date of December 31, 2017. The EPA will work with Region 10 to determine whether it is appropriate to place this recipient in reimbursement status. The EPA stated that the Columbia River Estuary Study Taskforce does not have any other grants or agreements with EPA; therefore, it is not possible to place Columbia River Estuary Study Taskforce on a reimbursement basis for EPA grants at this time. We consider the agency's planned corrective action to be acceptable.

Bridgeport, Connecticut, Region 1

EPA Region 1 Should Require Recipients to Maintain Separate Accounting

The Standards for Financial Management Systems, 40 CFR Part 31.20, requires grantees to provide accurate, current and complete disclosure of financial results, and to maintain records that adequately identify the source and application of funds. The regulation also says records must contain "information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income." In addition, accounting records must be supported by documents such as cancelled checks, paid bills, payrolls, time-and-attendance records, contract and subgrant award documents.

The following text from the closeout agreement between the EPA and Bridgeport, Connecticut, provides additional insight:

All retained program income must be managed separately, so it may easily be tracked, and shall be made available for continued operation of a Revolving Loan Fund for Brownfields cleanups and/or other Brownfields activities...

The grant recipient must maintain adequate accounting records for how retained program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained program income.

Per 2 CFR Section 1500.7(c) the following guidance is provided:

Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their closeout agreement.

However, 2 CFR Section 200.339 permits the EPA to terminate the agreement for cause if the recipient fails to comply with the terms and conditions of the agreement. If a recipient has a history of failure to comply with regulations, or the agreement terms and conditions, the EPA can require reimbursed payments rather than advance payments⁷.

Bridgeport, Connecticut's Financial Records Are Inadequate

The OIG questions how \$1,983,198 in EPA Brownfields RLF program income generated under cooperative agreement BF-97138201 was used. The city confirmed that program transactions, such as program income and expenses, have not been recorded in the city's accounting system, and the city does not know the current fund balance. Bridgeport, Connecticut, has not provided an activity/transaction statement for the Brownfields RLF (i.e., an income/expense report) for the period from September 14, 2005, through September 12, 2016, or a current trial balance for the Brownfields RLF. Currently, the city is trying to find the files associated with the closeout agreement. Therefore, the city has not provided sufficient support to document how it spent \$1,983,198 in Brownfields RLF funds.

Due to lack of accounting records, we are unable to verify how the closeout agreement's, pre- and post-closeout earned program income has been spent. Also, we cannot verify the actual current RLF fund balance.

⁷ This is according to 2 CFR 200.207 and 2 CFR 200.338.

Staffing Transitions Created Problems

Over the last 5 years, Bridgeport, Connecticut, has gone through four program directors, and the city has not had any consistent program staff. The current project manager has only been with Bridgeport, Connecticut, for over a year. The previous project manager left abruptly in 2010. The city did not have a well-managed transition, so reporting fell through the cracks. The current project manager also stated that prior to this year, he did not know the reporting requirements. The director for Bridgeport, Connecticut, stated that the closeout agreement was not on the city's radar. The director also said he did not have knowledge of the cooperative agreement's history; therefore, he did not know what was required under the closeout agreement's terms and conditions.

When the EPA cannot effectively audit and track Brownfields RLF funds because the financial records are incomplete, the agency is unable to determine whether the recipient has used those funds for brownfield site assessment(s), cleanup(s), and rehabilitation. Nor can the EPA determine whether costs were allowable, allocable and reasonable. Based on these reasons, we question the use of \$1,983,198. When recipients use program funds for costs unrelated to Brownfields RLF activities, the fund has less money available to provide loans and subgrants to perform brownfield activities.

Recommendations

We recommend that the Regional Administrator, Region 1:

20. Question unsupported use of \$1,983,198 in EPA Brownfields Revolving Loan Funds program income reported by Bridgeport, Connecticut, and recover remaining program income.
21. Place Bridgeport, Connecticut, on a reimbursement basis for all EPA grants and agreements.

Agency Response and OIG Evaluation

The EPA agreed with Recommendation 20, and will review documentation on questioned costs. The aggregate value of the questioned costs in this report exceed \$250,000. Therefore, in accordance with EPA Manual 2750, Recommendation 20 will require the agency to submit a proposed Management Decision to the OIG for concurrence before it is issued to the recipient, and within 120 days of the final report.

The EPA agreed with Recommendation 21, and provided corrective action and a completion date of December 31, 2017. The EPA will work with Region 1 to determine whether it is appropriate to place this recipient in reimbursement status. The EPA Region 1 staff conducted an Administrative Post-Award Advanced

Monitoring Review of the city of Bridgeport's administrative and financial management systems in September 2016, and has been working with the city to implement new policies and procedures to address issues relating to financial management and reporting. Regional program staff have met with Bridgeport staff several times in person and by telephone to help improve their understanding of program requirements. We consider the agency's planned corrective action to be acceptable.

Rhode Island Economic Development Corporation, Region 1

EPA Region 1 Should Require Recipients to Maintain Proper Financial Records

The requirements outlined in the Standards for Financial Management Systems, 40 CFR Part 31.20, establish standards for financial management including how financial records must be maintained. The regulation requires grantees to provide accurate, current and complete disclosure of financial results, and to maintain records that adequately identify the source and application of funds.

In addition, the Rhode Island Economic Development Corporation's closeout agreement states the following:

All retained program income must be managed separately, so it may easily be tracked, and shall be made available for continued operation of a Revolving Loan Fund for Brownfields cleanups and/or other Brownfields activities...

The grant recipient must maintain adequate accounting records for how retained program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained program income...

Annual Reports shall be required for the first 5 years following the effective date of the closeout agreement...

Regulation 2 CFR 1500.7(c) states the following:

Recipients may also keep program income at the end of the assistance agreement as long as they use these funds to continue to operate the revolving loan fund or some other brownfield purpose as outlined in their closeout agreement.

However, 2 CFR 200.339 says that in the event the recipient fails to comply with the terms and conditions of the agreement, the EPA may terminate the agreement for cause. Also, when a recipient has a history of failure to comply

with regulations, or the agreement's terms and conditions, the EPA can require payments as reimbursements rather than advance payments⁸.

EPA Region 1 Project Officers Should Review Recipient Financial Records

The OIG questions how an estimated \$608,712 of EPA Brownfields RLF program income generated by the EPA under cooperative agreement BL-98128501 was spent. The Rhode Island Economic Development Corporation comingled funds and program income from several grants.

The Rhode Island Economic Development Corporation has not provided adequate accounting records and/or documents for the auditor to substantiate whether the recipient has used program income in a manner consistent with the terms and conditions of the closeout agreement, or expended program income for eligible Brownfields RLF cleanup activities. The recipient has not managed all retained income separately, so that income can be easily tracked, as required by the closeout agreement. Therefore, the recipient has not provided sufficient support to document how it spent an estimated \$608,712 in EPA Brownfields RLF funds.

Further, the Rhode Island Economic Development Corporation has not provided any annual reports that contain a summary of expenses incurred, and program income received, as required by the closeout agreement.

Funds Have Gone Undetected

Rhode Island Economic Development Corporation staff did not know the closeout agreement existed, and they did not know the terms and conditions. Staff said a former employee should have been submitting the annual reports, but the submissions never occurred. The Region 1 project officer has not conducted any monitoring, and he does not know why the recipient did not file the annual reports.

The EPA risks not being able to determine whether the recipient has used Brownfields RLF funds for brownfield site assessment(s), cleanup(s) and rehabilitation, when the recipient has not tracked the funds and the EPA cannot audit the Brownfields RLF account. Therefore, we question the use of an estimated \$608,712 of EPA Brownfields RLF program income. If a recipient uses program funds for costs unrelated to Brownfields RLF activities, less money is available to provide loans and subgrants to perform brownfield sites assessments, cleanups and other brownfield activities.

⁸ This is according to 2 CFR 200.207 and 2 CFR 200.338.

Recommendations

We recommend that the Regional Administrator, Region 1:

22. Question unsupported use of an estimated \$608,712 in EPA Brownfields Revolving Loan Funds by the Rhode Island Economic Development Corporation and recover remaining program income.
23. Place the Rhode Island Economic Development Corporation on a reimbursement basis for all EPA grants and agreements.

Agency Response and OIG Evaluation

The EPA agreed with Recommendation 22, and will review documentation on questioned costs. The aggregate value of the questioned costs in this report exceed \$250,000. Therefore, in accordance with EPA Manual 2750, Recommendation 22 will require the agency to submit a proposed Management Decision to the OIG for concurrence before it is issued to the recipient, and within 120 days of the final report.

The EPA agreed with Recommendation 23, and provided corrective action and a completion date of December 31, 2017. The EPA will work with Region 1 to determine whether it is appropriate to place this recipient in reimbursement status. According to the EPA, Region 1 has taken actions to improve the issues that lead to the unsupported cost identified in Recommendation 22, and the region should improve the financial accounting of recipients going forward. We consider the agency's planned corrective action to be acceptable.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	7	Develop a policy to reduce balances of available program income of Brownfields Revolving Loan Funds being held by recipients. The policy should establish a timeframe for recipients to use or return the funds to the EPA.	R	Assistant Administrator for Land and Emergency Management	3/31/18	\$10,900
2	7	Develop a policy to require a recipient's balance(s) of Brownfields Revolving Loan Fund program income be used before awarding additional funds, as required by regulation.	U	Assistant Administrator for Land and Emergency Management		
3	12	Create a policy to require any new amendments to cooperative agreements include the term and condition to deposit program income into an interest-bearing account.	R	Assistant Administrator for Land and Emergency Management	3/31/18	\$77
4	12	Develop a policy to require any new closeout agreements include the term and condition to deposit program income into an interest-bearing account.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
5	12	Develop a plan, and implement a policy, that requires all recipients to maintain program income, and requires revolving loan funds to be maintained in interest-bearing accounts.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
6	18	Develop a policy to require any new closeout agreements to include a program income definition that is consistent with the Revolving Loan Fund Grant Program Administrative Manual.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
7	19	Develop and implement a policy that provides an explicit definition of program income for regions to distribute to existing recipients.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
8	19	Develop and implement required training for all regional Brownfields Revolving Loan Fund staff. Have the training include all program policy and guidance relating to maintaining a Brownfields Revolving Loan Fund after the cooperative agreement is closed if program income exists.	R	Assistant Administrator for Land and Emergency Management	9/30/18	
9	19	Track staff completion of required training.	R	Assistant Administrator for Land and Emergency Management	9/30/18	
10	23	Require any new closeout agreement to include a standard term and condition describing the requirements that need to be met to terminate the agreement, and discontinue the agreed-to, post-closeout Brownfields Revolving Loan Fund activities.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
11	23	Develop and implement a methodology that will align recipients with the same termination terms and conditions.	R	Assistant Administrator for Land and Emergency Management	9/30/18	

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
12	23	Provide an explicit definition of "expenditure" for EPA regions to distribute to recipients.	R	Assistant Administrator for Land and Emergency Management	12/31/17	
13	27	Require regional project officers, through a policy, to be assigned and maintain information on all closed cooperative agreements with pre- and post-program income.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
14	27	Develop and implement a method for the Office of Brownfields and Land Revitalization to track closed cooperative agreements with pre- and post-program income.	R	Assistant Administrator for Land and Emergency Management	9/30/18	
15	27	Develop a policy to require terms and conditions in the cooperative agreement and/or the closeout agreement to require all recipients to report program income.	R	Assistant Administrator for Land and Emergency Management	3/31/18	
16	29	Create a method for the Office of Brownfields and Land Revitalization, and EPA regional managers, to track compliance with reporting requirements for closed cooperative agreements.	R	Assistant Administrator for Land and Emergency Management	6/30/18	
17	29	Train regional Brownfields Revolving Loan Fund project officers and managers on the Office of Grants and Debarment's Assistance Agreement Almanac, Chapter 4.5, titled "Compliance and Performance Issues," to include the roles and responsibilities of the project officer, and instruction on enforcement actions available to the EPA if a recipient does not comply.	R	Assistant Administrator for Land and Emergency Management	9/30/18	
18	33	Question the unsupported use of \$103,968 in EPA Brownfields Revolving Loan Fund revenue reported by the Columbia River Estuary Study Taskforce in its profit and loss statements, and recover remaining program income.	R	Regional Administrator, Region 10	12/31/17	\$103
19	33	Place the Columbia River Estuary Study Taskforce on a reimbursement basis for all EPA grants and agreements.	R	Regional Administrator, Region 10	12/31/17	
20	35	Question unsupported use of \$1,983,198 in EPA Brownfields Revolving Loan Fund program income reported by Bridgeport, Connecticut, and recover remaining program income.	R	Regional Administrator, Region 1	6/30/18	\$1,983
21	35	Place Bridgeport, Connecticut, on a reimbursement basis for all EPA grants and agreements.	R	Regional Administrator, Region 1	12/31/17	
22	38	Question unsupported use of an estimated \$608,712 in EPA Brownfields Revolving Loan Funds by the Rhode Island Economic Development Corporation and recover remaining program income.	R	Regional Administrator, Region 1	6/30/18	\$609
23	38	Place the Rhode Island Economic Development Corporation on a reimbursement basis for all EPA grants and agreements.	R	Regional Administrator, Region 1	12/31/17	

¹ C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

Sample of Cooperative Agreements Reviewed

For preliminary research, the team judgmentally selected a sample of three cooperative agreements to review. We selected the largest cumulative Brownfields Revolving Loan Fund cooperative agreement in Region 5 (Redevelopment Authority of the City of Milwaukee), Region 7 (Sioux City, Iowa), and Region 8 (Colorado Department of Public Health and Environment). Initially, the team selected Cooperative Agreement No. 97500701-2 (Illinois Environmental Protection Agency) for Region 5, but replaced the cooperative agreement with the Redevelopment Authority of the City of Milwaukee cooperative agreement No. 97568301-0.

For fieldwork, the team judgmentally selected 17 additional samples for a total of 20. The team judgmentally selected samples from an agency-provided spreadsheet of closed Brownfields RLF cooperative agreements based on the following criteria:

1. There is a closeout agreement, indicating there is or will be program income.
2. Award dates are both before and after the 2002 Brownfields Law.
3. There is either pre-closeout program income or post-closeout program income.
4. There is some type of Brownfields RLF projects/activities to be completed with closeout program income.
5. Project end dates and/or closeout dates are not in 2014, 2015 or 2016, providing the recipient ample time to identify projects for funding. (In one case, the project ended in 2010, but the closeout date was 2016.)
6. Award amounts are all over \$1,000,000.

The team selected the number of regional recipients based on the number of closeout agreements and RLF funds awarded per EPA region.

	Cooperative agreement number	Recipient	EPA Region
1	BF97138201	Bridgeport, Connecticut	1
2	BL98128501	Rhode Island Economic Development Corporation	1
3	BF97145801	Portland, Maine	1
4	BL99275501	Trenton, New Jersey	2
5	BL99369801	Philadelphia, Pennsylvania	3
6	BL97434201	South Florida Regional Planning Council	4
7	BL98487299	Clearwater, Florida	4
8	BL97568301	Redevelopment Authority of the City of Milwaukee	5
9	BF97564102	Ohio Department of Development	5
10	BL00E01001	Downriver Community Conference	5
11	BL98574402	Cuyahoga County	5
12	BL97565101	Mansfield Economic Development Department	5
13	BL00E04401	St. Paul Port Authority	5
14	BF96522301	Michigan Department of Environmental Quality	5
15	BF96603101	Oklahoma City, Oklahoma	6
16	BL97611001	New Mexico	6
17	BL98706401	Sioux City, Iowa	7
18	BL98811601	Colorado Department of Public Health and Environment	8

Cooperative agreement number		Recipient	EPA Region
19	BF96941701	Nevada Department of Conservation and Natural Resources	9
20	BF97070501	Columbia River Estuary Study Taskforce	10

To verify the accuracy of the data that OBLR provided, the team judgmentally selected an additional sample of 22 cooperative agreements. The team selected samples from an agency-provided spreadsheet of closed Brownfields RLF cooperative agreements, based on the following criteria:

1. The cooperative agreement does not have a closeout agreement.
2. There was not any post-closeout program income reported.
3. Award amounts greater than or equal to \$1,000,000.
4. More than \$100,000 expended.

The team selected the number of regional cooperative agreements based on the number of closeout agreements awarded per region.

	Cooperative agreement number	Recipient	EPA Region
1	BF97157201	Brewer, Maine	1
2	BF97357101	Roanoke, Virginia	3
3	BF97357001	Johnstown Redevelopment Authority	3
4	BL97467102	Alabama Department of Environmental Management	4
5	BL97570901	Oakland County	5
6	BL97572401	Jackson County Brownfields Redevelopment Authority	5
7	BL97572501	Saginaw County	5
8	BL97597801	Springfield, Ohio	5
9	BL97598201	Monroe, Michigan	5
10	BL97566801	Kenosha, Wisconsin	5
11	2B00F08301	Oklahoma Department of Environmental Quality	6
12	BF96662001	North Central Texas Council of Governments	6
13	RP97653901	Louisiana Department of Environmental Quality	6
14	2B97892501	Aurora, Colorado	8
15	2B97863101	Colorado Department of Public Health and Environment	8
16	2B00T31601	California Department of Toxic Substance Control	9
17	BF97955901	Emeryville, California	9
18	BF97971201	Anaheim Redevelopment Agency	9
19	BL97941601	Madera County	9
20	BL97943301	Hawaii Department of Business, Economic Development, and Tourism	9
21	BL98998401	Nevada Division of Environmental Protection	9
22	BL99988701	Sacramento, California	9

Agency Response to Draft Report



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

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OA-FY-16-0155
"Consistent Management of the Brownfields Revolving Loan Fund Program is
Needed Across EPA Regional Offices", dated June 23, 2017

FROM: Barry N. Breen
Acting Assistant Administrator

TO: Arthur A. Elkins, Jr.
Inspector General

1/21/2017

Thank you for the opportunity to respond to the issues and recommendations in the subject audit draft report. Following is a summary of the Agency's overall position, along with its position on each of the draft report recommendations. EPA's Region 1 and Region 10 have contributed to and concurred with this response. For those report recommendations with which the Agency agrees, we have provided high-level intended corrective actions and estimated completion dates to the extent we can. For those report recommendations that we do not think are appropriate or supported, we have explained our position, and proposed alternatives to your recommendations. For your consideration, we have included technical comments within the draft report to supplement this response.

AGENCY'S OVERALL POSITION

EPA agrees with the OIG finding and is in agreement with 22 of 23 recommendations. EPA has already taken steps to address some of the findings and recommendations noted by the OIG (e.g., the revised model FY17 RLF terms and conditions have incorporated and addressed a number of report recommendations). EPA will work with the regions to develop policies and training material to bring consistency in implementing the RLF program across the ten regions.

AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS

AGREEMENTS

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Develop a policy to reduce balances of available program income of Brownfields Revolving Loan Funds being held by recipients. The policy should establish a timeframe for recipients to use or return the funds to the EPA.	OBLR will work with the Regions to develop a policy regarding monitoring of accumulated program income on the cooperative agreements. The policy will also establish actions to be taken in certain timeframes to reduce balance of program income or require return of funds to EPA as appropriate.	Complete by Q2 FY2018
3	Create a policy to require any new amendments to cooperative agreements include the term and condition to deposit program income into an interest-bearing account.	OBLR will develop a policy requiring any new amendments to cooperative agreements include the term and condition to deposit program income in an interest-bearing account. OBLR has already revised the RLF terms and conditions requiring program income to be deposited into an interest bearing account. These terms and conditions will be incorporated when awarding new cooperative agreements or as new amendments are made to existing cooperative agreements.	Complete by Q2 FY2018
4	Develop a policy to require any new close-out agreements include the term and condition to deposit program income into an interest-bearing account.	OBLR will develop and issue a policy that requires any new closeout agreements include a term and condition to deposit program income in an interest bearing account. OBLR has already revised the RLF terms and conditions. The revised terms and conditions include closeout agreement requirements which require program income to be deposited into an interest bearing account.	Complete by Q2 FY2018
5	Develop a plan, and implement a policy, that requires all recipients to maintain program income, and requires revolving loan funds to be maintained in interest-bearing accounts.	OBLR will develop a plan and implement a policy that requires all recipients to maintain program income and revolving loan funds in interest bearing accounts in FY17 and going forward. The plan will also include strategies for maximizing the number of existing recipients required to maintain program income and revolving loan funds in interest bearing accounts as the Agency doesn't have authority to unilaterally modify the terms and conditions of existing agreements and will need to work with the recipients to reach	Complete by Q2 FY2018

		bilateral agreements which change the terms and conditions of their agreements.	
6	Develop a policy to require any new close-out agreements to include a program income definition that is consistent with the Revolving Loan Fund Grant Program Administrative Manual.	OBLR will develop a policy to require any new closeout agreements to include a program income definition that is consistent with the Revolving Loan Fund Grant Program Administrative Manual. OBLR has already revised the RLF terms and conditions which includes closeout agreement requirements and it provides a clear definition of program income that is consistent with RLF Grant Administrative Manual.	Complete by Q2 FY 2018
7	Develop and implement a policy that provides an explicit definition of program income for regions to distribute to existing recipients.	OBLR will develop and implement a policy that provides an explicit definition of program income for regions to distribute to existing recipients. The policy will outline the explicit definition of program income and identify the mechanism EPA will use to distribute the definition to recipients.	Complete by Q2 FY2018
8	Develop and implement required training for all regional Brownfields Revolving Loan Fund staff. Have the training include all program policy and guidance relating to maintaining a Brownfields Revolving Loan Fund after the cooperative agreement is closed if program income exists.	OBLR will work with the Regions to develop and deliver a series of training sessions to regional Brownfields Revolving Loan Fund staff. The training will cover all program policies and guidance related to the management of Brownfields Revolving Fund after closeout with a focus on cooperative agreements that have program income after closeout. OBLR will use various formats to deliver training to project officers, e.g., during regularly scheduled meetings, webinars, sharepoint site, and in-person training etc.	Complete by Q4 FY2018
9	Track staff completion of required training.	OBLR will work with supervisors of RLF project officers to ensure all required training is completed by staff managing RLF cooperative agreements.	Complete by Q4 FY2018
10	Require any new close-out agreement to include a standard term and condition describing the requirements that need to be met to terminate the agreement, and discontinue the agreed-to, post-close-out Brownfields	OBLR will require any new close out agreements to include a standard term and condition describing the requirements that need to be met to terminate the agreement, and discontinue the agreed to, post-closeout Brownfields RLF activities. OBLR has already proactively revised the RLF terms and conditions of new cooperative to clearly	Complete by Q2 FY2018

	Revolving Loan Fund activities.	define the requirements for terminating the cooperative agreement post-closeout	
11	Develop and implement a methodology that will align all recipients with the same termination terms and conditions.	OBLR partially concurs with this recommendation. While OBLR will strive to maintain and align the same national model terms and conditions with all recipients, it is beyond EPA's authority to unilaterally change the terms and conditions of older cooperative agreements. OBLR will work to implement a methodology that seeks to maximize the number of agreements with consistent national model terms and conditions by working with recipients to negotiate bilateral modifications of the terms and conditions of their agreements.	Complete by Q4 FY2018
12	Provide an explicit definition of "expenditure" for EPA regions to distribute to recipients.	OBLR will provide an explicit definition of "expenditure" for EPA to distribute to recipients. The revised RLF terms and conditions use the term 'disbursed' instead of expenditure. The definition of 'disbursed' is included in the revised terms and conditions. For termination of the cooperative agreement, we have revised the language to reflect that funds will not be coming back to the revolving loan fund program. OBLR will provide the revised language to project officers for distribution to the cooperative agreement recipients.	Complete by Q1 FY2018
13	Require regional project officers, through a policy, to be assigned and maintain information on all closed cooperative agreements with pre- and post-program income.	OBLR will work with the Regions to develop and issue a policy regarding the assignment and maintenance of information on all closed cooperative agreements with pre- and post-program income. The policy will outline the mechanism OBLR will use to work with regional management to implement this policy.	Complete by Q2 FY2018
14	Develop and implement a method for the Office of Brownfields and Land Revitalization to track closed cooperative agreements with pre- and post- program income.	OBLR will work with the regions to develop and implement a method such as a tool, a spreadsheet or a database, to track pre- and post-close out program income until termination of the closed out cooperative agreements in accordance with the reporting requirements listed under the closeout agreement. Regional staff will be required to update and/or monitor the tool in accordance with the reporting requirements listed in the closeout agreements. OBLR will work with regional management to ensure proper use of this tool and completion of regular updates OBLR staff will have access to this tool and	Complete by Q4 FY2018

		will monitor that information is being reported and tracked as required.	
15	Develop a policy to require terms and conditions in the cooperative agreement and/or the close-out agreement to require all recipients to report program income.	OBLR will develop a policy to require the terms and conditions in the cooperative agreement and/or the closeout agreement to require all recipients to report program income in FY17 and going forward. As mentioned for recommendations #5 and #11, OBLR will work to maximize the number of older cooperative agreement recipients who have the revised term and condition in their agreement. However, EPA cannot unilaterally modify older cooperative agreements terms and conditions and will need to work with these recipients on bilateral agreements in order to incorporate the new terms and conditions.	Complete by Q2 FY2018
16	Create a method for the Office of Brownfields and Land Revitalization, and EPA regional managers, to track compliance with reporting requirements for closed cooperative agreements.	OBLR will work with the regions to create a method to track compliance with reporting requirements for closed cooperative agreements. The tracking tool will be distributed to the regions. Regions will be responsible for tracking and making sure that the cooperative agreement recipients are complying with the reporting requirements. OBLR will monitor and discuss compliance with the regional Brownfield managers during regularly schedule conference calls.	Complete by Q3 FY2018
17	Train regional Brownfields Revolving Loan Fund project officers and managers on the Office of Grants and Debarment's Assistance Agreement Almanac, Chapter 4.5, titled "Compliance and Performance Issues," to include the roles and responsibilities of the project officer, and instruction on enforcement actions available to the EPA if a recipient does not comply.	OBLR will work with Regions to develop and provide training to RLF project officers and managers on "Compliance and Performance issues" based on current OGD policies and guidance. OBLR will use various means to deliver this training, e.g., during regularly scheduled RLF meetings with the regions, training seminars, webinars, and in-person meetings. The training material will clarify roles and responsibilities and process to take available enforcement actions.	Complete by Q4 FY2018
18	Question the unsupported use of \$103,968 in EPA Brownfields Revolving Loan Fund revenue reported by the Columbia River Estuary Study Taskforce in its profit and loss statements and	OBLR will work Region 10 to review documentation on questioned costs. Region 10 RLF Lead has been in communication with the Columbia River Estuary Taskforce (CREST) staff to resolve this issue. Due to staff changes at CREST, reconstructing financial records has taken a	Complete by Q1 FY2018

	recover any remaining program income.	little longer than expected. CREST has been given a completion target of July 2017 for providing the Profit & Loss Sheet & Transaction Log along with cancelled checks which confirms their repayment of loan with interest to themselves.	
19	Place the Columbia River Estuary Study Taskforce on a reimbursement basis for all EPA grants and agreements.	OBLR will work with Region 10 to determine whether it is appropriate to place this recipient in reimbursement status. The Columbia River Estuary Study Taskforce does not have any other grants or agreements with EPA. Therefore, it is not possible to place CREST on a reimbursement basis for EPA grants at this time.	Complete by Q1 FY2018
20	Question unsupported use of \$1,983,198 in EPA Brownfields Revolving Loan Funds program income reported by Bridgeport, Connecticut and recover remaining program income.	OBLR will work Region 1 to review documentation on questioned costs. EPA Region 1 staff conducted an Administrative Post Award Advanced Monitoring Review of the City of Bridgeport administrative and financial management systems in September 2016 and has been working with City to implement new policies and procedures to address issues relating to financial management and reporting. Regional program staff have met with Bridgeport staff several times in person and via telephone to help improve their understanding of these program requirements. Bridgeport staff also attended the Region 1 RLF training workshop in April 2017, which focused on issues relating to financial management and program income.	Complete by Q3 FY2018
21	Place Bridgeport, Connecticut, on a reimbursement basis for all EPA grants and agreements.	OBLR will work with Region 1 to determine whether it is appropriate to place this recipient in reimbursement status.	Complete by Q1, 2018
22	Question unsupported use of an estimated \$608,712 in EPA Brownfields Revolving Loan Funds by the Rhode Island Economic Development Corporation and recover remaining program income.	OBLR will work Region 1 to review documentation on questioned costs.	Complete by Q3 FY2018
23	Place the Rhode Island Economic Development Corporation on a reimbursement basis for all EPA grants and agreements.	OBLR will work with Region 1 to determine whether it is appropriate to place this recipient in reimbursement status.	Complete by Q1, 2018

		<p>The region has taken the actions to improve the issues that lead to the unsupported cost identified in recommendation #22 and should improve the financial accounting of the recipients going forward. The Region 1 project officer conducted annual Baseline Monitoring and performed a Programmatic Post Award Advanced Monitoring review in December 2013 of the open grants with the Rhode Island Economic Development Corporation. In addition, EPA Headquarters through an outside contractor (GMG Management Consulting, Inc.) conducted an onsite Administrative Post Award Monitoring review of this recipient in 2014. Based on these monitoring efforts by EPA, the recipient made significant improvements in their overall reporting efforts for their open grants but was directed to develop procedures for improved and timely filing of financial reports.</p>	
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DISAGREEMENT

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
2	Develop a policy to require a recipient's balance(s) of Brownfields Revolving Loan Fund program income be used before awarding additional funds, as required by regulation.	OBLR does not concur with this recommendation. The OIG's position is inconsistent with the regulatory requirements. The regulations at 40 CFR 31.21(f)(2) do not preclude EPA from "awarding additional funds" to recipients with balances of program income. Rather, that regulatory provision required that recipients disburse program income accrued under the grant that generated the program income before requesting additional payments under that grant agreement. This provision did not preclude EPA from awarding another BF RLF agreement to the recipient or providing supplemental funding to an existing agreement under the authority of CERCLA 104(k)(4)(A)(ii). As noted above, EPA's regulations at 2 CFR 1500.7(c) allow RLF recipients to use direct EPA grant funding before using PI. OIG Draft Recommendation 2 is inconsistent with the policy that underlies that regulation.	Notwithstanding our non-concurrence with OIG Draft Recommendation 2, OBLR acknowledges that EPA needs to improve its oversight of close out agreements to ensure that program income is being deployed in a timely manner to achieve the purposes of the RLFs. OBLR believes that implementing OIG's other recommendations actions relating to improved program income reporting, monitoring by EPA staff and consistent close out terms and conditions would be consistent with 2 CFR 1500.7 and our policy of encouraging recipients to accumulate program income for post award RLF sustainability. As an alternative to implementing OIG Draft Recommendation 2, we recommend that OBLR develop a policy to provide guidance to Regions on negotiating terms and conditions for supplemental funding amendments and new awards to recipients who have large balances of program income on closed out agreements. The policy would require actions on the part of the recipient to reduce the program income balances.

Attachment

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