

EPA REGION 1 RLF WORKSHOP

JUNE 5, 2015



RLF Terms & Conditions:
What Do They All Mean?



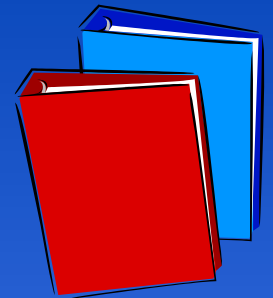
RLF Terms & Conditions

- ⦿ Programmatic Conditions added to all RLF cooperative agreements
- ⦿ Sets forth requirements of RLF grant program
- ⦿ The first place to look for answers to your questions
- ⦿ This presentation highlights the major items contained in the most current version of the RLF T&Cs – Please refer to your T&Cs for more details



RLF Terms & Conditions

- RLF T&Cs contain six sections:
 - I. General Federal Requirements
 - II. Site/Borrower/Subgrantee Eligibility
 - III. General Cooperative Agreement Administrative Requirements
 - IV. Financial Administration Requirements
 - V. RLF Environmental Requirements
 - VI. Revolving Loan Fund Requirements
 - VII. Disbursement, Payment and Closeout
- + Davis Bacon T&Cs





RLF Terms & Conditions

I - General Federal Requirements

A. Federal Policy & Guidance

1. Cooperative Agreement Recipient (CAR) may not draw down funds until work plan is approved
2. CAR, borrowers, and subgrantees:
 - ✓ Will comply with CERCLA 104(k)
 - ✓ Cleanups will:
 - Follow applicable Federal & State laws and regulations
 - Be protective of human health and the environment
3. Conduct cleanups under appropriate State or Tribal program
4. Information submitted to EPA may be subject to the Freedom of Information Act (FOIA)



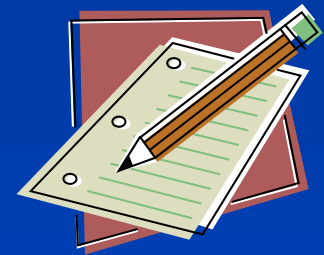


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II - Site/Borrower/Subgrantee Eligibility

A. Brownfields Site Eligibility

1. CAR to provide site specific information before incurring costs including:
 - ✓ Meets definition of Brownfields site
 - ✓ Identity of owner
 - ✓ Date of acquisition
2. CAR to provide information if eligible for a property specific determination
 - ✓ Protect human health and environment
 - ✓ Promote economic development
 - ✓ Enable creation, preservation, or addition to parks, greenways, ... or other non-profit purposes





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II - Site/Borrower/Subgrantee Eligibility

A. Brownfields Site Eligibility (cont)

3. For **Petroleum** sites, CAR to provide documentation from State (per Proposal Guidelines for Brownfields Revolving Loan Fund Grants) that:
 - a. State has determined site is of relatively low risk
 - b. State has determined there is “no viable responsible party”
 - c. State has determined person assessing or cleaning up site is not liable
 - d. Site is not subject to 9003(h) of the Solid Waste Disposal Act





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II - Site/Borrower/Subgrantee Eligibility

A. Brownfields Site Eligibility (cont)

4. Documentation must include State contact information and summary of petroleum determination
5. If State does not make petroleum determination, CAR must submit documentation to EPA Project Officer (PO) so EPA can make determination
6. EPA must make petroleum determination for sites on tribal land so CAR must submit documentation to EPA PO





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II - Site/Borrower/Subgrantee Eligibility

B. Borrower & Subgrant Recipient Eligibility

1. Subgrants can only be made to eligible entities or non-profit organizations that own the site
2. Subgrant recipient must own site throughout period of subgrant & CAR cannot subgrant to itself
3. CAR can discount loans up to 30% not to exceed \$200k per site & cannot discount loans to private entities
4. CAR cannot loan or subgrant funds to an entity that is potentially liable under CERCLA § 107



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II - Site/Borrower/Subgrantee Eligibility

- B. Borrower & Subgrant Recipient Eligibility (cont)
5. For petroleum sites, person cleaning up site must not be considered potentially liable for contamination
 6. CAR shall maintain documentation supporting the eligibility of sites, borrowers and subgrantees
 7. Borrowers and subgrantees must submit information regarding their environmental compliance history at the site and CAR must use this to evaluate business risk
 8. An entity that is suspended, debarred or ineligible cannot be a borrower or subgrantee



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II - Site/Borrower/Subgrantee Eligibility

C. Obligations for Grant Recipients, Borrowers, or Subgrantees Asserting a Limitation on Liability from CERCLA § 107

1. Defines 3 liability protections from CERCLA:
 - 1) Bona fide prospective purchaser (BFPP)
 - 2) Contiguous property owner (CPO)
 - 3) Innocent landowner (ILO)
 - a. Must have performed AAI prior to acquisition
 - b. For BFPP & CPO, cannot be potentially liable or affiliated with anyone that is potentially liable
 - c. Must comply with continuing obligations
 - d. Comply with other CERCLA obligations to maintain liability protection

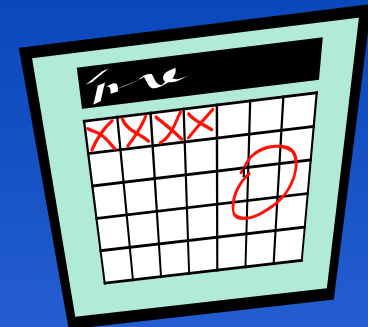


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III - General CA Administrative Requirements

A. Term of Agreement

1. Term of cooperative agreement (CA) is 5 years
2. Time for sufficient progress is 2 years in which the CAR has:
 - ✓ Made loans or subgrants, or
 - ✓ Hired key personnel, established and advertised RLF, and developed of one or more loans or subgrants



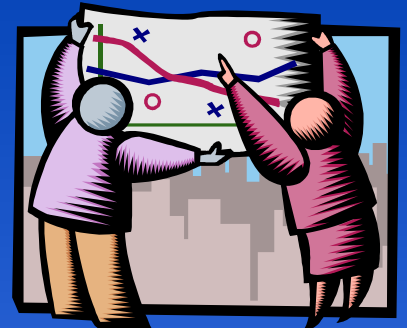


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III - General CA Administrative Requirements

B. Substantial Involvement

1. EPA substantially involved in overseeing & monitoring the CA
 - a. Includes monitoring, reviewing and approving procedures, etc.
 - b. Property-specific determinations and site eligibility including technical assistance
 - c. Review of reporting & recordkeeping
 - d. Review of substantive loan and subgrant terms





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III - General CA Administrative Requirements

B. Substantial Involvement (cont)

2. Effects of substantial involvement includes:
 - a. EPA review does not negate CERCLA §128 site determinations, CERCLA in general or any Federal statute
 - b. CAR responsible for ensuring cleanups are protective of human health and the environment, comply with applicable federal and state laws, and must consult with EPA if changes to cleanup are necessary
 - c. CAR responsible for ensuring costs are allowable under OMB circulars



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III - General CA Administrative Requirements

C. Cooperative Agreement Recipient Roles & Responsibilities

1. CAR is responsible for establishing RLF team to implement RLF Program
2. CAR must have or acquire a Qualified Environmental Professional (QEP) to oversee cleanups
3. CAR shall act as or appoint a Fund Manager to carry out financial management
4. CAR shall have or appoint legal council to review all loans & subgrants
5. CAR is responsible for ensuring borrowers and subgrantees comply with terms and conditions of loans, subgrants, and EPA CA



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III - General CA Administrative Requirements

D. Quarterly Progress Reports

1. CAR must submit quarterly progress reports to PO that contain information outlined in this T&C – Region 1 report template is found at:
<http://www.epa.gov/region1/brownfields/funding/postaward.html#qr>
2. CAR must maintain records on funds expended on specific properties CAR will inform EPA of any problems that will impair their ability to meet outputs/outcomes



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III - General CA Administrative Requirements

E. Property Profile Submission

1. CAR to report on property specific progress via the ACRES on-line reporting system
 - ✓ CAR must enter data at least quarterly
 - ✓ EPA will provide CAR with training on ACRES
 - ✓ CAR must use ACRES unless approval to use the Property Profile Form is obtained from the PO

F. Final Report

1. CAR must submit a final report at the end of the CA period in order to close out the grant
 - ✓ Final Report contents are outlined in this T&C



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IV - Financial Administration Requirements

A. Cost Share Requirement

1. CAR is required to pay a cost share of at least 20% of the total federal funds and can be in the form of:
 - ✓ Money
 - ✓ Labor
 - ✓ Material
 - ✓ Services from a non-federal source



Cost Share must be for eligible and allowable costs and be supported by documentation



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IV - Financial Administrative Requirements

B. Eligible Uses of the Funds ...

1. Per the EPA approved workplan, CA funds may be used for eligible programmatic costs and cleanups
 - a. CAR must maintain records for reporting costs incurred to EPA
 - b. Loan/Subgrant Split
 - ✓ 50% of funds to loans & up to 50% of funds to subgrants
 - ✓ Subgrants limited to \$200,000 per site
 - ✓ CAR can request a waiver of the 50/50 split and \$200,000 per site limit



RLF Terms & Conditions

IV - Financial Administrative Requirements

B. Eligible Uses of the Funds ... (cont)

- c. CAR must consider the following for subgrants – That the subgrant will facilitate the:
 - i. Creation, preservation or addition to a park, greenway, undeveloped, recreational or non-profit property
 - ii. Meet needs of a community with inability to draw on other sources of remediation funds
 - iii. Use or reuse exiting infrastructure
 - iv. Benefit of promoting the long term availability of funds



CAR must maintain records to support and document these determinations



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IV - Financial Administrative Requirements

B. Eligible Uses of the Funds ... (cont)

2. Eligible programmatic expenses may include:
 - a. Site eligibility per CERCLA 104(k)
 - b. Site cleanup complies with Federal & State laws
 - c. Limited site characterization for cleanup design
 - d. Preparing an Analysis of Brownfields Cleanup Alternatives (ABCA)
 - e. Ensuring public participation requirements are met including Community Relations Plan (CRP)
 - f. Establishing an administrative record for each site



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IV - Financial Administrative Requirements

B. Eligible Uses of the Funds ... (cont)

2. Eligible programmatic expenses may include:
 - g. Developing a Quality Assurance Project Plan (QAPP)
 - h. Ensuring adequacy of cleanup and overseeing activities to ensure compliance with Federal & State requirements
 - i. Ensuring site is secure if borrower/subgrantee is unable or unwilling to complete cleanup
 - j. Purchasing environmental insurance
 - k. Other eligible programmatic costs
 - l. Subgrantee progress reporting



RLF Terms & Conditions

IV - Financial Administrative Requirements

B. Eligible Uses of the Funds ... (cont)

3. Up to 10% of funds can be used by the CAR for program development and implementation - health monitoring and institutional controls
4. If CAR makes a subgrant to a local government that includes up to 10% for program development and implementation, a term and condition for maintaining adequate records must be included in the subgrant





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IV - Financial Administrative Requirements

C. Ineligible Uses of the Funds ...

1. Funds cannot be used for:
 - a. Pre-cleanup assessment activities (Phase I & II)
 - b. Monitoring and data collection for permits under federal or state laws unless required by cleanup
 - c. Non-cleanup related construction, demolition, development and addressing deteriorated drinking water supplies
 - d. Job training unrelated to site cleanup
 - e. Paying a penalty or fine
 - f. Meeting a federal cost share requirement unless allowed by statutory authority



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IV - Financial Administrative Requirements

C. Ineligible Uses of the Funds ... (cont)

1. Funds cannot be used for:
 - g. Paying a response cost at a site where the recipient of a loan or subgrant is liable under CERCLA 107
 - h. Paying a cost of compliance with any federal law not applicable to the cleanup
 - i. Unallowable costs under OMB Circulars





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IV - Financial Administrative Requirements

C. Ineligible Uses of the Funds ... (cont)

2. Administrative costs and all indirect costs under OMB Circulars are prohibited
 - a. Ineligible administrative costs are salaries, benefits, contractual costs, supplies and data processing charges incurred to comply with Uniform Administrative Requirements for Grants in 40 CFR Part 30 or Part 31 and direct costs for grant and subgrant administration not identified in eligible costs
 - b. See T&C for list of ineligible grant or subgrant administration costs

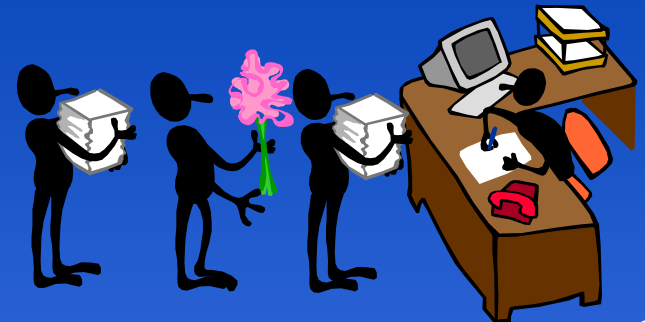


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IV - Financial Administrative Requirements

C. Ineligible Uses of the Funds ... (cont)

- c. Prohibited administrative costs for borrowers include costs associated with loan administration and overhead costs
- d. Direct costs for loan administration are ineligible - See T&C for list of ineligible loan administration costs
- e. Overhead costs for borrowers that are not directly related to cleanup are ineligible - See T&C for list of ineligible overhead costs





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IV - Financial Administrative Requirements

C. Ineligible Uses of the Funds ... (cont)

4. Funds can not be used on the following sites:
 - a. Listed or proposed for listing on NPL
 - b. Subject to orders under CERCLA
 - c. Under control of US Government except for tribal land in trust
 - d. Excluded from the definition of a Brownfields site for which EPA has not made a property-specific determination
5. CAR cannot include management fees in excess of direct costs



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IV - Financial Administrative Requirements

D. Use of Program Income

1. CAR can add and use program income under these terms and conditions
 - ✓ Program income includes repayments, loan interest, account interest, fees, and RLF operations
2. When transitioning an RLF grant, the program income carries over to the transitioned grant
3. CAR can use program income from fees, loan interest and other eligible program income to meet cost share – **not loan principle**

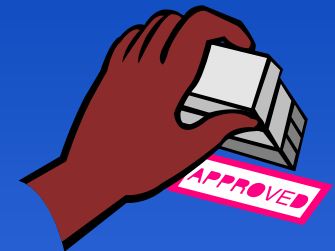


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IV- Financial Administrative Requirements

D. Use of Program Income (cont)

4. CAR must maintain adequate records on use of program income and return any ineligible costs to the RLF
5. Loans and subgrants made with a combination of direct funding, program income, and/or other funding are subject to these T&Cs
6. CAR must obtain EPA approval on substantive terms of loan and subgrants made entirely with program income





RLF Terms & Conditions

IV - Financial Administrative Requirements

- E. Post Cooperative Agreement Program Income
 - 1. CAR shall use post-closeout program income in accordance with negotiated closeout agreement
 - ✓ CAR shall maintain records to document compliance
 - ✓ EPA may request access to records to verify

- F. Interest-Bearing Accounts
 - 1. CAR must deposit advanced grant funds and program income in an interest bearing account
 - 2. Interest on advanced grant funds subject to grant interest provisions
 - 3. Interest on program income is additional program income



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V - RLF Environmental Requirements

A. Authorized RLF Cleanup Activities

1. CAR shall prepare an analysis of brownfields cleanup alternatives (ABCA)
 - ✓ Include contamination on site, cleanup alternatives, applicable laws and proposed cleanup
 - ✓ Evaluation of alternatives must include effectiveness, implementability, cost and no action
 - ✓ Cleanup method chosen must be based on this analysis
2. CAR shall consult with EPA if there is a potential impact on historic structures and assist EPA in complying with the Historic Preservation Act



RLF Terms & Conditions

V - RLF Environmental Requirements

B. Quality Assurance (QA) Requirements

1. If samples will be collected during the cleanup, the CAR shall comply with quality assurance requirements
 - ✓ State law may impose additional QA requirements
 - ✓ Region 1 includes a paragraph detailing our QAPP requirements, EPA review and approval requirement, scheduled time for review, and address to send QAPPs:
 1. Your EPA Project Officer
 2. Regional Quality Assurance Manager



RLF Terms & Conditions

V - RLF Environmental Requirements

C. Community Relations & Public Involvement ...

1. All loan and subgrant sites require a community relations plan including notice, opportunity for involvement and comment on proposed cleanups

D. Administrative Record

1. CAR shall establish an administrative record including ABCA, site investigations, cleanup plan, response to public comments, etc. and must be kept in a location convenient for public inspection



RLF Terms & Conditions

V - RLF Environmental Requirements

E. Implementation of RLF Cleanup Activities

1. CAR shall ensure adequacy of each RLF cleanup in protecting human health and the environment and include loan/subgrant T&Cs to allow for changes in cleanup plans based on public comments
2. If borrower/subgrantee is unable or unwilling to complete cleanup, CAR shall:
 - ✓ Ensure site is secure
 - ✓ Notify appropriate state agency
 - ✓ Notify EPA





RLF Terms & Conditions

V - RLF Environmental Requirements

F. Completion of RLF Cleanup Activities

1. CAR shall ensure successful completion of cleanup is documented as a:
 - ✓ Final report or letter from QEP
 - ✓ State or Tribal cleanup complete documentation



This documentation must be placed in the administrative record





RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

A. Prudent Lending & Subgranting Practices

1. CAR to establish economically sound structures, management and processing procedures to maintain RLF and meet long term lending/subgranting objectives
2. CAR shall not incur costs until work plan is approved by EPA and ensure objectives of workplan are met – activities may include:
 - a. Consider awarding subgrants competitively
 - b. Establish appropriate project selection criteria
 - c. Establish threshold eligibility requirements



RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

- A. Prudent Lending & Subgranting Practices (cont)
 - d. Develop formal eligibility protocol for potential borrowers/subgrantees
 - e. Require borrowers and subgrantees to submit information on their environmental compliance history
 - f. Establish procedures for handling management and processing of loans and repayments
 - g. Establish procedures for the disbursement of funds to borrowers and subgrantees



RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

B. Inclusion of Special Terms & Conditions in RLF Loan and Subgrant Documents

1. CAR will include the following T&Cs in loan and subgrant agreements:
 - a. Funds shall be used for eligible activities and in compliance with CERCLA 104(k) and applicable Federal & State laws and regulations
 - b. Ensure cleanup protects human health and the environment
 - c. Document how funds are used and separately account for petroleum funds



RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

B. Inclusion of Special Terms & Conditions in RLF Loan and Subgrant Documents (cont)

- d. Maintain records for 3 years after completion of cleanup, receive CAR's approval before destroying, and allow the Federal government access
- e. Certify borrowers/subgrantees are not or have not been subject to penalties for non-compliance
- f. Certify borrowers/subgrantees are not potentially liable under CERCLA § 107 or that they qualify for a defense (usually BFPP) or they are not a viable responsible party for petroleum contamination



RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

B. Inclusion of Special Terms & Conditions in RLF Loan and Subgrant Documents (cont)

- g. Borrowers/subgrantees will conduct cleanup activities as required by the CAR
- h. Subgrant recipients will comply with 40 CFR Part 30 (non-profits) or 31 (government) and procurements will comply with 40 CFR Part 31.36 (government) or 30.40-30.48 (non-profits)





RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

B. Inclusion of Special Terms & Conditions in RLF Loan and Subgrant Documents (cont)

- i. Borrowers/subgrantees will comply with all applicable Federal & State laws and requirements including:
 - ✓ 40 CFR 31 & OMB Circular A-87 for governmental recipients
 - ✓ 40 CFR 30 & OMB Circular A-122 for non-profits
 - ✓ 40 CFR 30 & OMB Circular A-21 for educational institutions
- j. CAR must comply with Davis Bacon Act for all contracts and subcontracts awarded with EPA funds
Davis Bacon T&Cs are attached to RLF T&Cs



RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

B. Inclusion of Special Terms & Conditions in RLF Loan and Subgrant Documents (cont)

k. Federal cross-cutting requirements such as:

- ✓ MBE/WBE
- ✓ OSHA Worker Health & Safety Standards
- ✓ Uniform Relocation Act
- ✓ National Historic Preservation
- ✓ Endangered Species Act
- ✓ Clean Water Act
- ✓ Equal Employment Opportunity
- ✓ Contract Work Hours & Safety Act
- ✓ Anti Kickback Act
- ✓ Rehabilitation Act





RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

C. Default

1. In the event of a loan default, CAR will enforce loan terms & conditions and go after collateral to cover loan losses. If cleanup not complete, the CAR will:
 - 1) Document nexus between amount paid to the amount of cleanup work completed
 - 2) Secure the site to protect the public and inform EPA and the State





RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

D. Conflict of Interest

- > 1. CAR shall establish and enforce conflict of interest provisions to prevent award of subgrants that create real or apparent conflicts of interest



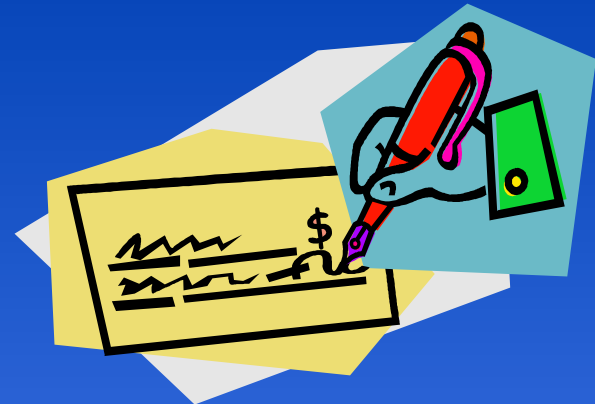


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VII - Disbursement, Payment & Closeout

A. Payment Schedule

1. EPA to make payments to CAR that minimizes time between transfer of funds from EPA and when CAR pays borrower/subgrantee
 - ✓ Can request payment on actual expense or scheduled method
 - ✓ CAR shall use program income prior to requesting funds from EPA





RLF Terms & Conditions

VII - Disbursement, Payment & Closeout

B. Methods of Disbursement

1. CAR requests payment by means of “actual expense” or “schedule”
 - a. “Actual expense” is when borrower/subgrantee submits documentation of expenditure to CAR prior to requesting funds from EPA
 - b. “Schedule” is based on an agreed amount per a negotiated schedule – CAR must send copy of schedule to EPA





RLF Terms & Conditions

VII - Disbursement, Payment & Closeout

B. Methods of Disbursement

1. CAR requests payment by means of “actual expense” or “schedule” (cont)
 - c. If disbursement is made in full at the beginning of a loan or subgrant, the CAR must show EPA PO that this is required for cleanup and a provision will be added to the loan/subgrant agreement that insures prompt use of funds and any interest is applied to the cleanup
 - d. Subgrant funds must be distributed per 40 CFR 31.21 or 30.22



RLF Terms & Conditions

VII - Disbursement, Payment & Closeout

C. Schedule for Closeout

1. Two criteria for closeout
 - a. Final payment of funds to the CAR
 - b. Completion of all cleanup activities funded by grant
2. First is met when CAR receives all payments from EPA and second is met when all cleanup activities are complete





RLF Terms & Conditions

VII - Disbursement, Payment & Closeout

C. Schedule for Closeout (cont)

3. CAR must negotiate a closeout agreement with EPA to govern use of program income received after closeout – Eligible uses are to continue RLF program and/or other brownfields activities
4. Closeout agreement to require all assessments & cleanups be consistent with CERCLA § 107 and site eligibility limitations in these T&Cs



RLF Terms & Conditions

VII - Disbursement, Payment & Closeout

D. Compliance with Closeout Schedule

1. If CAR fails to comply with the closeout agreement, EPA may recover remaining funds

E. Final Requirements

1. Within 90 days of the expiration or termination of the grant, the CAR must submit all requirements
 - a. CAR must submit the following documentation:
 1. Final Report
 2. Final Federal Financial Report
 3. Final MBE/WBE Report
 - b. All property data in ACRES





RLF Terms & Conditions

VII - Disbursement, Payment & Closeout

F. Recovery of RLF Assets

1. In case of termination for cause or convenience, CAR shall return to EPA its fair share of RLF assets as described in this T&C

G. Loan Guarantees

1. If the CAR chooses to use RLF funds for loan guarantees, this section contains the T&Cs that support this approach

