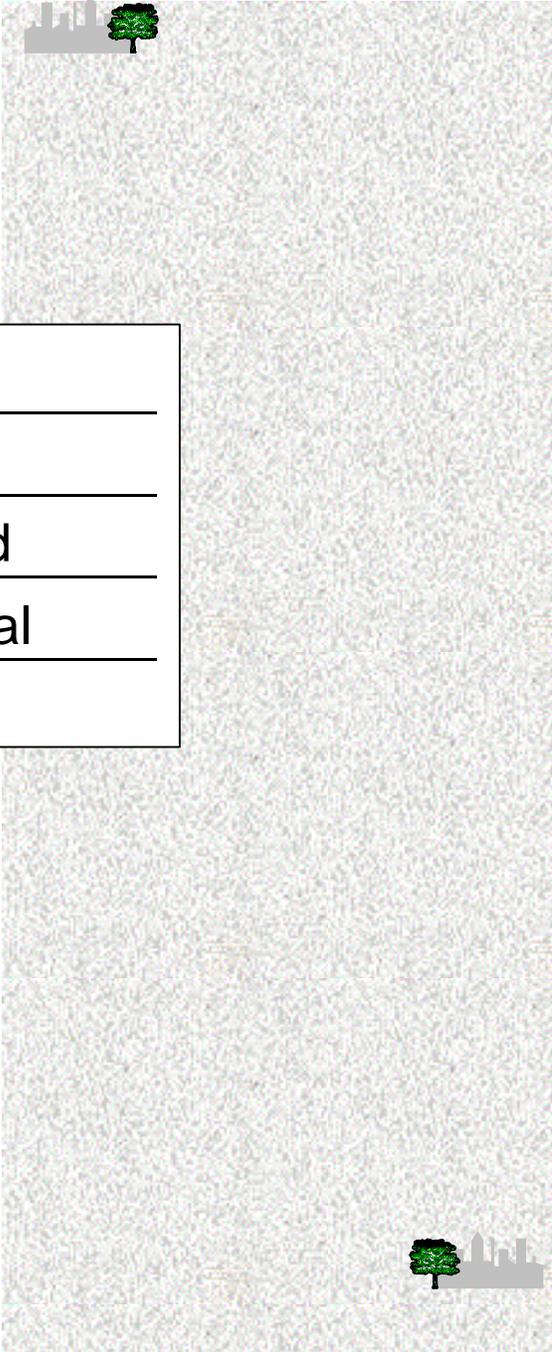


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The Brownfields Economic Redevelopment Initiative



Brownfields Cleanup
Revolving Loan Fund
Administrative Manual

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Contents and Intent of Manual

This manual describes the administrative requirements and procedures for the Brownfields Cleanup Revolving Loan Fund (BCRLF) demonstration pilots. The manual is intended to assist the U.S. Environmental Protection Agency (U.S. EPA) Regions in developing cooperative agreements and overseeing BCRLF pilots, as well as to provide program participants with initial guidance on various requirements. Examples of these requirements include environmental and financial program management standards, recordkeeping and reporting requirements, and the U.S. EPA oversight and audit requirements.

The cooperative agreement entered into by the cooperative agreement recipient and the U.S. EPA, which is composed of the approved application and the assistance agreement document which incorporates the Standard Terms and Conditions and any Special Terms and Conditions, document the approved scope of work as well as the legal requirements applicable to each BCRLF pilot funding recipient. Since the cooperative agreements were awarded under the regulatory authority of 40 C.F.R. Part 35, Subpart O, all of the requirements of those regulations, as well as applicable portions of 40 C.F.R. Part 31, apply to these agreements, with the sole exception of the portion of the regulations for which a deviation has been granted (see Appendix H, *Approved Deviation Request*). This manual is designed to support and implement those established requirements. (Note: Congressional appropriations committee's report language for FY 1998 limited the use of available brownfields funds to assessments, training, and personnel costs. The report language stated that "the law preempts the expenditure of funds for 'revolving loan funds' for cleanups." EPA is not using FY 1998 funding for BCRLFs.)

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I. PROGRAM DESCRIPTION

A. INTRODUCTION

One element of the U.S. Environmental Protection Agency's (U.S. EPA) Brownfields Economic Redevelopment Initiative is the Agency's award of financial assistance to eligible entities so they may capitalize Brownfields Cleanup Revolving Loan Fund (BCRLF) demonstration pilots to test loan fund models and facilitate coordinated public and private cleanup efforts. In no way is the BCRLF designed to undermine or replace the fundamental concept of "polluter pays," upon which all U.S. EPA cleanup initiatives are based. Those who create or contribute to environmental problems should and will continue, whenever possible, to bear the funding burden for cleanup (i.e., the "polluter pays").

As part of each award, the U.S. EPA will fund (i.e., provide seed funding to) Brownfields Cleanup Revolving Loan Fund pilots in amounts up to \$350,000. These funds will be provided without a matching or cost share requirement. However, participants are encouraged to contribute additional monies and/or in-kind services to maximize the lending capacity of the BCRLF to support brownfields cleanup.

States, political subdivisions of states (e.g., counties, cities, towns), territories, and Indian tribes are eligible cooperative agreement recipients. For the fiscal year 1997 award cycle, only the 29 entities that were awarded National or Regional brownfields site assessment pilots prior to October 1995 were eligible recipients of BCRLF pilot funds. Of those 29, twenty four were awarded funds (see Appendix E, *Entities Selected for FY 1997 BCRLF Program*).

The U.S. EPA expects to be substantially involved in overseeing and monitoring the BCRLF program. The U.S. EPA is responsible for general program oversight and review, as well as ensuring that all applicable financial and environmental management and cleanup requirements are met (see Section IV.B., *U.S. EPA Responsibilities*). The U.S. EPA expects that its involvement will vary based on each cooperative agreement recipient's level of experience and expertise to implement cleanup and fund management requirements. Under no circumstance, however, will the U.S. EPA be directly involved in a recipient's prioritization of loan recipients or the day-to-day management of the loan program.

Each cooperative agreement recipient is legally responsible for managing BCRLF funds, ensuring proper environmental cleanups, and complying with all applicable Federal and state laws and regulations (see Section IV.C., *Cooperative Agreement Responsibilities*; Section V, *BCRLF Environmental Response Requirements -- Applicable Authority*; and Section VI, *BCRLF Environmental Response Requirements -- Fund Manager Functions and Responsibilities*). Furthermore, cooperative agreement recipients are responsible for ensuring compliance with all applicable statutory and executive order based "cross-cutting" Federal requirements to the extent of Federal participation (i.e., the Federal monetary contribution) in the revolving loan fund (see

Description

Section IX, *Cross-cutters*).

As with cooperative agreement recipients, BCRLF borrowers also are responsible for complying with all applicable Federal and state laws and regulations, including ensuring proper environmental cleanups and prudent financial management. While cooperative agreement recipients retain legal responsibility for BCRLF response activities, it is expected that borrowers will actively participate in developing and conducting BCRLF response actions (see Section IV.D., *Borrower Responsibilities*).

B. PURPOSE

The overall purpose of the BCRLF pilot program is rooted in the mission of the U.S. EPA's Brownfields Economic Redevelopment Initiative: to empower states, local governments, communities, and other stakeholders to work together in a timely manner to prevent, assess, and safely clean up brownfields in order to facilitate their sustainable reuse. As part of this broader initiative, the specific purpose of the BCRLF pilot program is to foster development and implementation of financial and administrative approaches that can support self-sustaining efforts by states, local governments, and Indian tribes to facilitate brownfields cleanup efforts.

The pilot program will accomplish this objective in two ways. First, it will facilitate the implementation of loan programs to carry out cleanups in pilot locations. Second, the experience gained from these pilots will provide important information and lessons for all brownfields stakeholders -- about how to structure, establish, and operate revolving loan funds to effectively support brownfields cleanup.

Similar revolving loan funds, such as those supporting investments in wastewater treatment, drinking water, and general economic development, typically are capitalized with a combination of Federal, state, and/or local funds. Through the provision of loans, often at below-market interest rates, such revolving loan funds are able to become self-sufficient sources of capital funds for targeted purposes (i.e., in the case of the BCRLF pilot program, brownfields cleanups). The fund "revolves," by using loan repayments (principal and interest) and other program income to provide new loans and for other for authorized purposes.

C. PROGRAM OVERVIEW

The U.S. EPA will make awards to selected BCRLF pilots through cooperative agreements negotiated between the U.S. EPA and the entities selected to receive pilot funding. For the demonstration pilot the U.S. EPA will be responsible for ensuring that all cooperative agreement financial and environmental management requirements are met including ensuring that all environmental response actions are conducted in accordance with the cooperative agreement and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (see Section V, *BCRLF Environmental Response Requirements -- Applicable Authority*). To this end, the U.S. EPA will be substantially involved in the general

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administration of the BCRLF program, including such activities as collaborating with cooperative agreement recipients on operational matters and providing necessary monitoring and oversight of the cooperative agreement. However, day-to-day operations and all activities related to prioritizing loan applications will be the responsibility of the cooperative agreement recipient.

Cooperative agreement recipients are expected to work with the U.S. EPA to ensure that BCRLF pilot funds are used appropriately and that the individual BCRLF programs established by the cooperative agreement recipients meet the intent and legal requirements of the pilot program. The specific responsibilities of cooperative agreement recipients include both environmental cleanup and financial management components of operating the loan fund. The cooperative agreement recipient will serve as the “lead agency” for clean up. The cooperative agreement recipient may enter into a written agreement with a qualified government organization or private entity to support its lead agency functions. As the lead agency, the cooperative agreement recipient will designate a qualified government environmental specialist as “brownfields site manager” (responsible for on-scene coordinator responsibilities described in 40 C.F.R. Part 300) for each and every site toward which BCRLF funding is directed. One brownfields site manager must be responsible for each site, but a single brownfields site manager may be responsible for more than one site. In addition to cleanup-related responsibilities, the cooperative agreement recipient also will serve as, or enlist the services of, a “fund manager” to provide all financial management functions required to operate the BCRLF (see Section IV, *Roles and Responsibilities Overview* and Section V, *BCRLF Environmental Response Requirements -- Applicable Authority*).

Among its other responsibilities, each cooperative agreement recipient must ensure that its borrowers comply with all relevant requirements of the BCRLF program, as well as other applicable Federal and state requirements. Such requirements will be outlined in the loan agreement between the cooperative agreement recipient and individual borrowers (see Section III, *Eligible BCRLF Cooperative Agreement Fund Uses and Program Activities*).

D. AUTHORITY Section 104(d)(1) of CERCLA, as amended, permits funding of the BCRLF program to carry out cleanup activities. Regulations applicable to the program include 40 C.F.R. Part 31 (Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments), 40 C.F.R. Part 35, Subpart O (Cooperative Agreements for Superfund Response Action), and 40 C.F.R. Part 300 (the NCP).

**E .
APPLICABILITY** This manual describes general legal and administrative requirements applicable to all cooperative agreement recipients selected for the BCRLF demonstration pilot program. Applicable statutes and regulations take precedence over any descriptions contained in the manual. Cooperative Agreement Recipients are bound by the

Description

signed cooperative agreement and its terms and conditions.

To supplement this guidance, the U.S. EPA Regions may incorporate other terms and conditions into a cooperative agreement if such terms and conditions meet the requirements of CERCLA and any applicable Federal statutory and regulatory requirements, are consistent with the overall goals of the BCRLF program, and meet environmental and/or financial objectives.

Any changes to CERCLA legislation may apply to all cooperative agreement recipients upon passage of new legislation or implementation of associated regulations. Loans made by the cooperative agreement recipients prior to the effective date of the change, however, will not be affected unless required by law or authorized by an amendment to the agreement.

II. Proposal and Cooperative Agreement Application Process

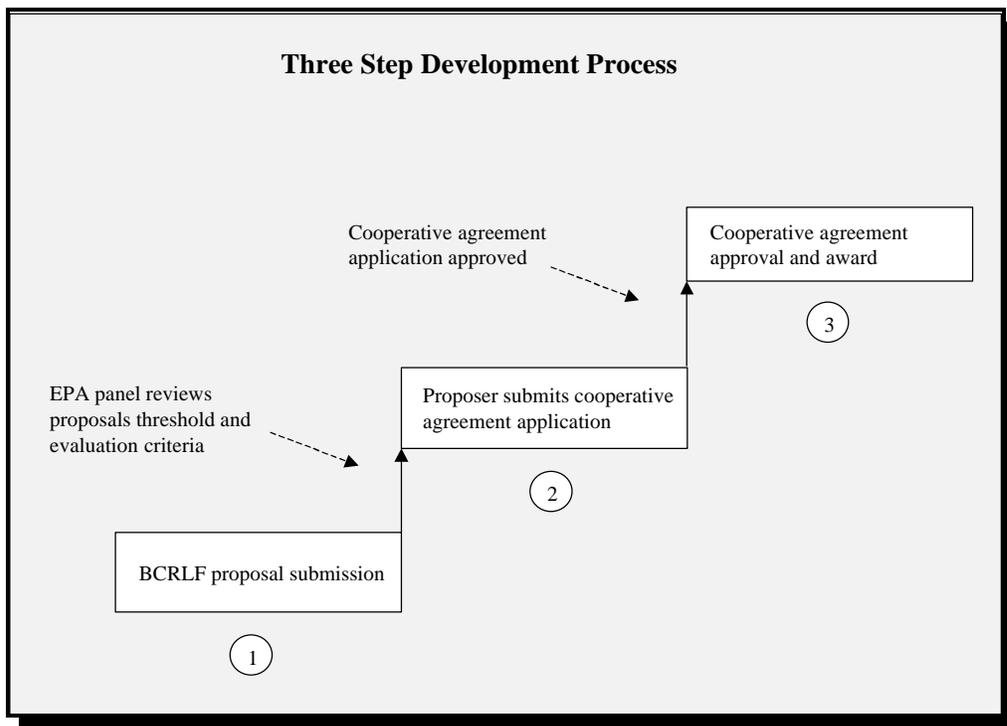
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II. Proposal and Cooperative Agreement Application Process

A. INTRODUCTION

Designation as a BCRLF pilot involves a three step process. States, political subdivisions of states (e.g., counties, cities, towns), territories, and Indian tribes first submit proposals for BCRLF demonstration pilot awards. The U.S. EPA reviews proposals based on threshold and evaluation criteria. Based on the U.S. EPA review, proposers may choose to submit a formal application for a cooperative agreement. This application is then processed and, *if approved*, becomes the basis of a cooperative agreement. These steps are described in more detail below. In addition, development of a BCRLF program includes creating or adapting a pre-existing institutional structure to meet the needs of the program (see Section IV.C.2., *Institutional Alternatives*).



B. BCRLF PILOT PROPOSAL

The U.S. EPA provides proposal instructions, minimum threshold criteria, and evaluation criteria for parties interested in BCRLF pilots in *The Brownfields Economic Redevelopment Initiative: Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund* (the U.S. EPA, OSWER, 500-F-97-147 April 1997) and BCRLF Administrative Manual, Appendix B, *Proposal Guidelines for BCRLF Demonstration Pilots*.

C. COOPERATIVE AGREEMENT PACKAGE AND PROCESS

1. Overview

Upon proposal selection, the U.S. EPA Headquarters will send successful proposers letters confirming their selection and will simultaneously notify the appropriate U.S. EPA Regional Brownfields Coordinators and Regional Grant Specialists of the selections (see Appendix G, *Key Brownfields Regional and National Contacts*). Appropriate Regional Offices will then contact successful proposers and ask them to submit a formal cooperative agreement application package. Proposers are responsible for contacting their State Intergovernmental Review Office (single point of contact) to initiate applicable review processes as soon as possible after receiving notification of intent to award (see 40 C.F.R. Part 29). If no State Intergovernmental Review Office exists for a given state, or if the state has not selected the BCRLF program for review, proposers are responsible for distributing information about their prospective application to each relevant reviewing agency. BCRLF applications are subject to §204 of the Demonstration Cities and Metropolitan Development Act of 1966 (see 40 C.F.R. §29.8(c)).

The cooperative agreement application requires more detailed information on specific products, schedules, and budgets than initially submitted in BCRLF proposals.

The cooperative agreement application package should include:

- Standard application and budget forms (see Appendix D, *Sample Cooperative Agreement Application*);
- A formal workplan that provides a detailed description of the work to be performed, including a schedule, milestones, products, and budget backup information;
- Information related to community relations, health and safety, and quality assurance plans;
- Required certification forms;
- A letter from the state Governor or Attorney General (or, in the case of political subdivisions, from the Mayor or a resolution from the City Council) certifying that the applicant has the authority to enter into this agreement with the U.S. EPA and has the authority to carry out the work included in the application;
- When the applicant is a political subdivision, a letter of support from the appropriate state (see 40 C.F.R. §35.6205(c)); and
- Any written commitments necessary to establish the roles and responsibilities of the entities supporting the cooperative agreement

recipient.

U.S. EPA Regional Brownfields Coordinators and Regional Grants Specialists are responsible for working with each BCRLF applicant to process the application package and finalize the cooperative agreement (see Appendix C, *Cooperative Agreement Application Completeness Checklist*). The *cooperative agreement* and its associated workplan are the documents that cover the day-to-day operation of the BCRLF and the relationship between the U.S. EPA and the cooperative agreement recipient.

The cooperative agreement awards Federal funds, contains the Standard Terms and Conditions, as well as any Special Terms and Conditions, and covers issues such as environmental management and cleanup requirements, loan administration, reporting requirements, recordkeeping, etc. (see Appendix D, *Sample Cooperative Agreement Application*). Furthermore, the cooperative agreement details the amount of each award and a schedule and protocol for payment of cooperative agreement funds to the fund manager. In addition to these items, the cooperative agreement incorporates the cooperative agreement application package and workplan.

The *cooperative agreement workplan* is the document negotiated between the U.S. EPA and entities selected to receive BCRLF pilot funding. The cooperative agreement workplan develops the cooperative agreement recipient's strategy for accomplishing program goals and objectives.

The primary components of a cooperative agreement workplan include:

- The details of the recipient's procedures for selecting sites/loan recipients that meet the requirements of CERCLA and the NCP;
- The recipient's financial plan, including the BCRLF cooperative agreement payment structure or fund capitalization; and
- An approach for handling the day-to-day operation of the BCRLF.

The workplan will contain a schedule outlining milestones and a schedule for items to be delivered to the U.S. EPA during the course of the cooperative agreement. These items include quarterly reports, site-specific Community Relations Plans, and site-specific quality assurance project plans/sampling plans. Any site-specific information or plans required by 40 C.F.R. Part 35, Subpart O which was not submitted with an application also must be submitted to and approved by the U.S. EPA prior to field work beginning or in accordance with milestones laid out in the cooperative agreement.

Please note that unless a case specific deviation is granted, only costs incurred after the award of the cooperative agreement are eligible for reimbursement under the agreement.

2. Deviation Request

Since a program such as the BCRLF demonstration pilot program was not envisioned at the time 40 C.F.R. Part 35, Subpart O was promulgated, deviations from certain definitions and provisions of these regulations may be necessary to ensure that the BCRLF demonstration pilot program can meet its stated objectives. For example, a deviation has been granted for the first round of BCRLF Pilots from those portions of 40 C.F.R. §35.6105(a) (as referenced in §35.6205(a) and (c)) which require the Recipient to submit with its applications site-specific information because site identification will not occur at the application phase of the cooperative agreement. Cooperative Agreement Recipients will, however, submit all site-specific information required under §35.6105(a) to the U.S. EPA once a site is identified and the information becomes available (see Appendix H, *Approved Deviation Request*). This deviation was requested from the U.S. EPA's Grants Administration Division by the EPA's Office of Solid Waste and Emergency Response (OSWER).

3. State Agreement

Cooperative agreement recipients must obtain and forward to the U.S. EPA Region's BCRLF Project Officer written agreement from the state that the cooperative agreement recipient may assume the lead responsibility for removal activity at a particular site. If such an agreement cannot be obtained prior to cooperative agreement signature, then it must be received prior to the cooperative agreement recipient incurring any cost under a BCRLF cooperative agreement (this condition should be included as a special term or condition of the cooperative agreement). The state may agree to cooperative agreement recipient lead removals on a site by site or programmatic basis. This requirement is in addition to and distinct from the intergovernmental review required to initiate the cooperative agreement (see Section II.C.1., *Overview*).

What type of state agreement is required for the cooperative agreement recipient to take the lead responsibility for removal activities?

Cooperative agreement recipients must obtain and forward to the U.S. EPA BCRLF Project Officer written agreement from the state that the cooperative agreement recipient may assume the lead responsibility for removal activities. This requirement is in addition to and distinct from the intergovernmental review required to initiate the cooperative agreement (see Section II.C.1., *Overview*).

D. HIGH RISK COOPERATIVE AGREEMENT RECIPIENTS

A cooperative agreement recipient that has demonstrated difficulty in meeting the terms and conditions of past awards may be treated as a “high risk” cooperative agreement recipient. BCRLF awards to high risk cooperative agreement recipients may be subject to special terms and conditions or other provisions, as detailed below. The following criteria are listed in 40 C.F.R. §31.12 as defining a “high risk” cooperative agreement recipient:

- Has a history of unsatisfactory performance;
- Is not financially stable;
- Has a management system which does not meet the management standards set forth in 40 C.F.R. Part 31;
- Has not conformed to terms and conditions of previous awards; or
- Is otherwise not responsible.

If a prospective cooperative agreement recipient meets any of the above criteria, special conditions and/or restrictions corresponding to the relevant high risk condition shall be included in the award. These may include:

- Payment from the U.S. EPA limited to a reimbursement basis;
- Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
- Requiring additional, more detailed financial reports;
- Additional project monitoring;
- Requiring the cooperative agreement recipient to obtain technical or management assistance; or
- Establishing additional prior approvals.

Prospective cooperative agreement recipients must be notified by the EPA Award Official¹ as soon as possible, in writing, of the nature of the special conditions/restrictions, the reason(s) for imposing them, the corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions, as well as the method that the recipient should use to request reconsideration of the conditions/restrictions imposed.

Section II Endnotes:

1. Note that Regional Brownfield Coordinators are not “Award Officials.” See 40 C.F.R. 31 “Uniform Administrative Requirements for Grants and Cooperative Agreements” for further details on “Award Officials.”

III. Eligible BCRLF Cooperative Agreement Fund Uses and

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III. Eligible BCRLF Cooperative Agreement Fund Uses and Program Activities

A. INTRODUCTION

BCRLF cooperative agreement funds may be used to provide loans or other authorized financial assistance to eligible public and private borrowers. In order to ensure funds are loaned consistent with the “polluter pays” principle, the EPA has placed restrictions on parties eligible to receive loans. See section VI.B.7. of this manual for further discussion of borrower eligibility. Within established limits, funds also may be used to pay for allowable administrative costs of the BCRLF (see Section VII.D., *Administrative Costs*).

Cooperative agreement recipients may provide loans and/or other financial assistance with BCRLF pilot funds only for eligible sites and for eligible cleanup activities. Eligible sites and cleanup activities, as well as identified ineligible sites and cleanup activities, are described below (also see Section V.A., *Applicable Authority* and Section VI.B.7., *Borrower Eligibility*).

B. ELIGIBLE SITES

Use of BCRLF pilot funds is limited to sites that have an actual release or substantial threat of release of a “hazardous substance” (as listed under 40 C.F.R. §302.4) into the environment. BCRLF pilot funds also may be used to address releases or substantial threats of releases into the environment of a “pollutant” or “contaminant” (as defined by CERCLA §101(33)) that may present an imminent or substantial danger to public health or welfare. See CERCLA §104(a)(1).

BCRLF funds may be used at sites that are:

- Publicly-owned, either directly by a municipality or indirectly through a quasi-public entity such as a community development corporation; and
- Privately-owned and with clear means of recouping BCRLF expenditures (e.g., through an agreement with the owner or developer or through a lien or other security interests) -- this includes sites undergoing purchase by an entity who meets the definition of a prospective purchaser.²

C. INELIGIBLE SITES

BCRLF pilot funds may not be used at any sites:

- Listed, or proposed for listing, on the National Priorities List;
- At which a removal action must be taken within six months (i.e., time critical removal action);
- Where a Federal or state agency is planning or conducting a response or enforcement action; or
- Contaminated by petroleum products except to address a non-petroleum hazardous substance (e.g., co-mingled waste).

May BCRLF funds be used for further investigation or assessment activities required by the cleanup process?

No. BCRLF funds may only be used for cleanup activities and for site monitoring activities, including sampling and analysis, that are necessary to determine the effectiveness of a cleanup. BCRLF funds may not be used for pre-cleanup environmental response activities, such as site assessment, identification, and characterization. BCRLF funds may not be used for the preparation of Remedial Action Plans (RAPs) or feasibility studies .

**D. ELIGIBLE
ACTIVITIES TO
BE FUNDED
(AT ELIGIBLE
SITES)**

BCRLF pilot funds have been designated by the U.S. EPA's Administrator for cleanup activities only. BCRLF activities must be removals as defined in CERCLA §101(23), and described in 40 C.F.R. §300.415. These activities are summarized below:

- Actions associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant, or contaminant (as appropriate to different site situations), including:
 - ▶ Fences, warning signs, or other security or site control precautions;
 - ▶ Drainage controls;
 - ▶ Stabilization of berms, dikes, or impoundments or drainage or closing lagoons;
 - ▶ Capping of contaminated soils;
 - ▶ Using chemicals and other materials to retard the spread of the release or mitigate its effects;
 - ▶ Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas;
 - ▶ Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants, or contaminants;
 - ▶ Containment, treatment, disposal, or incineration of hazardous materials; and
 - ▶ Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for a permanent remedy.
- Site monitoring activities, including sampling and analysis, that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
- Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.

May BCRLF funds be used for demolition and/or site preparation related to cleanup?

Yes, BCRLF funds may be used for removal activities, including demolition and/or site preparation, that are part of site cleanup. BCRLF funds may not be used for pre-cleanup environmental response activities, such as site assessment, identification, and characterization.

E. INELIGIBLE ACTIVITIES

BCRLF funds may not be used for the following activities:

- Pre-cleanup environmental response activities, such as site assessment, identification, and characterization;³
- Cleanup of a naturally occurring substance, products that are part of the structure of and result in exposure within residential buildings or business or community structures (e.g., interior lead-based paint contamination or asbestos which results in indoor exposure), or public or private drinking water supplies that have deteriorated through ordinary use—except as determined on a site-by-site basis and approved by U.S. EPA Headquarters, consistent with CERCLA §104(a)(3) and (4);
- Monitoring and data collection necessary to apply for, or comply with, environmental permits under other Federal and state laws, unless such a permit is required as a component of the cleanup action;
- Development activities that are not removal actions (e.g., construction of a new facility or marketing of property).

May BCRLF funds be used for remediation of underground storage tanks, assuming non-petroleum contaminants are present?

Yes and No. There are two issues here: First, BCRLF funds may not be used for “remedial” actions. Secondly, BCRLF funds may be used to conduct non-time critical removal activities to address underground storage tanks only to respond to a non-petroleum hazardous substance (e.g., co-mingled waste).

The U.S. EPA also places other, non-cleanup related restrictions on the use of BCRLF pilot funds. These restrictions include the following provisions:

- Only up to 15 percent of the total award may be used to cover a cooperative agreement recipient’s (including lead agency and fund manager) administrative and legal costs (e.g., loan processing, professional services, audit, legal fees, and state program fees), as negotiated by EPA and the cooperative agreement recipient during the cooperative agreement application and award process;

- Absent statutory authorization -- such as that which exist for community development block grants -- the recipient may not use BCRLF funds to meet a cost sharing or matching requirement for another Federal grant;⁴
- Funds may not support job training; and
- Funds may not support lobbying efforts of the cooperative agreement recipient (e.g., before the U.S. Congress, state legislatures, the U.S. EPA, or other Federal agencies).

Section III Endnotes:

2. See "Guidance on Agreements with Prospective Purchasers of Contaminated Property," U.S. EPA, Washington, D.C., May 1995.
3. Brownfields Assessment Pilots are awarded for these purposes.
4. The U.S. EPA, if requested to do so by the cooperative agreement recipient, will provide case specific guidance on whether borrowers may use BCRLF funds to meet cost sharing or matching requirements for another Federal grant (40 C.F.R. Part 31.24(b)).

IV. Roles and Responsibilities Overview Contents

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IV. Roles and Responsibilities Overview

A INTRODUCTION

There are three primary entities involved in the development, oversight, and implementation of the BCRLF program: the U.S. EPA, cooperative agreement recipients, and borrowers. The roles and responsibilities of each, in the context of the BCRLF program, are detailed below (see also Section V, *BCRLF Environmental Response Requirements* and Section VI, *BCRLF Fund Manager Functions and Responsibilities*).

B. THE U.S. EPA RESPONSIBILITIES

The U.S. EPA anticipates being substantially involved in overseeing and monitoring the BCRLF program. Substantial involvement by the U.S. EPA generally covers such activities as: monitoring; review and approval of procedures for site and loan recipient selection; review or approval of project phases; developing scopes of work; and overseeing operational matters. However, the U.S. EPA does not intend to be involved in recipients' prioritization of loan recipients or day-to-day management of the loan program.

What level of involvement does the U.S. EPA expect to have with the cooperative agreement recipient?

The U.S. EPA expects to be substantially involved with the cooperative agreement. The U.S. EPA is responsible for monitoring BCRLF pilot sites' fulfillment of all reporting, recordkeeping, and other program requirements, including: 1) reviewing quarterly financial and performance reports; 2) ensuring that all environmental cleanup actions conducted under the BCRLF program are completed in accordance with CERCLA and consistent with the NCP.

For this demonstration pilot, the U.S. EPA will monitor a recipient's procedures to ensure that all cooperative agreement financial and environmental management and cleanup requirements are met. This includes reviewing quarterly financial and performance reports, as well as environmental cleanup status reports, and approving site-specific Community Relations Plans and quality assurance project plans/sampling plans. In its oversight role, the U.S. EPA is responsible for ensuring that all environmental response actions conducted under the BCRLF program are conducted in accordance with the cooperative agreement and CERCLA, and are consistent with the NCP.

The U.S. EPA is also responsible for monitoring cooperative agreement recipients to ensure that they comply with other applicable statutory and executive order based "cross-cutting" Federal requirements to the extent of Federal participation (i.e., the Federal monetary contribution) in the fund. Each recipient, in turn, is responsible for ensuring that its borrowers meet these requirements, as applicable.

The EPA expects that its degree of involvement will vary based on the level of experience and expertise of the cooperative agreement recipient to implement cleanup and fund management requirements. In some instances, special terms and conditions may be imposed (40 C.F.R. Part 31.12 and 40 C.F.R. Part 35.6790). The U.S. EPA also may provide technical assistance to BCRLF pilot recipients.

C.
COOPERATIVE
AGREEMENT
RECIPIENT
RESPONSIBILITIES

Cooperative agreement recipient responsibilities cover two basic functions: environmental cleanups; and financial management. A cooperative agreement recipient is legally responsible for ensuring proper environmental cleanups, managing BCRLF funds, and complying with all applicable Federal and state laws and regulations. For certain activities, the cooperative agreement recipient may obtain services, by contract or agreement with other organizations or individuals. Notwithstanding such contracts or agreements, the cooperative agreement recipient is the entity legally responsible to the U.S. EPA for all actions of the BCRLF pilot.

For the purposes of the BCRLF program, the cooperative agreement recipient is the “lead agency,” as defined in the National Oil and Hazardous Substances Contingency Plan (NCP). The lead agency is responsible for ensuring that BCRLF response actions are conducted in conformance with the cooperative agreement, CERCLA, and the NCP. The lead agency also is responsible for designating a “brownfields site manager” to coordinate, direct, and oversee BCRLF response actions at a particular site. The brownfields site manager is an on-scene coordinator (OSC) and is responsible for carrying out the OSC duties described in the NCP. The lead agency must designate a qualified government employee as the brownfields site manager. Both the lead agency and the brownfields site manager must work with the fund manager, prior to any final loan decisions and as loan agreements are developed, to ensure that all environmental cleanup requirements will be met and that BCRLF funds are used only for authorized activities (see Section V, *BCRLF Environmental Response Requirements -- Applicable Authority*).

Each cooperative agreement recipient also must act as or enlist the services of a “fund manager.” Fund manager responsibilities include those related to financial management of the seed capitalization funding, as well as program income resulting from the lending of pilot funds (see Section VI, *BCRLF Environmental Response Requirements -- Fund Manager Functions and Responsibilities* and Section VII.B., *Use of Program Income*).

The cooperative agreement recipient may choose to enlist the services of other entities that have experience with overseeing and carrying out environmental response actions and fund management activities to help the lead agency, brownfields site manager, and the fund manager to fulfill their responsibilities. The cooperative agreement recipient may enter into written commitments (by contract or agreement) to obtain the services of other qualified agencies, organizations, or individuals (see Section IV.C.3., *Written Commitments* and Section IV.C.2, *Institutional Alternatives*). The cooperative agreement recipient, however, remains the entity legally responsible for carrying out all terms and conditions of the cooperative agreement, and complying with CERCLA and the NCP.

Does the U.S. EPA intend to review each loan application?

No. While the U.S. EPA does anticipate being substantially involved in the BCRLF program, the Agency does not intend to review individual loan applications.

1. Functions

There are four key roles and functions under the cooperative agreement. They include:

- The **Cooperative Agreement Recipient**, who enters into the cooperative agreement with the U.S. EPA, receives BCRLF pilot funding from the U.S. EPA, and is legally responsible to the U.S. EPA for managing funds, ensuring proper environmental cleanups, and complying with all applicable laws and regulations.
- As **Lead Agency**, the cooperative agreement recipient is responsible for ensuring that environmental cleanups conducted using BCRLF pilot funds are conducted in accordance with the cooperative agreement and CERCLA and are consistent with the NCP.

May the lead agency be a private party?

No. For the BCRLF program, the lead agency must be the cooperative agreement recipient itself (i.e., state, political subdivision, etc. selected as cooperative agreement recipient). The lead agency may engage the services of another government organization or private entity to support lead agency functions.

- The **Brownfields Site Manager**, who is designated by the lead agency and is responsible for overseeing cleanups at specific sites. The brownfields site manager must be a qualified government employee (see definition of OSC in 40 C.F.R. §300.5.). One brownfields site manager must be responsible for each site, but a single manager may be responsible for more than one site.
- The **Fund Manager**, who is responsible for ensuring that the BCRLF is managed in conformance with the cooperative agreement, applicable laws and regulations, and prudent lending practices. The fund manager may be a cooperative agreement recipient or a private lender or other private entity that has entered into a written agreement with the cooperative agreement recipient.

May a private lender serve as fund manager as long as they meet the requirements of the BCRLF program?

Yes, under a written agreement with the cooperative agreement recipient, a private lender or other qualified private entity may serve as a fund manager.

2. Institutional
Alternatives

Cooperative agreement recipients may be able to fill all BCRLF roles in-house, but many recipients likely will seek expertise from one or more other entities that have experience administering loan funds and/or carrying out environmental cleanups. The cooperative agreement recipient may obtain services of other qualified agencies,

organizations, or individuals to help perform its functions as lead agency or fund manager. Cooperative agreement recipients seeking expert assistance could look to such organizations as other revolving loan fund programs, such as those administered by the U.S. Economic Development Administration, U.S. Department of Housing and Urban Development, and the U.S. Small Business Administration, infrastructure banks or state revolving fund programs, or another city, county, or department.

A wide variety of institutional alternatives exist for BCRLFs due to the differing nature of program needs from location to location. The cooperative agreement recipient, however, remains the entity legally responsible for carrying out all terms and conditions of the cooperative agreement.

Entities that are likely candidates to help provide services for a BCRLF operation include, but are not limited to:

- Economic development offices;
- Environmental management offices;
- Executive offices (mayor's, governor's, and county executive's offices);
- Government finance departments;
- Metropolitan planning organizations (MPOs);
- Offices of management and budget;
- Public works departments;
- Public engineering agencies;
- Transportation departments;
- Environmental consultants;
- Non-profit community development; and
- For-profit and not-for-profit corporations.

Flexibility in the BCRLF program enables a cooperative agreement recipient to coordinate with other public, private, or non-profit organizations such as those listed above to take advantage of financial, environmental, project management, administrative, and other specialized personnel. A BCRLF can therefore be comprised of personnel from two or more organizations.

It is expected that BCRLF proposers will have given significant thought to potential institutional arrangements in developing their proposals and will have selected the one that best meets the pilot program's threshold criteria and most strongly demonstrates a cooperative agreement recipient and any partners' abilities to manage a revolving loan fund and environmental cleanups.

Could the BCRLF be administered by the cooperative agreement recipient, perhaps using the services of a review consultant under contract to the recipient to address technical issues?

Yes. Institutional arrangements of the BCRLF cooperative agreement are intentionally flexible. The cooperative agreement recipient may fulfill BCRLF roles/responsibilities itself or may use agreements or contracts with other public or private organizations to support lead agency functions or to serve as fund manager. The role of brownfields site manager must be performed by a government employee (e.g., local, tribal, state government). The brownfields site manager may oversee a private party that is employed to conduct site management activities.

3. Written Commitments

Cooperative agreement recipients wishing to enlist the services of other government entities or private parties to assist with the activities required to fulfill the responsibilities of lead agency or fund manager, must use written commitments to secure such services. Any transaction involving a transfer of cooperative agreement funds must comply with 40 C.F.R. §35.6550 through §35.6610. Cooperative agreement recipients cannot enter into intergovernmental agreements or award subgrants. BCRLF cooperating parties (i.e., organizations supporting fund manager and lead agency roles) must establish some type of written commitment, such as contracts, by the time the final workplan is being negotiated so that they may be incorporated by reference (if necessary) into the terms and conditions of that agreement. If these written commitments are not in place, the cooperative agreement recipient may not start work until the substantive terms are submitted to the U.S. EPA for approval. BCRLF pilot applicants should provide some indication of the intent of all cooperating parties to establish such an agreement(s) (e.g., a letter of intent or the equivalent) along with their proposal package.

What type of agreements must the cooperative agreement recipient have with other agencies that may be assisting with the activities of lead agency and/or fund manager? At what point in time must these agreements be established?

Cooperative agreement recipients must have written commitments (e.g., contracts, intergovernmental agreements, and/or memoranda of understanding) by the time the cooperative agreement is being negotiated so that they may be reviewed and approved by the U.S. EPA and incorporated by reference (if necessary) into the terms and conditions of that agreement. Ideally, they should be established as part of the cooperative agreement package before the award is signed. If these commitments are not in place, the cooperative agreement recipient may not start work until the substantive terms of the agreement are submitted to EPA for approval.

D. BORROWER RESPONSIBILITIES

Although the cooperative agreement recipient retains primary control and final decisionmaking authority over BCRLF response activities conducted using BCRLF funds, it is expected that a borrower will actively participate in developing and conducting a particular BCRLF response.

Borrowers are allowed to use BCRLF funds only for eligible activities (see Section III, *Eligible BCRLF Cooperative Agreement Fund Uses and Program Activities*). Borrowers

Can cooperative agreement recipients award subgrants to non-profit organizations?
No. Non-profit organizations are ineligible to receive CERCLA 104(d) cooperative agreements and are therefore ineligible for subgrants. Cooperative agreement recipients may award contracts to such organizations provided they follow applicable procurement procedures in 40 C.F.R. Part 35.

also will be required to document their use of funds. Such documentation must be kept for a minimum of ten years after completion of the cleanup activities supported by the loan or for the length of the loan, whichever is longer (see Section VII.E., *Reporting and Audit*). Written approval of the lead agency must be obtained prior to destroying any records.

Cooperative agreement recipients are responsible for ensuring that BCRLF borrowers meet all relevant requirements. The EPA will have no direct contractual ties with individual borrowers. Instead, cooperative agreements shall specify those requirements that the BCRLF will impose on its borrowers. The EPA, through its monitoring and oversight, will verify that the cooperative agreement recipient is sufficiently fulfilling its responsibilities.

The cooperative agreement recipient must ensure that borrowers comply with all applicable Federal and state requirements as well as the intent of the BCRLF program. The requirements placed on the borrower should be spelled out in the loan agreement, including both environmental and financial compliance components.

V. BCRLF Environmental Response Requirements Contents

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V. BCRLF Environmental Response Requirements

**A.
APPLICABLE
AUTHORITY**

All environmental response activities carried out using BCRLF demonstration pilot funds must be in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), located in 40 C.F.R. Part 300. BCRLF funds may only be used to carry out non-time critical removal activities authorized by CERCLA and the NCP (for purposes of this discussion, the term “BCRLF response” is equivalent to “non-time critical removal action”).

Is compliance with the NCP required?

Yes, all environmental response activities carried out using BCRLF demonstration pilot funds must be consistent with the NCP at 40 C.F.R. Part 300.

CERCLA provides authority to the U.S. EPA, and to a state, or political subdivision of a state, an Indian Tribe, etc. operating pursuant to a §104(d) cooperative agreement, to respond to the release, or substantial threat of release, of any hazardous substance into the environment. The NCP establishes the responsibilities of the “lead agency” and various organizations that participate in responses, describes how coordination is to occur among these entities, outlines criteria for determining the appropriate response, discusses community involvement and public participation requirements, explains response action implementation activities, and establishes procedures for preparing administrative records that support the selection of response actions.

The following discussion is intended to highlight and clarify particular requirements of CERCLA and the NCP in the context of the BCRLF demonstration pilot program and the responsibilities of the BCRLF lead agency. It is not intended to apply to, and should not be used for, anything other than BCRLF response actions. It is not intended as a substitute for the statute or the regulations.⁵

**B.
ENVIRONMENTAL
RESPONSE
REQUIREMENTS**

**1. Determining
if a BCRLF
Response is**

Prior to lending BCRLF funds for a response action at a particular site, the lead agency must first determine that a BCRLF response is authorized by CERCLA and the NCP. The lead agency must make this determination based on a site evaluation

Authorized

(its own and/or on site evaluation information submitted by the potential borrower), and current site conditions. Potential borrowers are strongly encouraged to include site evaluation information in their initial application to the lead agency.⁶

Site evaluations are described in the NCP at 40 C.F.R. §300.410. It is expected that an American Society for Testing and Materials (ASTM) Phase I/Phase II assessment will generally provide most of the information necessary for the lead agency to determine whether a BCRLF response is authorized. A lead agency also may require the borrower to submit additional site evaluation information. Any data generated by anyone including the lead agency must conform to the NCP at 40 C.F.R. §300.415 (b)(4)(ii) in order to be used as a basis for any findings or decisions by the lead agency.

What site evaluations are required to determine if a BCRLF response is authorized?

Site evaluations are described in the NCP at 40 C.F.R. §300.410. It is expected that an American Society for Testing and Materials (ASTM) Phase I/Phase II assessment will generally provide most of the information necessary for the lead agency to determine whether a BCRLF response is authorized. Potential borrowers are strongly encouraged to include site evaluation information in their initial application to the lead agency.

To determine whether a BCRLF response is authorized, the lead agency must make findings (a) - (e) on a site-by-site basis and must document its findings in a signed memorandum. It is recommended that determinations regarding the eligibility of the potential borrower and eligible sites also be made at this time. Note that, if responsible parties are known, the cooperative agreement recipient (lead agency) must initially, to the extent practicable, make an effort to determine whether the responsible party can and will perform the necessary removal action promptly and properly (see NCP at 40 C.F.R. §300.415(a)(2)). For purposes of this effort, a "responsible party" does not include an entity which meets the borrower eligibility criteria summarized in Section VI.B, *Establishing the BCRLF Financial Plan*.

The lead agency must make the following findings:

(a.) There is a release, or substantial threat of release, of any hazardous substance into the environment, or there is a release, or substantial threat of release, of a pollutant or contaminant into the environment which may present an imminent and substantial danger to the public health or welfare (see CERCLA §104(a)(1)).

"Hazardous substance" is defined at CERCLA §101(14) and the list of hazardous substances is at 40 C.F.R. §302.4. "Pollutant or contaminant" is defined at CERCLA §101(33). BCRLF response actions may not be undertaken at site contaminated with unlisted petroleum except to address a non-petroleum hazardous substance (e.g., a co-mingled waste). CERCLA expressly excludes petroleum from the definition of hazardous substance and pollutant or contaminant. The term "release" is defined at CERCLA §101(22). "Environment" is defined at CERCLA §101(8).

What type of release must the lead agency find to determine that a BCRLF response is authorized?

The lead agency must find that there is a release, or substantial threat of release, of any hazardous substance into the environment (as defined at CERCLA §101(14)), or that there is a release or substantial threat of release, of a pollutant or contaminant into the environment which may present an imminent and substantial danger to the public health or welfare (see CERCLA §104(a)(1)).

(b.) The release does not involve: (1) a naturally occurring substance from a location where it is naturally found; (2) a product that is part of the structure, and results in exposure within, a residential building or business or community structure (e.g., interior lead-based paint or asbestos which results in indoor exposure); or (3) a public or private drinking water supply that has deteriorated through ordinary use (see CERCLA §104(a)(3) and (4)).

If the release involves any of the substance(s) described above, BCRLF funding may not be used for a BCRLF cleanup, except as determined on a site-by-site basis and approved by U.S. EPA Headquarters, consistent with CERCLA §104(a) (3) and (4).⁷

(c.) A removal is appropriate because there is a threat to public health or welfare or the environment (see NCP at 40 C.F.R. §300.415(b)(1)).

The lead agency must consider the following factors in making this determination:

- 1. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;*
- 2. Actual or potential contamination of drinking water supplies or sensitive ecosystems;*
- 3. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;*
- 4. High levels of hazardous substances or pollutants or contaminants in soils, largely at or near the surface, that may migrate;*
- 5. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;*
- 6. Threat of fire or explosion;*
- 7. The availability of other appropriate Federal or state response mechanisms to respond the release; and*
- 8. Other situations or factors that may pose threats to public health or welfare of the U.S. or the environment.*

(d.) Sufficient time is available to plan and select a BCRLF response and to implement the community relations and public involvement activities before any on-site cleanup activities may take place.

BCRLF funds may only be used at a site where the lead agency determines that this planning period exists. The lead agency must ensure that all NCP requirements regarding planning and selecting a BCRLF response, community relations and public involvement, and the administrative record have been met prior to initiating any on-site cleanup activity. Community relations and public involvement requirements in BCRLF actions are further discussed in Section V.B.3, Community Relations and Public Involvement in BCRLF Response Actions.

If a state or local government have public participation requirements associated with its cleanup and economic development programs, will they suffice for BCRLF response actions?

BCRLF response actions must, at a minimum, meet NCP public participation requirements. If the state or local government requirements meet or exceed the NCP requirements, then their community relations and public involvement activities will suffice. However, state and local government public participation requirements must at a minimum meet those outlined in Section V.B.3., *Community Relations and Public Involvement in BCRLF Response Actions.*

(e.) Cleanup of the site will contribute to brownfields revitalization.

BCRLF funds may only be used to conduct response actions at brownfields sites, and the lead agency should consider whether cleanup will significantly contribute to local community revitalization.

2. Selecting a BCRLF Response

The lead agency is responsible for conducting an analysis of BCRLF response alternatives for a site and must ensure that an appropriate BCRLF response action is selected (see the NCP at 40 C.F.R. §300.415(b)(4)(i)). This analysis is referred to as an “engineering evaluation/cost analysis (EE/CA) or its equivalent” in the NCP. The EE/CA or its equivalent should identify the objectives of a BCRLF response and analyze the effectiveness, feasibility, and costs of alternatives that also would satisfy BCRLF response objectives. As part of this analysis, the lead agency should consider whether a BCRLF response may take more than 12 months. BCRLF response actions may last only 12 months.⁸ This restriction will be referred to as the “12 month limit.” The lead agency also should consider current use restrictions and potential future land use. An ASTM Phase I/Phase II assessment may supply sufficient information to conduct the EE/CA or its equivalent. The lead agency may rely on information supplied by the potential borrower to conduct this analysis.

(a.) Sampling and analysis plan

The lead agency must develop sampling and analysis plans that provide a process for obtaining data of sufficient quality and quantity to satisfy data needs, if environmental samples are to be collected. Any data generated by anyone,

including the lead agency, must conform to the NCP at 40 C.F.R. §300.415 (b)(4)(ii) in order to be used as a basis for any findings or decisions by the lead agency. Note that 40 C.F.R. Part 35, Subpart O requires submission of a quality assurance project plan and sampling plan to the U.S. EPA. Field work may not begin until the U.S. EPA approves the plan.⁹ Sampling and analysis plans must consist of two parts:

- (i) The field sampling plan which describes: the rationale; the number, type, and location of samples; and the type of analyses and data quality objectives.
- (ii) The quality assurance project plan which describes: policy, organization, and functional activities; and the data quality objectives and measures necessary to achieve adequate data for use in planning and documenting the removal action.

What information does the EE/CA, or its equivalent, require?

The EE/CA, or its equivalent, should identify the objectives of a BCRLF response and analyze the effectiveness, feasibility, and costs of alternatives that also would satisfy BCRLF response objectives. An American Society of Testing and Materials (ASTM) Phase I/Phase II site assessment submitted by the borrower may supply sufficient information for the lead agency to conduct an "engineering evaluation/cost analysis (EE/CA) or its equivalent," as described in the NCP.

(b.) BCRLF response actions that may be taken

BCRLF funds may only be used to support removal activities authorized by CERCLA and the NCP. "Removal" is defined in CERCLA §101(23). Removal activities include actions associated with removing, mitigating, or preventing the release or threat of release of a hazardous substance, pollutant, or contaminant (as appropriate to different site situations). Some specific examples of removal activities are described in the NCP at 40 C.F.R. §300.415(e) and include:

- Fences, warning signs, or other security or site control precautions;
- Drainage controls;
- Stabilization of berms, dikes, or impoundments or drainage or closing lagoons;
- Capping of contaminated soils;
- Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas;
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants, or contaminants;
- Containment, treatment, disposal, or incineration of hazardous materials; and

- Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

(c.) Requirements of other environmental laws (i.e., ARARs)

BCRLF response actions must be designed to attain, to the extent practicable, applicable or relevant and appropriate requirements (ARARs) under Federal environmental or state environmental or facility siting laws (see the NCP at 40 C.F.R. §300.415(j)). Other Federal and state advisories, criteria, or guidance may, as appropriate, be considered in formulating the BCRLF response action (see the NCP at 40 C.F.R. §300.400(g)(3)). Identification and evaluation of ARARs should occur throughout the BCRLF response selection process. It is recommended that the lead agency work with the state to identify ARARs.

“Applicable” requirements are Federal or state environmental standards that specifically address a particular hazardous substance, pollutant, contaminant, removal action, location, or other site specific issue. “Relevant and appropriate requirements” are not specific (i.e., not “applicable”) to the location, action, or substance of concern, but address problems or situations similar to those encountered at the BCRLF site (see the NCP at 40 C.F.R. §300.500 for complete definitions of “applicable” and “relevant and appropriate” requirements).

ARARs are required for removal actions “to the extent practicable considering the exigencies of the circumstances.” In determining whether compliance with ARARs is practicable, the cooperative agreement recipient (lead agency) should consider appropriate factors, including:

- (i) *The urgency of the situation.* Because BCRLF responses will be non-time critical removal actions, it is not generally expected that compliance with ARARs will be impracticable due to the urgency of the situation.
- (ii) *The scope of the removal action to be conducted.* The scope of the removal action relates to the sometimes limited scope and purpose of a removal action, e.g., site stabilization and mitigation of near term threats. For the BCRLF Pilot Program, the Cooperative Agreement Recipient (lead agency) must consider current and future land use to determine ARAR practicability. For the BCRLF pilot program, the lead agency must consider current and future land use to determine ARAR practicability.
- (iii) In addition, even if attaining ARARs is practicable, ARARs identified for a particular BCRLF response may be waived under the NCP (40 C.F.R. §300.415(j)).

(d.) Post-BCRLF response site control¹⁰

The cooperative agreement recipient (lead agency) should review a borrower’s proposed response actions to assess whether post-BCRLF response site controls will be necessary. Such site controls include actions necessary to ensure the effectiveness and integrity of the response action after the completion of the BCRLF response or

the 12 month limit. Post-BCRLF response site controls may be removal actions under CERCLA; however, controls necessary beyond the 12 month limit cannot be funded with BCRLF funds.

May BCRLF funds be used for post-BCRLF cleanup response site control?

Post-BCRLF cleanup response site controls may be removal actions under CERCLA ; however, controls necessary beyond the 12 month limit cannot be funded with BCRLF funds.

(e.) Documenting the BCRLF response selection decision

The lead agency must document final selection of a BCRLF response for a particular site in a decision document. The decision document should explain why the BCRLF response is authorized, identify the selected action, and explain the rationale for selecting that particular response. In addition, the decision document should document all ARARs and provide reasons for any waivers or findings of impracticability. See the sample “action memo” in Exhibit 1 for a model outline of a decision document).

Prior to signing the decision document, the lead agency must ensure that the public has had an opportunity to review and comment on the EE/CA or its equivalent, and that a response has been provided to any significant comments (see Section V.B.3., *Community Relations and Public Involvement in BCRLF Response Actions*). *Final loan decisions should not be made prior to signing the decision document and in no event shall any loan decision preclude the ability of the lead agency to change a BCRLF response, or any portion of response, based on comments from the public or on any new information acquired by the lead agency.*

3. Community Relations and Public Involvement in BCRLF Response Actions

Community relations and public involvement activities occur throughout the BCRLF response and implementation process, and the BCRLF funds may be used to support these activities. Community relations and public involvement activities are not administrative costs, and therefore, are not subject to the Cooperative Agreement Recipient’s fifteen percent limit on such expenditures. The lead agency must meet the requirements described in 40 C.F.R. §300.415(n) and summarized below:

- Designate a spokesperson to inform the community of actions taken, respond to inquiries, and provide information.
- Prior to completion of the engineering evaluation/cost analysis (EE/CA) or its equivalent, conduct interviews with local officials, community residents, public interest groups, or other interested and affected parties, as appropriate.
- Prior to completion of the EE/CA or its equivalent, prepare a Community Relations Plan (CRP) based on community interviews and other relevant

Requirements

information, specifying the community relations activities that the lead agency expects to undertake during the response.¹¹

- Prior to formal documentation that a BCRLF response is authorized at a particular site, establish at least one local information repository at or near the location of the potential response action that includes public information related to that action and an administrative record file. The cooperative agreement recipient (lead agency) must inform the public of the information repository and provide notice of availability of the administrative record for public review.
- Publish notice of availability of the EE/CA or its equivalent in a major local newspaper of general circulation.
- Provide reasonable opportunity (not less than 30 days) for written and oral comments on the EE/CA or its equivalent. Upon timely request, extend the public comment period by a minimum of 15 days.
- Prepare a written response to significant comments.

Compliance with the requirements for interviews, a CRP, and information repository discussed above must be documented in the Administrative Record file (see Section V.B.6., *Administrative Record* and the NCP at 40 C.F.R. §300.820(a)(3)).

Public participation is a critical component of developing and selecting a BCRLF response. *Final loan decisions should not be made prior to carrying out the required community relations and public involvement activities, and in no event shall any loan decision preclude the ability of the lead agency to change a BCRLF response, or any portion of a response, based on comments from the public or on any new information acquired by the lead agency.*

Exhibit 1. Sample Action Memorandum Outline

- I. Purpose
- II. Site Conditions and Background
 - A. Site Description
 1. Removal site evaluation
 2. Physical location
 3. Site characteristics
 4. Release or threatened release of a hazardous substance, pollutant, or contaminant
 5. Maps, pictures, and other graphic representations
 - B. Other Actions
 1. Previous actions
 2. Current actions
 - C. State and Local Authorities' Roles
 1. State and local actions to date
 2. Potential for continued State/local response
- III. Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities
 - A. Threats to Public Health or Welfare
 - B. Threats to the Environment
- IV. Proposed Actions and Estimated Costs
 - A. Proposed Actions
 1. Proposed BCRLF response
 2. Engineering Evaluation/Cost Analysis (EE/CA) or its equivalent
 - i. EE/CA summary or EE/CA Executive Summary
 - ii. Summary of written responses to public comment
 3. Applicable or relevant and appropriate requirements (ARARs)
 4. Project schedule
 - B. Estimated Costs
- V. Decision to Proceed
- VI. Attachments [e.g., the loan agreement (as available); a copy of the EE/CA or its equivalent; and the lead agency's response to significant public comments]

4. Implementation of Response Action and Ongoing Activities

BCRLF cooperative agreement recipients and brownfields site managers must ensure the adequacy of each BCRLF response as it is implemented. Each loan agreement should contain terms and conditions which allow the cooperative agreement recipients to change response activities as necessary. In some situations, the planned environmental response may fail to fully address the threats at a site, or new threats may be discovered. If the selected response action will not fully address threats posed by releases, or a borrower is unable or unwilling to complete the response, the cooperative agreement recipient must ensure that the site is secure and poses no immediate threat to human health or the environment. The cooperative agreement recipient also must notify the appropriate state agency and the U.S. EPA to ensure an orderly transition to other appropriate response activities.

Other requirements to be aware of during selection and implementation of BCRLF response actions include:

(a.) Subpart O site-specific information requirements

The cooperative agreement recipient (lead agency) and brownfields site manager must ensure that applicable 40 C.F.R. Part 35, Subpart O site-specific information requirements, including budget sheets, site description, site-specific scopes of work, designation of the lead site project manager, and the community relation plan, are delivered to the U.S. EPA. This obligation terminates at cooperative agreement closeout (see Section VIII, *Closeout and Additional Requirements*).

(b.) Notification of natural resource trustees

The cooperative agreement recipient (lead agency) and brownfields site manager must ensure that Natural Resource Trustees (including, but not limited to, the U.S. Department of the Interior, the National Oceanic and Atmospheric Administration, etc.) are promptly notified of potential damages to natural resources and must coordinate all BCRLF activities with such affected Trustees.

(c.) Worker health and safety

The cooperative agreement recipient (lead agency) and brownfields site manager must ensure that all Federal and state requirements for worker health and safety are met during BCRLF response activities. 40 C.F.R. §35.6105(a)(v), Subpart O requires the cooperative agreement recipient (lead agency) to have a site-specific health and safety plan which complies with 29 C.F.R. §1910.120. This should be submitted with the cooperative agreement application or an assurance must be provided that a final plan will be in place before starting field work.

(d.) Notification of out-of-state transfer of CERCLA wastes

The cooperative agreement recipient (lead agency) must provide written notification of off-site shipments of CERCLA waste to an out-of-state waste management facility to the appropriate officer as described in 40 C.F.R. §35.6120, Subpart O.

5. Completion of BCRLF Response

At the completion of a BCRLF response, the cooperative agreement recipient (lead agency) and brownfields site manager must, at a minimum, ensure that the closeout report contain the following items found in 40 C.F.R. §300.165(b):

- Documentation that addresses the situation as it developed;
- Documentation regarding the actions that were taken;
- Documentation of the resources committed; and
- Documentation of any problems encountered.

What happens in the event that a project funded by a BCRLF loan must be terminated?

In the event that a project must be terminated, the lead agency is required to secure the site (e.g., ensure public safety) and inform the U.S. EPA and the state.

6.
Administrative
Record

The cooperative agreement recipient (lead agency) is responsible for establishing an administrative record containing the information forming the basis for the selection of a BCRLF response action (see the NCP at 40 C.F.R. §300.800(a)). This should generally include all site information submitted by the borrower and may include appropriate sections of loan documents necessary to ensure cleanup requirements are met.

As described in the community relations section above, the cooperative agreement recipient is responsible for establishing at least one docket of information that is available for public inspection at or near the site at issue. Information regarding the BCRLF response action that is not required to be kept on-site is outlined in the NCP at 40 C.F.R. §300.805(a)(1-5). Typical contents of the administrative record are found in the NCP at 40 C.F.R. §300.810 and summarized below:

- Documents containing data and information that may form the basis for selection of a response action, including: sampling data; quality control and assurance documentation; chain of custody forms; site inspection reports; preliminary assessment and site evaluation reports; ATSDR health assessments; public health evaluations; and technical and engineering evaluations.
- Guidance documents, technical literature, and site-specific policy memoranda that may form the basis for the selection of the response action.
- Documents received, published, or made available to the public for non-time critical removal actions or the BCRLF pilot program.
- Decision documents (e.g., initial determination that BCRLF response is authorized).
- An index of documents included in the administrative record file.

Certain documents generated or received after the BCRLF response selection decision document is signed must be added to the administrative record file in accordance with 40 C.F.R. §300.825 (see 40 C.F.R. §300.820(a)(4)).

In establishing the administrative record, cooperative agreement recipients also should be conscious of NCP provisions governing information that need not be included, such as privileged documents, and summaries of confidential information (see the NCP at 40 C.F.R. §300.810(b-d)).

It is the responsibility of the cooperative agreement recipient to make the administrative record file available for inspection at the time that the EE/CA or its equivalent is released for public comment and review (see the NCP at 40 C.F.R. §300.820(a)(1)).

C. USE OF STATE VOLUNTARY CLEANUP PROGRAMS

The U.S. EPA expects that cooperative agreement recipients and borrowers may want to conduct cleanups pursuant to their respective State Voluntary Cleanup Program (State VCP). BCRLF funds may be used to clean up a site pursuant to a State VCP, so long as the BCRLF response meets the substantive and procedural requirements of CERCLA and the NCP, and all terms and conditions of the cooperative agreement are met. The BCRLF lead agency and brownfields site manager are responsible for ensuring that these requirements will be met on a site-specific basis, including ensuring that appropriate terms and conditions are included in each loan agreement.

In instances where the BCRLF pilot is located in a state with a voluntary cleanup program (State VCP), what is the most appropriate way to handle discrepancies between the State VCP and the NCP (e.g., differing public participation/community involvement requirements)?

BCRLF funds may be used to clean up a site pursuant to a State VCP, so long as the cleanup is carried out in accordance with all terms and conditions of the cooperative agreement and CERCLA and consistent with the NCP. The BCRLF lead agency and brownfields site manager are responsible for ensuring that these requirements will be met on a site-specific basis.

Section V Endnotes:

5. The U.S. EPA publication "Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA," PB93-963402, the U.S. EPA 540-R-93-057, August 1993, also can be consulted for further reference.
6. BCRLF funds, however, may not be used to fund site assessment activities.
7. The U.S. EPA guidance "Response Actions At Sites with Contamination Inside Buildings," OSWER Directive 9360.3-12, August 1993, should also be consulted for further reference.
8. BCRLF response actions may last only 12 months unless the U.S. EPA determines that the response may continue (consistent with CERCLA §104(c)(1) and the NCP §300.415(b)(5)).
9. The U.S. EPA Regions may use the same process for reviewing quality assurance plans for the brownfields site assessment pilots.
10. See the NCP at 40 C.F.R. §300.415(1).
11. Please note that 40 C.F.R. §300.6105(a)(2)(iv), Subpart O requires that a Community Relations Plan (CRP) be submitted to the U.S. EPA as part of the cooperative agreement. The U.S. EPA Region managing the BCRLF demonstration pilot cooperative agreement may consider scheduling options for addressing this requirement on a pilot-by-pilot basis, however, field work cannot begin until the CRP has been approved by the U.S. EPA.

VI. BCRLF Fund Manager Functions and Responsibilities

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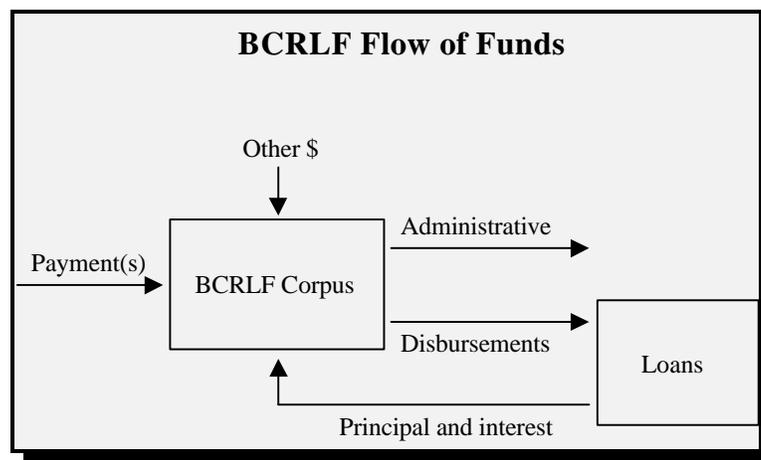
VI. BCRLF Fund Manager Functions and Responsibilities

A. INTRODUCTION

This section describes the objectives and mechanics of capitalizing and operating a BCRLF and the specific responsibilities of the fund manager in administering the financial and loan administration components of cooperative agreements. These methods should be considered in conjunction with the more technical requirements and procedures outlined in Section VII, *Administrative Procedures and Restrictions*.

Under the BCRLF pilot program, cooperative agreement recipients are responsible for ensuring that the fund is set up to optimize its lending potential in order to meet demands for financial assistance in the pilot area. A cooperative agreement recipient may conduct the necessary financial management activities itself or, through a written commitment with another qualified entity or individual, designate such an entity to serve as fund manager for the BCRLF (see Section IV.C.2., *Institutional Alternatives*).

The overall financial objectives of a BCRLF can be achieved by establishing a fully revolving fund whereby initial cooperative agreement award payments and any other start-up capitalization funds form the initial capital of the fund. These funds are used to make loans to eligible public and private borrowers, and, within established limitations, to pay for administrative costs of the BCRLF (see Section VII.D., *Administrative Costs*). Over time, these loan funds are returned to the BCRLF, via repayments of principal and interest. Additional funds may accrue to the fund in the form of loan processing and other loan-related charges imposed on borrowers, as well as interest earned on fund balances. These relationships are illustrated in the diagram below.



**B.
ESTABLISHING
THE BCRLF
FINANCIAL
PLAN**

Prior to the receipt of capitalization funds for the BCRLF, cooperative agreement recipients or their designated fund managers must establish the objectives and financial administration of the fund. These decisions include: the source(s) and level of capitalization and provision for utilizing program income; the types of assistance to be offered; capital utilization provisions (i.e., the revolving nature of the fund); underwriting principles to be followed; and assurance that all financial restrictions on funds use are met by the BCRLF and its borrowers.

**1. Sources of
Capital for
BCRLF Pilots**

Sources of capital for BCRLF pilots include the U.S. EPA cooperative agreement funds and may include financial contributions from participating states, political subdivisions, Indian Tribes, or private parties (see Section VII.A., *Payment Procedures and Methods of Disbursement*). The BCRLF pilot program does not require cost share or matching funds, but, as noted in the proposal guidelines, non-federal financial participation is encouraged.¹² Program income, including principal repayments on outstanding loans, interest, and other loan-related charges are expected to recapitalize BCRLFs as they revolve over time.

**2. Capital
Utilization**

Cooperative agreement recipients are expected to manage BCRLF lending schedules to minimize the amount of uncommitted funds, in accordance with the terms and conditions of their agreement. Generally the terms and conditions require BCRLF assets be managed to maintain a minimum of 50 percent of the BCRLF capital loaned out or committed at all times. The U.S. EPA Regions may negotiate alternate capital utilization standards with cooperative agreement recipients in their jurisdiction.

**3. Types of
Assistance**

As currently envisioned, the primary form of financial assistance to be provided by a BCRLF to eligible borrowers is a direct loan. Such loans may be provided at below-market interest rates, but not less than zero percent (see discussion of interest rates below). There also is no limit on the size of individual loans.

The use of BCRLF assets to provide other forms of financial assistance, such as financial guarantees, etc. may be considered on a case-by-case basis. If a cooperative agreement recipient chooses to use BCRLF funds to support loan guarantees, it must: (1) document the relationship between the expenditure of CERCLA 104(d) funds and response actions; (2) maintain an escrow account expressly for the purpose (see Section VII.A.3., *Methods of Disbursement*); and (3) ensure that any and all response actions guaranteed by BCRLF funds are conducted in accordance with the terms and conditions of the cooperative agreement and CERCLA and consistent with the NCP.

In instances where cooperative agreement recipients are providing borrowers with loan guarantees rather than direct loans, the cooperative agreement recipient will not receive payment from the U.S. EPA until the guaranteed loan has been issued from a bank or other financial institution. That is, loans guaranteed with BCRLF funds may only be made available on an as-needed basis for specific cleanup activities. Funds used to provide the guarantee should remain in escrow and return

to the cooperative agreement recipient only when borrowers repay the guaranteed loans. Escrow accounts should be established consistent with the standards for “disbursement” of grant funds discussed by the General Accounting Office in 64 Comp. Gen. 96 (1984).

May BCRLF monies be used for loan guarantees?

Yes. If the cooperative agreement recipient chooses to use BCRLF funds to support a loan guarantee approach, the cooperative agreement recipient must: (1) document the relationship between the expenditure of CERCLA 104 (d) funds and response actions; (2) maintain an escrow account expressly for this purpose, by following disbursement requirements described below; and (3) ensure that response actions guaranteed by BCRLF funds are conducted in accordance with the terms and conditions of the cooperative agreement and CERCLA and are consistent with the NCP.

To ensure that funds transferred to the cooperative agreement recipient are credited as disbursements of assisted funds, the escrow account supported by the loan guarantees must be structured in accordance with the standards of 64 Comp. Gen. 96 (1984). To qualify as a disbursement: (1) the recipient cannot retain the funds; (2) the recipient must not have access to the escrow funds on demand; (3) the funds must remain in escrow unless there is a default of a guaranteed loan; (4) the organization holding the escrow must be a bank or similar financial institution that is independent of the recipient; and (5) there must be an agreement with participating financial institutions which documents that the financial institution has made a guaranteed loan to clean up a brownfields site in exchange for access to funds held in escrow in the event of a default by the borrower.

Any obligations that the cooperative agreement recipient incurs for loan guarantees in excess of the BCRLF award are the responsibility of the cooperative agreement recipient. Cooperative agreement recipients are further required to communicate the terms of their cooperative agreements and the limits described herein to all participating banks and borrowers.

4. Insurance

A cooperative agreement recipient may purchase insurance, including environmental insurance, if the expense is incidental to costs it incurs as a lead agency associated with a specific loan agreement or site cleanup. Purchase of environmental insurance by a cooperative agreement recipient is subject to the 15 percent administrative cost limit (see Section VII.D., *Administrative Costs*).

May a cooperative agreement recipient use the BCRLF funds to purchase insurance, including environmental insurance?

Yes. Purchase of insurance, including environmental insurance, is an allowable administrative cost for the cooperative agreement recipient, if the expense is incidental to costs it incurs as a lead agency associated with a specific loan agreement or site cleanup. Unlike borrowers, such insurance does count against the 15 percent limit on cooperative agreement recipient administrative costs.

If a cooperative agreement recipient wishes to use BCRLF funds for the sole purpose of purchasing environmental insurance, approval from the EPA Headquarters must be obtained.

Borrowers also may purchase insurance, including environmental insurance, if the expense is incidental to, and associated with BCRLF costs it incurs for site-specific cleanup activities (e.g., workers compensation). Unlike for a cooperative agreement recipient, incidental insurance purchased by a borrower is not counted against the borrower's ten percent limit on administrative costs.

May BCRLF funds be used by the borrower to pay for insurance, including environmental insurance, associated with site cleanup?

Yes. Purchase of insurance, including environmental insurance, by the borrower using BCRLF funding, is allowable if the expense is incidental to, and associated with BCRLF costs it incurs for site-specific cleanup activities. Insurance coverage that is purchased by the borrower associated with a specific cleanup activity is not counted against the borrower's ten percent limit on administrative costs.

U.S. EPA Headquarters approval must be obtained if the borrower wishes to use the BCRLF funds for the sole purpose of purchasing environmental insurance.

With the U.S. EPA Headquarter's approval, BCRLF funds may be used by a borrower for the sole purpose of purchasing environmental insurance if the purchase of such insurance is necessary to carry out other removal activities. Removal activities associated with BCRLF funded insurance must be carried out in accordance with the terms and conditions of the cooperative agreement, CERCLA and the NCP.

5. Prudent Lending Practices

Cooperative agreement recipients should ensure that necessary institutional and personnel structures are in place to maintain the BCRLF and meet long-term brownfield cleanup and lending objectives. BCRLF cooperative agreement recipients must operate the BCRLF in accordance with lending practices generally accepted as prudent for Federally-assisted public loan programs.

Prudent underwriting principles include those related to the establishment of interest rates, repayment terms, and collateral requirements (discussed below), as well as practices covering loan processing, documentation, loan approval, collections, servicing, administrative procedures, and recovery actions (discussed later in this section).

(a.) Interest rates

Fund managers may make loans to eligible borrowers at interest rates that are less than or equal to the market interest rate, but not less than zero percent. The cooperative agreement recipient is responsible for identifying in the cooperative agreement workplan the method it will use to determine the "prevailing" market interest rate at the time a particular loan is executed with a borrower.

(b.) Repayment terms

As a condition of the cooperative agreement, BCRLF cooperative agreement recipients are required to develop a plan for how repayment terms on individual loans will be determined. This plan should provide enough detail to assure the U.S. EPA that loans will be repaid in a timely and efficient manner. It is not necessary for these plans to specify the details of individual loan repayment schedules, since these conditions will vary based upon the needs of individual borrowers.

No requirements for the length of the term of a loan repayment have been established. The cooperative agreement recipient is simply expected to use sound judgement and apply standard practices when establishing loan durations.

(c.) Security

BCRLF cooperative agreement recipients are required to obtain adequate and appropriate financial security from borrowers and to act diligently to protect the interests of the revolving loan fund through collection, foreclosure, or other recovery actions on defaulted loans. The U.S. EPA requires that cooperative agreement recipients ensure that all loans are properly secured, but leaves the details of the collateral to the cooperative agreement recipient as an operational decision. The recipient should determine, on a case-by-case basis, whether a lien on the brownfield site is appropriate collateral. Other collateral may include security interests in equipment, accounts, and personal guarantees.

6. Project
Selection
Procedures

Each cooperative agreement recipient or designated fund manager, in cooperation with the lead agency, is responsible for developing a systematic approach for selecting borrowers and projects that are eligible for funding (see Section III.B., *Eligible Sites*; Section III.C., *Ineligible Sites*; and Section V, *BCRLF Environmental Response Requirements -- Applicable Authority*). It is the responsibility of cooperative agreement recipients to establish appropriate project selection criteria consistent with Federal and state requirements, the intent of the BCRLF program, and the cooperative agreement entered into with the U.S. EPA.

Cooperative agreement recipients must identify procedures for determining how potential borrowers are qualified to direct proposed cleanup and redevelopment activities. For program operation, it is expected that cooperative agreement recipients will develop a formal protocol for potential borrowers to demonstrate eligibility, based on the procedures described in the proposal and cooperative agreement application. Such a protocol may include descriptions of projects that will be financed, how loan monies will be used, and qualifications of the borrower to make legitimate use of the funds. Additionally, cooperative agreement recipients may ask borrowers for an explanation of how a project, if selected, would be consistent with BCRLF program objectives.

Are there any requirements for the term of repaying loans to the cooperative agreement recipient as BCRLF lender?

No. There are not any requirements for the length of repayment period(s). However, the cooperative agreement recipient is expected to use sound judgement and standard practices when establishing the overall loan terms (i.e., length of repayment, repayment start date, security, and amortization) of loans. The requirement for interest rates is as follows: a cooperative agreement recipient may make loans with interest rates that are less than or equal to the market interest rate, including zero percent loans. Negative interest rates are not allowed. The cooperative agreement recipient is responsible for identifying in the cooperative agreement the method it will use to determine the "prevailing" market interest rate at the time a particular loan is executed with a borrower.

When several project borrowers are competing for BCRLF funds, cooperative agreement recipients should be prepared to substantiate methods and reasons for choosing one project over another. Project selection systems may be subject to review to ensure that BCRLF program objectives are being met.¹³ However, the U.S. EPA will not make decisions on individual loans.

7. Borrower Eligibility

Each fund manager should work with its respective BCRLF lead agency to establish borrower eligibility provisions and ensure they are met. Generally, eligible borrowers include any public or private entities with control over or access to an eligible site (as defined in Section III. B., *Eligible Sites*).

Some restrictions do apply on the eligibility of potential borrowers. They are listed below.

- A cooperative agreement recipient may not lend to itself.
- A party which is determined to be a generator or transporter of contamination at a brownfields site(s) is ineligible for a BCRLF pilot loan for that same site.
- The cooperative agreement recipient's lead agency may initially find that an owner/operator of a brownfields site(s) is an eligible borrower for a BCRLF pilot loan for that same site only if: the lead agency can determine that an owner/operator would fall under a statutory exemption from liability; or that the U.S. EPA could use its enforcement discretion and not pursue the party in question under CERCLA, as described by the U.S. EPA guidance (see Appendix F, *List of the U.S. EPA Brownfields Policy and Guidance*). However, initial findings of the lead agency by no means limit the enforcement discretion or authority of the Federal or state government. The lead agency must maintain documentation demonstrating the eligibility of the owner/operator (see Appendix B, *Proposal Guidelines for BCRLF Demonstration Pilots*).

- A borrower must submit information regarding its environmental compliance history. The cooperative agreement recipient will strongly consider this history in its analysis of the borrower as a cleanup and business risk.
- Each borrower must certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.
- Someone that has been suspended, debarred, or otherwise declared ineligible cannot be a borrower.

If a city is the cooperative agreement recipient, may it lend BCRLF dollars to another government agency (i.e., a Redevelopment Agency) if that agency is part of the same municipal government?

No. An entity would not be eligible to be a borrower if the entity is an agency of the same government as the cooperative agreement recipient, unless a state or local law establishes that the agency may borrow money from the political jurisdiction of the cooperative agreement recipient and raise funds to pay the loan back (otherwise the state or city would be lending money to itself).

Is the cooperative agreement recipient eligible to be a borrower? What if an organization is filling any of the roles (lead agency, fund manager, or site manager)?

No, a cooperative agreement recipient may not lend to itself. The cooperative agreement recipient also must establish and enforce conflict of interest provisions governing the roles and responsibilities of the lead agency, fund manager, brownfields site manager, and borrower.

C. LOAN
ADMINISTRATION

BCRLF fund managers are responsible for ensuring that the overall objectives of the fund are met through the selection and structuring of individual loans and lending practices. Such practices include the management of loan funds and timing of disbursements.

1. Loan
Agreements and
Borrower Terms
and Conditions

There are a number of general terms and conditions that BCRLF borrowers must agree to in order to receive a loan or other financial assistance from the BCRLF. It is the responsibility of the fund manager to work with the lead agency to establish appropriate terms and conditions in general and for individual borrowers. The fund manager must consult with the lead agency in developing loan agreements to ensure that all environmental cleanup requirements will be met and to ensure that BCRLF monies are used only for authorized activities (see Section V.A., *Applicable Authority*; Section III, *Eligible BCRLF Cooperative Agreement Fund Uses and Program*

Activities; and Section VII.E., Reporting and Audit).

2. Loan Processing

BCRLF fund managers must establish procedures for handling the day-to-day management and processing of loans and repayments. These procedures include coordination with the U.S. EPA on funds payment as well as disbursement of loans to borrowers. All loan processing procedures will be subject to the Single Audit Act of 1984, as amended, as implemented by OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations* and 40 C.F.R. Part 31 (see Section VII.A., *Payment Procedures and Methods of Disbursement*).

Cooperative agreement recipients may choose to disburse funds to borrowers by means of "schedule" or "actual expense." A schedule disbursement is one in which all or an agreed upon portion of the obligated funds are disbursed on the basis of an agreed upon schedule (e.g., progress payments) or upon execution of the loan. An actual expense disbursement approach requires the cooperative agreement recipient to submit documentation of the borrower's expenditures (e.g., invoices or other contractual agreements) to the U.S. EPA Regional BCRLF project officer to request payment (see Section VII.E., *Reporting and Audit*).

3. Default Provisions

In the event of a loan default, the BCRLF cooperative agreement recipient must make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. Differences between assets seized and outstanding loan balances should be considered unrecoverable losses to the fund. If the cleanup is not complete at the time of default, the BCRLF cooperative agreement recipient is responsible for: (1) documenting the nexus between the amount loaned to the borrower or, in the case of guaranteed loans, the amount paid to the bank or other financial institution and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the U.S. EPA and the state. The EPA will not make any financial decisions regarding the default of BCRLF loans. Recipients may consult with the U.S. EPA on these matters, but recipients ultimately must exercise their own discretion regarding loan default. However, the U.S. EPA may be involved in cleanup decisions regarding the default of BCRLF loans.

Will the U.S. EPA make any decisions regarding loan defaults?

No. The U.S. EPA will not make any financial decisions regarding the default of BCRLF loans. However, the U.S. EPA may be involved in cleanup decisions regarding default of BCRLF loans.

Could a cooperative agreement recipient be liable for cleanup costs if the borrower defaults on the loan, or if the borrower fails to complete the cleanup in compliance with CERCLA requirements?

Maybe. Whether a cooperative agreement recipient becomes liable for cleanup costs under CERCLA §107 will depend upon the facts of the particular situation. CERCLA §107 generally imposes liability on owners and operators of facilities with hazardous substances and persons who arranged for disposal, treatment or transportation of hazardous substances. Whether BCRLF participants are liable under CERCLA §107 will depend upon the facts of the particular situation. The following provisions may limit the liability of BCRLF participants: Section 107(d) exempts from liability actions "in the course of rendering care, assistance, or advice in accordance with the [NCP]" except as the result of negligence. Section 107(d)(2) exempts from liability state or local government actions "in response to an emergency created by the release or threatened release of a hazardous substance," except as a result of gross negligence or intentional misconduct."

Section 101(20), as revised by the "Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996," 104 P.L. 208, provides that the terms "owner" and "operator" do not include lenders who do not participate in the management of a facility. In addition, Section 101(20)(D) provides that the terms "owner" and "operator" do not include "a unit of state or local government which acquired ownership or control involuntarily...by virtue of its function as sovereign."

Section VI Endnotes:

12. "Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund," U.S. EPA, OSWER, Washington, D.C., 500-F-97-147, April 1997.
13. The recipient's decision to make a loan is not a procurement subject to 40 C.F.R. §31.36 and 40 C.F.R. §35.6550 through §35.6610.

VII. Administrative Procedures and Restrictions

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VII. Administrative Procedures and Restrictions

The U.S. EPA has established procedures governing how BCRLF funds may be transferred (i.e., paid) to cooperative agreement recipients and subsequently disbursed to borrowers. Furthermore, the U.S. EPA has put in place requirements regarding the use of program income, meeting cross-cutting requirements, program audit and recordkeeping, allowable administrative costs, remedies for noncompliance, program termination, and recovery of BCRLF assets. These administrative procedures and restrictions are discussed below (see also Section VI.B., *Establishing the BCRLF Financial Plan*).

A. PAYMENT PROCEDURES AND METHODS OF DISBURSEMENT

For the purposes of the BCRLF program, “payment” refers to the U.S. EPA’s transfer of funds to the cooperative agreement recipient and “disbursement” refers to the transfer of funds from the cooperative agreement recipient to the borrower. The cooperative agreement recipient incurs an “obligation” when it enters into a loan agreement with a borrower.

1. Pre-payment Requirements

Each cooperative agreement recipient must make positive assertions regarding its fund management capabilities and provide necessary certifications prior to any receipt of cooperative agreement award funds. In particular, a cooperative agreement recipient must certify that its accounting system is adequate to identify, safeguard, and account for all BCRLF funds, including BCRLF program income. Certification is normally completed through an independent accountant. The recipient also must certify that BCRLF loan documents necessary for lending are in place and that these documents have been reviewed by the recipient’s legal counsel for compliance with applicable state and local law and compliance with the Terms and Conditions of the award.

2. Payment Procedures

All payments to cooperative agreement recipients will be made consistent with 40 C.F.R. Part 35.6280. Depending on the method of disbursement established for the cooperative agreement, recipients may request payment from the U.S. EPA after incurring an obligation or administrative expense or based on a pre-established schedule. Funds for cooperative agreement recipients’ administrative costs (up to 15 percent of the total award) may be paid as appropriate.

The U.S. EPA will make payments to the cooperative agreement recipient on a schedule which minimizes the time elapsing between transfer of funds from the U.S. EPA and disbursement by the recipient. For funds covering a cooperative agreement recipient’s loan to a borrower, the recipient may request payments when it receives a disbursement request from a borrower, based on the borrower’s incurred costs under the actual expense method or the schedule for disbursement under the schedule disbursement method (see discussion below). The cooperative

agreement recipient must disburse accrued program income to meet all or part of this obligation or administrative expenses prior to requesting payment from the U.S. EPA.

If funds are requested but the loan agreement signing delayed, a cooperative agreement recipient may hold funds for a reasonable time period, but should return the funds if disbursement to borrowers is unlikely within a 30-day period. Returned funds will be available to the recipient for future drawdown for legitimate incurred costs. Interest earned on prematurely drawn funds must be returned to the U.S. EPA unless there is a statutory exemption.

What is the procedure by which the U.S. EPA plans to submit payment of funds to cooperative agreement recipients?

The method of payment will vary. The Region and the cooperative agreement recipient should work out the method of payment at the Region's discretion.

If the Automated Clearing House (ACH) Vendor Payment System is used to comply with the Debt Collection Improvement Act of 1996, the cooperative agreement recipient must complete and return the Payment Information Form ACH Vendor Payment System (TFS Form 3881).

Each cooperative agreement recipient should work with its regional EPA project officer to establish the method of payment that will be used. Appropriate methods of payment may include the Automated Clearing House Electronic Funds Transfer (ACH/EFT) system and U.S. Treasury check.

The ACH/EFT system wires funds directly to a cooperative agreement recipient's bank account. If the ACH Vendor Payment System is used, the cooperative agreement recipient must comply with all relevant provisions of the Debt Collection Improvement Act of 1996, including completing and returning (to the U.S. EPA project officer) the Payment Information Form ACH Vendor Payment System (Standard Form 3881). Once the SF 3881 has been submitted and accepted, a payment form (SF 270, *Request for Advance or Reimbursement*) or reimbursement form (SF 271, *Outlay Report and Request for Reimbursement for Construction Programs*) should be used to request payment, unless the cooperative agreement recipient already uses the ACH/EFT system.

Alternatively, a U.S. Treasury check may be used for payment(s). To request payment, each cooperative agreement recipient must submit a completed (SF 270 or 271) to the U.S. EPA.

There are two ways that the cooperative agreement recipient may elect to disburse funds to the borrower: via an "actual expense" approach or on a pre-determined "schedule." An "actual expense" disbursement approach requires the cooperative agreement recipient to submit documentation of the borrower's expenditures (e.g.,

3. Methods of Disbursement

invoices) to the U.S. EPA to request payment. A “schedule” disbursement approach requires that all, or an agreed upon portion, of the obligated funds are disbursed to the borrower on the basis of an agreed upon schedule (e.g., progress payments) which may coincide with execution of the loan. If a schedule disbursement approach is employed, the cooperative agreement recipient must submit documentation of the agreed-upon disbursement schedules to the U.S. EPA.

What is the procedure by which cooperative agreement funds are disbursed to individual borrowers?

The cooperative agreement recipient may choose to disburse funds to borrowers by means of a “schedule” disbursement or via an “actual expense” mechanism. A “schedule” disbursement is one in which all or an agreed upon portion of the obligated funds are disbursed to the borrower on the basis of an agreed upon schedule which may coincide with execution of the loan. The cooperative agreement recipient must submit documentation of disbursement schedules to the U.S. EPA. The “actual expense” approach requires the cooperative agreement recipient to submit documentation of the borrower’s expenditures (e.g., invoices) to the U.S. EPA to request payment.

B. USE OF PROGRAM INCOME

Program income is the gross income received by the cooperative agreement recipient, directly generated by the cooperative agreement award or earned during the period of the award (the time between the effective date of the award and the ending date of the cooperative agreement, as defined in 40 C.F.R. §31.25). The terms of the cooperative agreement allow the recipient to add program income to the funds awarded by the U.S. EPA and use the program income under the terms and conditions of its agreement (as defined in 40 C.F.R. §31.25(g)(2)), including eligible administrative costs and environmental response requirements.

Program income includes principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding BCRLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers, and other income generated from BCRLF operations.

Will repaid loan funds (principal and interest) be subject to the same restrictions as the initial BCRLF assistance funds? Could, for instance, local pilots lend these funds for other uses (e.g., petroleum sites) as long as the uses are consistent with the objectives of the Brownfields program?

Yes, repaid loan funds are subject to the same restrictions as the initial BCRLF assistance funds. Cooperative agreement recipients must use program income in a manner consistent with the terms and conditions of the cooperative agreement affecting disposal of program income, eligible costs and in accordance with CERCLA and consistent with the NCP. Providing funds to respond to petroleum contamination would not be consistent with these requirements.

BCRLF cooperative agreement recipients are encouraged to earn income to defray administrative costs and preserve the fund corpus. While up to ten percent of principal repayments and up to 100 percent of interest and fees may be used for administrative costs, fund managers are strongly encouraged to maximize the lending capacity of the BCRLF (see Section VII.D., *Administrative Costs*). In accounting for program income, any proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal and any proceeds in excess of the unpaid principal, will be treated as program income and must be placed in the BCRLF for lending purposes or to cover administrative costs.

All program income from active BCRLF loans received by cooperative agreement recipients should be placed immediately in the BCRLF and made available for relending. As new loans are made, cooperative agreement recipients may request new payments only for the difference, if any, between the amount of program income available for relending and the amount of the new loan. As noted earlier, up to ten percent of repaid principal and up to 100 percent of interest and fees may be deducted from funds available for relending to cover administrative costs.

Cooperative agreement recipients are expected to maintain a fund for future borrowing needs within the eligible lending area. To determine the amount of program income to use for administrative expenses, fund managers should consider the costs necessary to operate a BCRLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or area's) financial commitment to the BCRLF, and the anticipated demand for BCRLF loans.

Cooperative agreement recipients electing to use program income to cover all or part of a BCRLF's administrative costs must maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible BCRLF administrative costs and comply with applicable Office of Management and Budget cost principles when charging costs against program income.¹⁴ For any costs determined by the U.S. EPA to have been an ineligible use of program income, the recipient must reimburse the BCRLF or the U.S. EPA. The U.S. EPA will notify the recipient of the time period allowed for reimbursement.

After the period of the cooperative agreement has elapsed, cooperative agreement recipients are required to use program income in a manner consistent with the terms and conditions of the cooperative agreement affecting disposal of program income, eligible administrative costs, and environmental compliance (see Section VIII, *Closeout and Additional Requirements*).

C. ENSURING
EQUIVALENCY
STANDARD IS
MET FOR

Each cooperative agreement recipient must ensure that loans made with BCRLF funding in combination with other non-Federal funding sources, meet Federal cross-cutting requirements to the extent of the Federal participation in the loan. Approaches to meeting cross-cutting requirements include requiring borrowers to segregate expenditures between Federal and non-Federal sources, meeting cross-

CROSS-CUTTING REQUIREMENTS

cutting requirements to the extent Federal funding is included in the loan pool, and applying cross-cutting requirements to all BCRLF loans (see Section IX.B., *Applicable Cross-cutters*).

D. ADMINISTRATIVE COSTS

In addition to the requirements of OMB Circular A-87, the U.S. EPA places restrictions on the level and types of administrative costs for which BCRLF funds may be used—for both cooperative agreement recipient and borrower administrative costs.

May the fund manager (lender) recover administrative costs through interest rates, loan application fees, and/or loan processing fees?

Yes. To the extent possible, cooperative agreement recipients are encouraged to set up their BCRLF programs to recoup administrative costs through interest charges and/or loan application and processing fees. Cooperative agreement recipients or designated fund managers may use up to 100 percent of interest and fees for administrative costs. Only 10 percent of the repayments of principal may be used for this purpose.

1. Cooperative Agreement Recipient

Cooperative agreement recipients may use BCRLF pilot funds for the lead agency's or fund manager's administrative and legal costs up to 15 percent of the total initial award, to be determined during cooperative agreement application negotiations with the U.S. EPA. Cooperative agreement recipients also may use up to ten percent of repaid principal and up to 100 percent of the borrower's interest payments and any program fees for eligible administrative costs. This is allowable for every loan made and repaid to the fund.

What are the allowable administrative costs of the cooperative agreement recipients?

The cooperative agreement recipient may use no more than 15 percent of the total award to cover administrative and legal costs (e.g., insurance, loan processing, professional services, audit, legal fees, and state program fees incurred by lead agency and/or fund manager), as negotiated by the U.S. EPA and the cooperative agreement recipient during the cooperative agreement application process.

Furthermore, the cooperative agreement recipient may use no more than ten percent of the borrower's principal repayments to the fund, and up to 100 percent of the borrower's interest payments and program fees (e.g., loan origination or processing fee) for administrative and legal costs.

Allowable administrative costs include loan processing, professional services, administering the BCRLF, audit, legal fees, and state program fees. In addition, allowable administrative costs also may include the costs incurred by the cooperative

agreement recipient in ensuring that the BCRLF borrower complies with program requirements, such as public participation, worker health and safety, and interagency coordination.

2. Borrowers

Borrowers may use up to ten percent of borrowed funds for administrative costs, including costs for BCRLF response planning. Cooperative agreement recipients should define the borrowers administrative costs in the loan agreement.

To what extent may the borrower use the BCRLF for administrative costs?

Borrowers may use up to ten percent of borrowed funds for administrative costs. It also should be noted that while a borrower may not use BCRLF pilot funds to conduct environmental response activities preliminary to cleanup, such as site assessment, site identification, and site characterization, the fund manager may negotiate with the borrower a limit of up to ten percent of the total loan to cover *both* administrative and BCRLF response planning costs.

E. REPORTING AND AUDIT

1. The U.S. EPA Responsibilities

The U.S. EPA is responsible for monitoring BCRLF pilots' fulfillment of all reporting and recordkeeping requirements. This section describes those responsibilities.

(a.) Recordkeeping

The U.S. EPA Regional Offices will provide central storage/processing of data, reports, and evaluations related to BCRLF cooperative agreements in their region. Quarterly reports summarizing key information will be forwarded from the Regions to U.S. EPA Headquarters. This information may be used to address performance measures contained in the Government Performance and Results Act (GPRA) and other national performance measurement programs.

(b.) Program review

The U.S. EPA will conduct periodic reviews of each BCRLF to assess the success of the award recipient in meeting goals set forth by the BCRLF cooperative agreement workplan. The review will determine if the BCRLF is meeting program requirements, including recordkeeping, reporting, and audit requirements.

(c.) Evaluation

The U.S. EPA may develop case studies and other information to assist in periodic program evaluations. Program evaluation data may include: total acres cleaned up, total number of cleanups, total number of cleanup jobs leveraged, total number of long-term jobs leveraged, total cleanup dollars leveraged, total redevelopment dollars leveraged, and total tax dollars generated.

2. Cooperative Agreement Recipient Responsibilities

(d.) Dispute resolution

Any cooperative agreement recipient that believes it has been adversely affected by an agency action or omission may request a review of such action or omission as provided in 40 C.F.R. Part 31.70.

Cooperative agreement recipients are responsible for ensuring compliance with all necessary reporting and records management for themselves, their implementation partners (e.g., fund manager), and their borrowers. This section describes those responsibilities.

(a.) Deliverables

Each cooperative agreement recipient is responsible for reporting to the EPA requested measures of performance and other program-specific milestones. These measures will relate both to environmental cleanup and success of the loan program (see Section VII.E.1.b., *Program review* and Section VII.E.1.c., *Evaluation*). Measures will be used to evaluate the success of the pilot in advancing the goals of the National Brownfields Initiative. All cooperative agreement recipients will be requested to provide measures of success and program milestones. This information should be provided consistent with reporting intervals established by the U.S. EPA in accordance with applicable regulations.

(b.) Records maintenance

Cooperative agreement recipients must keep records of how they select borrowers of BCRLF loans. Beyond a simple record of borrower identity, cooperative agreement recipients must maintain documentation of criteria met by the borrower that explains why the borrower was selected over other interested potential borrowers. Thus, cooperative agreement recipients will have to establish selection criteria at the outset of the BCRLF. This may involve a threshold set of criteria and an evaluation set, similar to those approved for the evaluation of the BCRLF demonstration pilots. Under this scenario, all applicants would be required to meet the threshold criteria, and could subsequently be evaluated based on the evaluation criteria.

If the BCRLF cooperative agreement recipients include administrative or legal fees as part of their BCRLF costs, the exact fees to be paid out of the BCRLF must be documented. Recipients also must maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible BCRLF administrative costs, and also must comply with applicable Office of Management and Budget cost principles when charging costs against program income.

How long must cooperative agreement recipients keep records (financial, cleanup, etc.)?

As per 40 C.F.R. Part 35.6705, a cooperative agreement recipient must maintain documentation for a minimum of 10 years after completion of the cleanup activity supported by each loan and must obtain written approval from the U.S. EPA prior to destroying records. Microform copies may be substituted for the original records, but the U.S. EPA written approval must still be obtained before destroying original records. The microform copying must comply with 36 C.F.R. Part 1230 and U.S. EPA Directive 2160 Records Management Manual. Additionally, cooperative agreement recipients must maintain records regarding post close-out program income, if applicable.

Records must be maintained in accordance with 40 C.F.R. §35.6705. At a minimum, records must be maintained for ten years after submission of the Financial Status Report, closeout of the cooperative agreement, completion of an ongoing audit, or for the length of the individual loan, whichever is longest. In addition, the cooperative agreement recipient must obtain written approval from the U.S. EPA prior to destroying any records. Microform copies may be substituted for the original records, but the U.S. EPA written approval must still be obtained before destroying original records. The microform copying must comply with 36 C.F.R. Part 1230 and the U.S. EPA Directive 2160.

(c.) Quarterly reporting

Reporting serves to keep the U.S. EPA apprised of the BCRLF's performance. As such, the cooperative agreement recipient must report quarterly on their performance and the reports must be submitted within 30 days of the end of each Federal fiscal quarter. The U.S. EPA may provide information to cooperative agreement recipients in order to elicit reporting responses from them.

At a minimum, the items included in 40 C.F.R. §35.6650 should be included in quarterly reports. Examples of activities which cooperative agreement recipients may include in their quarterly report:

- Types of projects assisted;
- Criteria used in selection of sites/borrowers;
- Maintenance of adequate funds for continued brownfields assistance;
- Certification of efficient and timely funds administration;
- Details of separate accounts that provide loans for the purpose of cleanup of brownfields properties; and
- Provider of environmental cleanup.

Generally, reports should inform the U.S. EPA as to whether the individual BCRLF is meeting the goals of the pilot program. The U.S. EPA regions may require additional reporting items as necessary and appropriate to ensure cleanups are

carried out in accordance with CERCLA and consistent with the NCP.

For what period of time will cooperative agreement recipients be required to provide quarterly reports to the U.S. EPA?

Cooperative agreement recipients will be required to submit quarterly reports to the U.S. EPA until the end of the closeout of their cooperative agreement.

(d.) Audit

Cooperative agreement recipients must ensure that periodic audits of their programs are conducted by an outside auditor in accordance with General Accounting Office (GAO) accounting standards or generally accepted government auditing standards. Furthermore, a cooperative agreement recipient must comply with all applicable requirements of the Single Audit Act of 1984, as amended and implemented by OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. In addition, a cooperative agreement recipient must, as a condition of making a loan, require borrowers to maintain project accounts in accordance with generally accepted accounting principles. For example, charges against the loan must be properly supported, related to eligible construction costs, and documented by appropriate record. In some cases, the U.S. EPA Office of Inspector General may also conduct audits of specific cooperative agreements.

3. Borrower Reporting and Recordkeeping

Cooperative agreement recipients are required to ensure that borrowers comply with all relevant Federal and state regulations as well as the requirements of the BCRLF program. Cooperative agreement recipients should require borrowers to document that they are meeting their responsibilities with regard to BCRLF program objectives in regularly submitted reports. The cooperative agreement recipient must ensure that borrowers provide financial records on a regular basis, and maintain the records on file for a minimum of ten years from the end of the loan term.

Individual reporting systems will vary among cooperative agreement recipients and borrowers, but such systems should include basic accounting and control mechanisms to help ensure legitimate use of funds and to document that funds are put to authorized uses. It is the role of the cooperative agreement recipient to direct the borrower in filling out necessary forms to demonstrate compliance. This will include, for instance, any pertinent requirements to seek minority- and women-owned businesses when choosing contractors.

How long must borrowers keep records (financial, cleanup, etc.)?

The cooperative agreement recipient must ensure that borrowers maintain documentation for a minimum of ten years after the completion of the activity supported by each loan and must obtain written approval from the lead agency prior to destroying records.

Cooperative agreement recipients must ensure that borrowers keep records of compliance with the terms and conditions of the loans including requirements of

Does the U.S. EPA intend to audit the BCRLF programs? If so, what procedures will be used? How often will audits be conducted?

Each cooperative agreement recipient must ensure that periodic program audits are conducted by an outside auditor in accordance with U.S. General Accounting Office (GAO) accounting standards or generally accepted government auditing standards. Furthermore, the cooperative agreement recipient must comply with all applicable requirements of the Single Audit Act of 1984, as amended and implemented in OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. In addition, the cooperative agreement recipient must, as a condition of making a loan, require borrowers to maintain project accounts in accordance with generally accepted accounting principles.

CERCLA, the NCP, and allowable costs. A system of accounting must be in place that is both accurate and complete. The system should charge to individual sites, activities, and operable units. The system should have the ability to maintain records and track site-specific costs, and track costs by activity and operable unit.

The cooperative agreement recipient must ensure that borrowers meet pre-established financial reporting requirements, including submitting financial reports on a regular basis (may be required as often as quarterly). Reporting mechanisms should provide financial information by site, activity, and operable unit. Additionally, financial reports must show amount of funds received and expended, direct and indirect project costs, and a record of property use, procurement methods and records, and documentation of compliance with pertinent statutes and regulations.

Pursuant to CERCLA reporting and recordkeeping requirements, the cooperative agreement recipient must ensure that borrowers retain records for a minimum of ten years, unless otherwise directed. Permission must be obtained from the lead agency before records can be removed from storage systems, once records have been in storage for a minimum of ten years.

F. TERMINATION

1. Termination for Convenience

A cooperative agreement recipient may terminate the agreement for convenience of the cooperative agreement. In the case of a partial termination, the U.S. EPA must determine that sufficient funds remain to permit an effective BCRLF operation. Otherwise, the agreement may be terminated in its entirety by the U.S. EPA under 40 C.F.R. §31.43 or by mutual agreement. Upon termination, the Federal share of the funds must be returned to the Superfund Trust Fund (see Section VII.F.3., *Recovery of the U.S. EPA Interest in BCRLF Assets*).

What happens if the cooperative agreement recipient wants to terminate the program and dissolve the BCRLF? Do any limits apply to the pilots' use of remaining funds?

In case of termination, for cause or convenience, the cooperative agreement recipient must return to the U.S. EPA its fair share of the value of the BCRLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through the use of the funds. These assets will be returned to the Superfund Trust Fund. And yes, limits would apply to the pilot's use of remaining funds. Use of remaining funds must

2. REMEDIES FOR NONCOMPLIANCE

If the U.S. EPA determines that a cooperative agreement recipient has failed to comply with the terms of the cooperative agreement, the Agency may take action under 40 C.F.R. §31.43 and 40 C.F.R. §35.6760. These actions may include temporarily withholding payments, disallowing all or part of the cost activities not in compliance with the terms of the award, whole or partial suspension or termination, or whole or partial annulment of the agreement.

Before taking action, the U.S. EPA may give the recipient a reasonable period of time in which to take the necessary corrective action to comply with the terms of the cooperative agreement. However, should it appear that an award recipient will not take the necessary action, and/or that continued operation of the BCRLF would place the assets at risk, the EPA may suspend the cooperative agreement immediately under 40 C.F.R. §31.43(a)(3).

Upon suspension, the cooperative agreement recipient and its designated fund manager could be prohibited from any new lending activity, although normal loan servicing and collection efforts would continue. The recipient may be subject to restrictions on the use of BCRLF program income. Further, the U.S. EPA may recover payments to the recipient that were expended in violation of the terms and conditions of the agreement or in violation of applicable law and regulations.

In the event that compliance problems are not resolved during the suspension period, the U.S. EPA may identify a successor recipient to assume responsibility for administering the BCRLF in accordance with the terms of the original cooperative agreement. If a successor is identified, the noncompliant recipient's fund manager is expected to cooperate fully in the transfer of assets.

When a fund manager fails to complete the initial round of lending in the time schedule provided in the cooperative agreement, the agreement may be partially terminated and unused cooperative agreement funds may be de-obligated and the cooperative agreement award amended to reflect the reduced amount of the cooperative agreement. Cooperative agreement recipients who persistently fail to make maximum use of the available BCRLF capital, as defined by the Terms and

Conditions of the agreement, will be required to return excess funds, in an amount determined by the U.S. EPA, to the Superfund Trust Fund. This amount will not be greater than the EPA's proportionate share of the BCRLF funds. The cooperative agreement award will be amended to reflect the reduced amount of the U.S. EPA's participation.

3. Recovery of U.S. EPA Interest in BCRLF Assets

In case of termination, for cause or convenience, the U.S. EPA has the responsibility, on behalf of the Federal government, to recover its proportionate share of the value of the BCRLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. Recovered BCRLF assets must be returned to the Superfund Trust Fund. The U.S. EPA's proportionate share is the amount computed by applying the percentage of the EPA participation in the total capitalization of the BCRLF to the current fair market value of the assets thereof. In addition, the U.S. EPA has the right to compensation, over and above its share of the current fair market value of the assets, when it is determined that the value of such assets has been reduced by the improper/illegal use of cooperative agreement funding.

Section VII Endnotes:

14. As appropriate, please reference Office of Management and Budget circulars A-87, "Cost Principles for State and Local Governments," and A-122, "Cost Principles for Non-Profit Organizations."

VIII. Closeout and Additional Requirements

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VIII. Closeout and Additional Requirements

This section describes the procedures for closing out a BCRLF demonstration pilot, as well as the requirements that cooperative agreement recipients must meet after the period of the award. Closeout is the process that the U.S. EPA follows to ensure that all administrative actions and work required under a cooperative agreement have been completed, and to de-obligate any funds that a BCRLF cooperative agreement recipient has been unable to use. Post-award requirements are administrative, or other requirements, that continue beyond the period of the award.

For the purposes of the BCRLF demonstration pilot program, the following definitions apply: “*payment*” is the U.S. EPA’s transfer of funds to the cooperative agreement recipient; “*obligation*” is what the cooperative agreement recipient incurs when it enters into a loan agreement with the borrower; and “*disbursement*” is the transfer of funds from the cooperative agreement recipient to the borrower.

A. CLOSEOUT

1. Criteria

There are two fundamental criteria for closeout: (1) final payment of funds from the U.S. EPA to a cooperative agreement recipient; and (2) completion of all cleanups funded by the amount of the award. All BCRLF cleanup responses must be completed within 12 months from the date that on-site cleanup activity is initiated, unless the U.S. EPA determines, consistent with CERCLA §104(c)(1) and the NCP at 40 C.F.R. §300.415(b)(5), that the response may continue.

How is the cooperative agreement closed out once the term has ended?

There are two fundamental criterion for closeout: (1) final payment; and (2) completion of all cleanups funded. The first criterion of cooperative agreement closeout is met when the cooperative agreement recipient receives all payments from the U.S. EPA. The second closeout criterion is met when all cleanups funded by the amount of the award are complete (all cleanups are expected to be complete within 12 months from the date that on-site cleanup activity is initiated).

Each cooperative agreement recipient has three years from the cooperative agreement start date to obligate all funds awarded (i.e., the BCRLF seed principal). The schedule of obligation should be no less than 50 percent of the amount awarded within 18 months; 80 percent within two years; and 100 percent within three years. Final payment and disbursement of award funds must be complete within five years from the agreement start date. Any accrued program income (i.e., fees, repayments of interest, repayments of principal, and other income) must be disbursed before requesting final payment from the U.S. EPA (per 40 C.F.R. §31.21(f)).

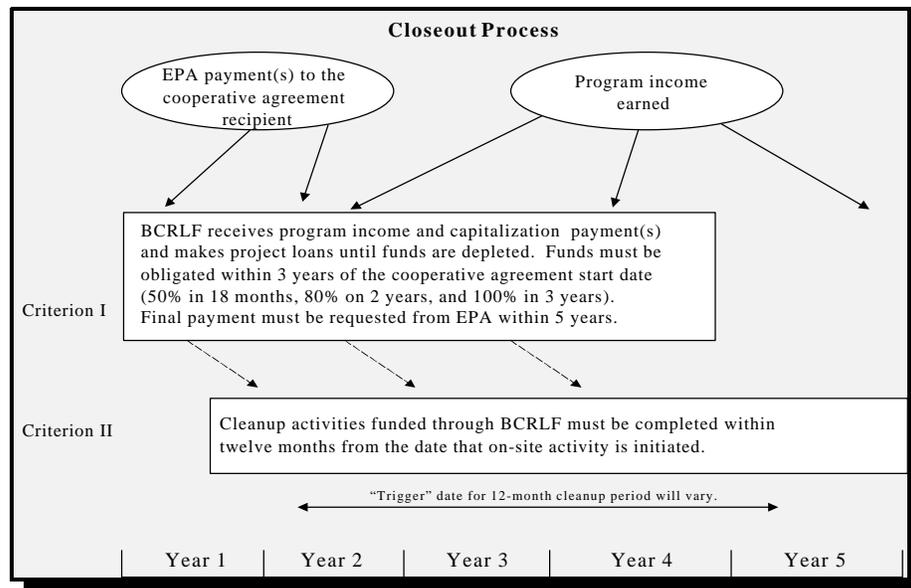
Requirements

Each cooperative agreement recipient has five years from the agreement start date to request final payment from the U.S. EPA. Therefore, closeout could occur at any point between one and five years, depending on the method of disbursement (i.e., schedule or actual expense) in use (see Section VII.A., *Payment Procedures and Methods of Disbursement*) and compliance with other terms and conditions of the agreement.

What is the anticipated term for the cooperative agreement?

The cooperative agreement recipient has five years from the agreement start date to request final payment from the U.S. EPA. This will require the cooperative agreement recipient to obligate and disburse all award funds and any program income (i.e., fees, repayments of principal and related interest, and other income) that accrues before final payment from the U.S. EPA (per 40 C.F.R. §31.21(f)). The schedule of obligation and disbursement must be no less than 50 percent of the amount awarded within 18 months; 80 percent within two years; and 100 percent within three years. It is then anticipated that associated cleanups and necessary documentation will be completed in five years.

Under this process, the maximum cooperative agreement award period expected would be five years (i.e., three years to obligate all of the award funding and five years to complete disbursement of all award funds and any program income earned during the award period, complete all cleanups, and request final payment from the U.S. EPA, assuming the last cleanup is initiated no later than one year after the final day of the three-year obligation period). This represents the end of the U.S. EPA's cooperative agreement, but not necessarily the end of a BCRLF itself. Also, a cooperative agreement recipient may request early closeout if both the payment and cleanup closeout criterion are met before the five year period ends. The diagram below graphically depicts the closeout process.



2. Closeout and Adjustments

In accordance with applicable regulations, the U.S. EPA will close out a cooperative agreement, or an activity under a cooperative agreement, when it is determined that all applicable administrative actions and all required work of the award has been completed. Within 90 days of completion, the cooperative agreement recipient must submit all financial, performance, and other reports required as a condition of the award which include, but are not limited to financial information (such as status of payment, obligation, and disbursement) and cleanup information (such as the cleanup completion dates). At the request of the cooperative agreement recipient, the U.S. EPA may extend this timeframe.

Reports that will be included in closeout proceedings are:

- Financial performance or progress reports;
- Financial status report (SF 269);Final request for payment (SF 270);
- Invention disclosure (if applicable);
- A property inventory report (if applicable) including a request for instructions regrading disposition of any property purchased with cooperative agreement funds; and
- A Federally owned property inventory report (if applicable).

Following submission of reporting forms and materials, the EPA will make (any necessary) adjustments to allowable costs within 90 days. The U.S. EPA also will make, if applicable, any necessary cash reimbursements on a timely basis. Cooperative recipients must return unused principal funds (i.e., of the original \$350,000) to the U.S. EPA unless those funds had been pre-authorized by the U.S. EPA for use on other programs.

The closeout of an award does not affect the U.S. EPA's right to disallow costs and recover funds on the basis of a later audit or other review. Additionally, closeout does not affect a cooperative agreement recipient's responsibility to return any funds due as a result of later refunds, corrections, or other transactions.

B. POST CLOSEOUT

1. Post Closeout Requirements

During the closeout process, the cooperative agreement recipient must advise the EPA whether the BCRLF will continue to operate beyond the project period (i.e., continue to make loans). If the cooperative agreement recipient chooses not to continue the BCRLF, remaining funds not obligated by the cooperative agreement recipient via a loan agreement shall be returned to the Superfund Trust Fund, or the EPA region may choose to modify the cooperative agreement to allow the recipient to use funds for other activities consistent with brownfields cleanup.

Requirements

If the cooperative agreement recipient chooses to continue the operation of the BCRLF, the cooperative agreement recipient, as part of the closeout agreement, shall reaffirm the use of program income in a manner consistent with the terms and conditions of the cooperative agreement affecting disposal of program income, eligible administrative costs, and environmental response requirements. The recipient shall maintain appropriate records to document compliance with these requirements. Should the cooperative agreement recipient choose to cease operation of the BCRLF post-closeout, the remaining principal funds (i.e. of the original \$350,000) shall be returned to the Superfund Trust Fund or the Region may choose to modify the close-out agreement to allow the recipient to use funds for other activities consistent with brownfields cleanup. The U.S. EPA may review the cooperative agreement recipient's compliance work plan.

2. Post-Cooperative Agreement Program Income

After the cooperative agreement award period has elapsed, cooperative agreement recipients must continue to use program income in a manner consistent with the terms and conditions of the cooperative agreement affecting disposal of program income, eligible administrative costs, and in accordance with CERCLA and consistent with the NCP (see Section VII.B., *Use of Program Income*; Section VII.D., *Administrative Costs*; and Section V.A., *Applicable Authority*). Furthermore, each cooperative agreement recipient is responsible for maintaining records to document compliance with these requirements. An appropriate disposition of program income will be negotiated with recipients who decide not to operate the BCRLF after the project period.

3. Post-Cooperative Agreement Reporting and Records Maintenance

As noted previously, cooperative agreement recipients are required to submit quarterly reports to the U.S. EPA until the cooperative agreement is closed out (see Section VII.E.2., *Cooperative Agreement Recipient Responsibilities*). However, the U.S. EPA is responsible for continuing to monitor the recipient's compliance with the terms and conditions in the agreement relating to the disposition of program income earned after the award period. Therefore, in accordance with 40 C.F.R. 31.42, cooperative agreement recipients must also maintain records relating to the use of post-award program income. The U.S. EPA may request access to these records or may negotiate post closeout reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the original agreement.

Will the U.S. EPA monitor the loan fund beyond the cooperative agreement's closeout?

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

Requirements

In general, cooperative agreement recipients must maintain documentation for a minimum of 10 years after completion of the cleanup activity supported by each loan (or longer, if the stream of program income from outstanding loans continues beyond this period). Written approval from the U.S. EPA prior to destroying of any records (see Section VII.E.2., *Cooperative Agreement Recipient Responsibilities*).

Similarly, borrowers are required to maintain documentation for at least 10 years after the final BCRLF funded cleanup is complete and obtain written approval from the lead agency prior to destroying records (see Section VII.E.3., *Borrower Reporting and Recordkeeping*).

Will recipients have to report on the use of repaid loan funds or only on the initial round of loans made by the pilots?

No. During the term of the cooperative agreement, cooperative agreement recipients are required to report on all fund activities, including loans made from the award and from program income (i.e., repaid loan funds, et c). Formal reporting requirements will end when the agreement is closed out. However, the U.S. EPA will monitor the recipient's compliance with the terms and conditions in the agreement relating to the disposition of program income earned after the award period.

4. Repayment of Funds if BCRLF is Terminated Prior to Closeout

Cooperative agreement recipients may be required to repay assistance funds and associated program income that are not used in accordance with the terms of their cooperative agreement. Under BCRLF closeout provisions, cooperative agreement recipients are required to obligate (i.e., sign loan agreements for) all awarded funds by the end of three years. If at the end of three years, a cooperative agreement recipient has not obligated all award funds, the U.S. EPA may de-obligate the remaining funds by amending the term and condition related to post cooperative agreement program income. If, at that time, EPA decides that the purpose of the agreement cannot be met, the U.S. EPA may terminate the cooperative agreement and recover the Federal share of its assets. If the agreement is terminated, the cooperative agreement recipient must return to the U.S. EPA its proportionate share of the value of BCRLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds (see Section VII.F.3., *Recovery of the U.S. EPA Interest in BCRLF Assets*). At the U.S. EPA's discretion, the cooperative agreement may be extended in cases where the recipient has not obligated all the funds but has an acceptable justification and a viable plan for obligating funds expeditiously. The U.S. EPA may allow BCRLFs to redirect funds for other brownfield cleanup related activities.

Requirements

Are cooperative agreement recipients required to repay the funds to the U.S. EPA?

Yes. Cooperative agreement recipients may be required to repay assistance funds, and associated program income, that are not used in accordance with the terms of the cooperative agreement. Under BCRLF closeout provisions, the cooperative agreement recipient should not retain any award funds at the end of three (3) years. At the end of three (3) years, if the recipient has not disbursed or obligated (i.e., a loan agreement is in place but the recipient has not yet disbursed funds to "liquidate" the obligation) award funds, the U.S. EPA may terminate the agreement and de-obligate the balance of the funds awarded under the cooperative agreement and return the money to the Superfund Trust Fund. At the EPA's discretion, the cooperative agreement may be extended in cases where the recipient has not obligated all the funds but has an acceptable justification and a viable plan for obligating funds expeditiously.

IX. Cross-cutting Federal Statutes, Executive Orders, and Regulations

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IX. Cross-cutting Federal Statutes, Executive Orders, and Regulations

A. INTRODUCTION

Cross-cutting requirements are those Federal requirements, in addition to CERCLA and associated administrative authorities, which are applicable to the BCRLF by operation of statutes, executive orders, and regulations. These cross-cutting Federal authorities apply by their own terms to projects and activities receiving Federal financial assistance, regardless of whether the statute authorizing the assistance mentions them specifically. BCRLF cross-cutters include social and economic policy authorities such as executive orders on equal employment opportunity and government-wide debarment and suspension rules.

Which cross-cutters apply to BCRLF cooperative agreement recipients?

Cooperative agreement recipients are responsible for complying with all applicable cross-cutting requirements. The U.S. EPA has developed a list of cross-cutting requirements that may apply to the BCRLF (see list below). Additional cross-cutting requirements are referenced in Standard Form 424B, entitled "Assurances Non-Construction Programs." However, the cross-cutting list and Standard Form 424 B may not identify all cross-cutting requirements, and cooperative agreement recipients are not relieved from responsibility for complying with a cross-cutting requirement because it is not included on the cross-cutting list or Standard Form 424B. The U.S. EPA will provide additional guidance on the applicability of specific cross-cutting requirements if requested to do so by a cooperative agreement recipient.

Each cooperative agreement recipient is responsible for complying with all applicable Federal cross-cutting requirements, including ensuring that BCRLF funding is made available on a nondiscriminatory basis and that prospective borrowers are not denied funding on the basis of race, color, age, national origin, religion, handicap, or sex. Furthermore, cooperative agreement recipients should actively market the BCRLF program to prospective minority and women borrowers. Each cooperative agreement recipient is responsible for establishing procedures to ensure compliance with all applicable Federal laws, statutes, regulations, and executive orders to the extent of Federal participation in the program.

B. APPLICABLE CROSS-CUTTERS

1. Environmental

Federal environmental requirements will be identified and applied on a site-by-site basis as part of the BCRLF response selection process (see Section V.B., *Applicable Authority*). Therefore, environmental statutes and regulations have not been included in the list of applicable cross-cutting requirements (see below) except as they relate to specific social or economic issues.

2. Social and Economic Cross-cutters

Cooperative agreement recipients are responsible for complying with all applicable cross-cutting requirements. The U.S. EPA has developed a list of social and economic cross-cutting requirements that may apply to the BCRLF (see list below). Additional cross-cutting requirements are referenced in Standard Form 424B, entitled "Assurances Non-Construction Programs." However, the cross-cutting list and Standard Form 424B may not identify all cross-cutting requirements, and cooperative agreement recipients are not relieved from responsibility for complying with a cross-cutting requirement because it is not included on the cross-cutting list or Standard Form 424B.

Cooperative agreement recipients also are responsible for ensuring that borrowers, including borrowers receiving non-BCRLF loans that are awarded based on a BCRLF loan guarantee for which CERCLA funds are used, comply with all applicable cross-cutting requirements. A term, condition, or other legally binding provision relating to cross-cutting requirements should be included in all loan or financial assistance agreements entered into with funds provided under a BCRLF cooperative agreement. As noted for cooperative agreement recipients above, the cross-cutting list and Standard Form 424B identify cross-cutting requirements that may be applicable to borrowers. The cross-cutting list and Standard Form 424B may not, however, identify all cross-cutting requirements, and the cooperative agreement recipients are not relieved from responsibility for ensuring that borrowers comply with a cross-cutting requirement because it is not included on the cross-cutting list or Standard Form 424B.

Cross-cutting Requirements

Following is a list of Federal laws and authorities sub-categorized as economic and social authorities that may apply to projects or activities receiving BCRLF assistance. While BCRLF cooperative agreement recipients and borrowers should both be aware of the following Federal authorities, it is unlikely that every law or regulation will apply to a particular project under consideration. However, cooperative agreement recipients are responsible for ensuring compliance with all applicable cross-cutting requirements. The U.S. EPA will provide additional guidance on the applicability of specific cross-cutting requirements if requested to do so by a cooperative agreement recipient.

In addition, cooperative agreement recipients must comply with the Davis Bacon Act, as amended (40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). Pursuant to CERCLA 104(g)(1), the Davis Bacon Act applies to construction, repair, or alteration work funded in whole or in part with BCRLF loans, or guaranteed with BCRLF funds. A term and condition ensuring that borrowers comply with the Davis Bacon Act should be included in all loan agreements made with BCRLF funds provided under this cooperative agreement.

Economic and Miscellaneous Authorities

- ◆ Debarment and Suspension, Executive Order 12549
- ◆ Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
- ◆ Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- ◆ Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, as amended

Social Policy Authorities

- ◆ Age Discrimination Act of 1975, Pub. L. 94-135
- ◆ Anti-Lobbying Provisions (40 C.F.R. Part 30)
- ◆ Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- ◆ Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333) and the Anti-Kickback Acts, as amended (40 U.S.C. 276 c), (18 U.S.C. 874)
- ◆ Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
- ◆ The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)
- ◆ Equal Employment Opportunity, Executive Order 11246
- ◆ Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- ◆ Section 129 of the Small Business Administration Reauthorization and Amendment Act of

C. ALTERNATIVE APPROACHES TO ENSURE COMPLIANCE

Cross-cutting requirements apply to loans funded under a cooperative agreement in combination with non-Federal sources of funds, and to loans awarded as a result of BCRLF loan guarantees, to the extent of the Federal participation in the loan. Cooperative agreement recipients may take one of the approaches listed below to ensure that cross-cutting requirements are met.

- 1) Include a term or condition in each loan agreement that will require

borrowers to maintain records which segregate expenditures from Federal and non-Federal sources. The cross-cutting requirements apply to the Federal expenditures. The Davis Bacon Act of 1931 (40 C.F.R. §276a) applies to all projects funded entirely or in part with CERCLA funds.

2) Use an *equivalency approach* by applying cross-cutting requirements in proportion to the amount of Federal funding included in the cooperative agreement recipient's loan pool. Each cooperative agreement recipient has the discretion to choose which loans are subject to the cross-cutting requirements as long as the cross-cutters are applied in proportion to the amount of Federal funds in the cooperative agreement recipient's loan pool. The Davis Bacon Act of 1931 (40 C.F.R. §276a) applies to all projects funded entirely or in part with CERCLA funds.

What is the equivalency approach?

The equivalency approach is one of three alternatives cooperative agreement recipients may choose to ensure cross-cutting requirements are met. Under this approach, cross-cutting requirements are applied in proportion to the amount of Federal funding included in the cooperative agreement recipient's loan pool. Each cooperative agreement recipient has the discretion to choose which loans are subject to the cross-cutting requirements as long as the cross-cutters are applied in proportion to the amount of Federal funds in the cooperative agreement recipient's loan pool. Davis Bacon applies to all projects funded entirely or in part with CERCLA funds.

3) Apply the cross-cutting requirements to all loans funded under the cooperative agreement regardless of whether Federal and non-Federal funding can be distinguished. The Davis Bacon Act of 1931 (40 C.F.R. §276a) applies to all projects funded entirely or in part with CERCLA funds.

Within 90 days of the date of award of a cooperative agreement, each cooperative agreement recipient must advise the U.S. EPA Project Officer of the approach that will be followed under this agreement.

Cross-cutters apply not only to the initial loans made with Federal funds but also to subsequent loans made with program income derived from Federal sources to the extent of Federal participation in the fund. A cooperative agreement recipient should be consistent in its approach to ensure compliance with cross-cutting requirements.

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Appendix A Terms, Phrases, and Titles

The following provides a glossary of terms, phrases, and titles frequently used in discussions of BCRLFs.

Administrative costs. EPA places restrictions on the level and types of administrative costs for which BCRLF funds may be used -- for both cooperative agreement recipient's and borrower's administrative costs. The cooperative agreement recipient's allowable administrative costs shall include loan processing, professional services, audit, legal fees, state program fees, and costs incurred by the cooperative agreement recipient in ensuring that the borrower complies with directly related Federal requirements and interagency coordination. The cooperative agreement recipient shall use not more than 15 percent of the total award to cover a cooperative agreement recipient's (lead agency and fund manager) administrative and legal costs, as negotiated by EPA and the cooperative agreement recipient during the cooperative agreement application and award process. Furthermore, the cooperative agreement recipient shall use no more than ten percent of the borrower's principal repayments to the fund, and up to 100 percent of the borrower's interest payments and any program fees for administrative costs. With respect to the borrower's administrative costs, the cooperative agreement recipient (fund manager) shall negotiate with the borrower a limit of up to ten percent of the total loan to cover both administrative and cleanup response planning costs.

Administrative record. The cooperative agreement recipient (lead agency) is required to establish an administrative record containing the information forming the basis for the selection of a BCRLF response action (see NCP at 40 C.F.R. §300.800(a)).

ARARs. Applicable or relevant and appropriate requirements. BCRLF response actions must be designed to attain, to the extent practicable, applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws (see NCP at 40 C.F.R. §300.415(j)).

ASTM. American Society for Testing and Materials.

ATSDR. Agency for Toxic Substances and Disease Registry.

Automated Clearing House/Electronic Funds Transfer. A Federal payment mechanism that transfers cash to recipients of Federal assistance using electronic transfers from the Treasury through the Federal Reserve System.

Written commitments. Contracts or memoranda of understanding that should be established as part of the cooperative agreement application package before the award is signed.

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

agreement recipient. The borrower cannot be the cooperative agreement recipient or an entity filling any of the BCRLF roles. (See VI.B.7. for further information on borrower eligibility criteria.)

Brownfields Assessment Demonstration Pilots. Brownfields assessment demonstration pilots focus on developing assessment models, streamlining regulatory requirements, and facilitating coordinated public and private efforts at the Federal, state, and local levels.

Brownfields Cleanup and Economic Redevelopment Initiative. A national initiative, of which BCRLF Pilots are a key component, to empower state and local governments and other stakeholders by the U.S. Environmental Protection Agency, of which BCRLF Pilots are a key component, that empowers states, political subdivisions of states, territories and Indian Tribes to prevent, assess, clean up, environmental restore and sustainably reuse brownfields sites.

Brownfields site manager. The brownfields site manager is designated by the lead agency and is responsible for overseeing cleanups at specific sites. The site manager must be a qualified government employee (one manager must be responsible for each site, but a single manager may be responsible for more than one site). See also definition for on-scene coordinator.

Capital reserves. Funds that remain in BCRLF and are not immediately loaned out.

Capital utilization. Capital utilization refers to use of BCRLF capital, such as what portion of funds should be loaned out at a given time, and how much reserved for future use.

Capitalization. Process of depositing various funds from public and private sources into a financial institution (e.g., the BCRLF) to enable financial services. This pool of money is distributed through loans in such a way as to ensure that payments are made back to maintain the corpus of the BCRLF.

Cooperative agreement close out. The process that the U.S. EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed and to de-obligate funds that the recipient has been unable to use.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). CERCLA is the legislation that provides the authorization to conduct environmental response activities.

Cooperative agreement. An executive agency shall use a cooperative agreement as the legal instrument reflecting a relationship between the United State Government and a State, a local government, or other recipient when –

1. The principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and
2. Substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the

agreement.

Cooperative agreement recipients. States, political subdivisions (e.g., counties, cities, towns), territories, and Indian tribes become BCRLF cooperative agreement recipients when they enter into BCRLF cooperative agreements with the U.S. EPA. EPA selects BCRLF cooperative agreement recipients based on a proposal and application process. BCRLF cooperative agreement recipients must use EPA funds provided through the BCRLF cooperative agreement for specified brownfields-related cleanup activities.

Corpus. The corpus refers to all initial funds and additional, subsequent revenue deposited for BCRLF capitalization. The corpus is essentially a "body" of funds that should remain intact throughout the life of the BCRLF.

Cross-cutting Federal requirements. Those requirements which are applicable to the BCRLF by operation of statutes, executive orders, and regulations other than CERCLA and associated administrative authorities.

CRP. Community relations plan. Prior to completion of the EE/CA (see below) or its equivalent, the BCRLF lead agency is required to prepare a community relations plan based on community interviews and other relevant information, specifying the community relations activities that the lead agency expects to undertake during the response (see 40 C.F.R. §300.415(n)).

Debt obligation. A legal obligation or liability to pay something to someone else.

Default. Failure to meet a financial obligation, such as a loan payment.

Deviation request. A waiver of certain specific regulatory requirements. In the case of the BCRLF Demonstration Pilot Program, a class deviation from certain application requirements, as specified in 40 C.F.R. 35 subpart O, was granted. Other deviation requests may be submitted to the U.S. Environmental Protection Agency by the BCRLF Pilots, but are by no means, automatic.

Disbursement. The transfer of cash from the cooperative agreement recipient to the borrower. Cooperative agreement recipients may choose to distribute funds to borrowers by means of "schedule" or "actual expense." A schedule disbursement is one in which all or an agreed upon portion of the obligated funds are disbursed on the basis of an agreed upon schedule (e.g., progress payments) or upon execution of the loan. An actual expense disbursement approach requires the cooperative agreement recipient to submit documentation of the borrower's expenditures (e.g., invoices or other contractual agreements) to the project officers to request payment.

EE/CA. Engineering evaluation/cost analysis. Cooperative agreement recipients are required to prepare an EE/CA or its equivalent as part of the BCRLF response selection, EE/CA's identify the objectives of the BCRLF response and analyze the effectiveness, feasibility, and costs of alternatives that would satisfy the BCRLF response objectives (see NCP at 40 C.F.R. §300.415(b)(4)(i)).

Equivalency. U.S. EPA requires that each cooperative agreement recipient ensure that loans made with BCRLF funding in combination with other non-federal funding sources, meet Federal cross-

cutting requirements (see above) to the extent of Federal participation in the loan. Approaches to meeting cross-cutting requirements include requiring borrowers to segregate expenditures between Federal and non-federal sources, meeting cross-cutting requirements to the extent Federal funding is included in the loan pool, and applying cross-cutting requirements to all BCRLF loans.

Evaluation criteria. Once a proposer has demonstrated their ability to meet the threshold criteria, the U.S. EPA evaluates proposers based on evaluation criteria, including: 1) demonstration of need; 2) commitment to creative leveraging of EPA funds; 3) benefits of BCRLF pilot loans to the local community; 4) long-term benefits and sustainability.

Financial plan. U.S. EPA requires that prior to receipt of capitalization funds for the BCRLF, cooperative agreement recipients or their designated fund managers establish objectives for financial administration of the fund, including the source(s) and level of capitalization and provision for utilizing program income; the types of assistance to be offered; capital utilization provisions (i.e., the revolving nature of the fund); underwriting principles to be followed; and assurance that all financial restrictions on funds use are met by the BCRLF and its borrowers.

Fund manager. The fund manager is responsible for overseeing BCRLF capital, including seed funding and income resulting from initial lending of pilot funds. Additionally, the fund manager is responsible for ensuring that the BCRLF is managed in conformance with the cooperative agreement, applicable laws and regulations, and prudent lending practices. The fund manager may be a cooperative agreement recipient or a private lender or another private entity that has entered into a binding agreement with the cooperative agreement recipient.

GAD. Grants Administration Division.

GAO. General Accounting Office.

GPRA. Government Performance and Results Act.

Initial assistance. First round of BCRLF loans from the cooperative agreement recipient to eligible borrowers. Upon initiation of the BCRLF program, a specific schedule for the initial round of lending is established (see VII.F.2.).

Lead agency. The cooperative agreement recipient is the lead agency responsible for planning and implementing BCRLF response actions. The lead agency in turn is responsible for designating a qualified environmental specialist as the “brownfields site manager” for each site subject to funded activities. The cooperative agreement recipient may engage the services of another government organization or private party to support lead agency functions.

Loan. Any form of financial assistance which is provided to a borrower from the BCRLF for all or part of project costs, and is subject to repayment.

Noncompliance. Failure to satisfy the terms of the cooperative agreement, including failure to meet environmental responsibilities and failure to manage the fund in a financial sound manner.

Natural resource trustees. The lead agency and brownfields site manager must ensure that natural resource trustees (including, but not limited to, the U.S. Department of the Interior, the National Oceanic, Atmospheric Administration, etc.) are promptly notified of potential damages to natural resources and must coordinate all BCRLF activities with such affected Trustees.

NCP. National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Part 300).

Obligation. For the purpose of the BCRLF program, the cooperative agreement recipient incurs an “obligation” when it enters into a loan agreement with the borrower.

OMB. Office of Management and Budget.

OSC. On-scene coordinator. An OSC is responsible for overseeing cleanups at specific sites (as described in 40 C.F.R. Part 300). The OSC for BCRLF responses is the brownfields site manager (see above).

OSWER. Office of Solid Waste and Emergency Response.

Payment. EPA’s transfer of funds to the cooperative agreement recipient.

Program income. Program income is the gross income received by the cooperative agreement recipient, directly generated by the cooperative agreement award or earned as a result of the cooperative agreement (40 C.F.R. §31.25). It includes repayments of principal and interest and loan fees.

Project revenues. All rates, rents, fees, assessments, charges, and other receipts derived by a borrower from a project. Generally, the source of BCRLF assistance repayment.

Proposer. A proposer is a state or political subdivision of a state (city, county, etc.), territory, or Indian tribe that is going to submit or has submitted a proposal for a BCRLF Demonstration Pilot with to the U.S. EPA.

Refinancing. The issuance of new debt in exchange for, or to provide funds for, the retirement of a previously executed debt obligation.

Revolving loan fund. Financing tool that recycles funds by providing loans, receiving loan repayments, and then providing further loans. A BCRLF is a revolving loan fund.

Standard Terms and Conditions, Special Terms and Conditions. Included in the cooperative agreement between EPA and cooperative agreement recipients, Standard Terms and Conditions and Special Terms and Conditions are designed to provide a framework for guidance and dispute resolution.

Threshold criteria. EPA uses threshold and evaluation criteria to determine an entity’s capability to act as a potential cooperative agreement recipient. Threshold criteria include the ability of the entity to manage a RLF and carry out and oversee environmental cleanups; the legal authority to act as a cooperative agreement recipients, etc.

VCP. Voluntary cleanup programs are operated by states. BCRLF funds may be used to clean up a site pursuant to a state VCP, so long as the BCRLF response meets the substantive and procedural requirements of CERCLA and the NCP and all terms and conditions of the cooperative agreement are met.

Work plan. The document, negotiated between the EPA and the entity selected to receive BCRLF funding, which specifies the entities strategy for accomplishing program goals and objectives.

Appendix B

Proposal Guidelines for BCRLF Demonstration Pilots

INTRODUCTION

The Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative is designed to empower states, local governments, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup, and sustainably reuse brownfields. As part of this Initiative, EPA will award Brownfields Cleanup Revolving Loan Fund (BCRLF) Demonstration Pilots to states, cities, towns, counties, territories, and Indiana tribes to test brownfields cleanup revolving loan fund models that direct special efforts toward facilitating coordinated public and private efforts at the federal, state, and local levels.

To date, the Agency has funded 78 Brownfields Assessment Demonstration Pilots. The brownfields assessment pilots (each funded up to \$200,000 over two years) test cleanup and redevelopment planning models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated environmental cleanup and redevelopment efforts at the federal, state, and local levels. These brownfields assessment pilot are being used to bring together community groups, investors, lenders, developers, and other affected parties to address the issue of assessing sites contaminated with hazardous substances and preparing them for appropriate, productive use. The pilots serve as vehicles to explore a series of models for states and localities struggling with such efforts. Of those pilots, 39 are National Pilots selected under criteria developed by EPA Headquarters and 39 are Regional Pilots selected under EPA Regional criteria. (In 1997, EPA will announce 25 new National Pilots and at least 5 new Regional Pilots.)

For the 1997 fiscal year (FY97), only entities that have been awarded National or Regional brownfields assessment pilots prior to October 1995 will be eligible to apply to EPA's BCRLF demonstration pilot program. Therefore, up to 29 BCRLF pilots may be awarded in FY97 (eligible entities are listed in Appendix A). FY97 BCRLF pilots will be selected by the National program. Unlike brownfields assessment pilots, Regional offices will not independently identify and select BCRLF pilots.

The BCRLF pilots will be selected through an evaluation process. Eligible entities must demonstrate: 1) an ability to manage a revolving loan fund and environmental cleanups; 2) a need for cleanup funds; 3) commitment to creative leveraging of EPA funds with public-private partnerships and in-kind services; and 4) a clear plan for sustaining the environmental protection and related economic development activities initiated through the BCRLF program. *The 29 eligible entities must meet EPA's threshold and evaluation criteria. There is no guarantee of an award.* Also, the size of the awards may vary (for example, from \$50,000 to \$350,000), depending on the proposal's responses to the evaluation criteria.

BACKGROUND

EPA defines brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. EPA's Brownfields Economic Redevelopment Initiative is an organized commitment to help communities revitalize such properties both environmentally and economically, mitigate potential health risks, and restore economic vitality to areas where brownfields exist. Experience gained from the brownfields assessment pilots, along with partnerships and outreach activities, is providing a growing knowledge base to help direct EPA's Brownfields Initiative. A clean and healthy environment is not the enemy of a growing and robust economy. Successful brownfields redevelopment is proof that economic development and the environment can, and indeed, must co-exist.

Many sites across the country once used for industrial/commercial purposes have been abandoned or are under-used—some are contaminated, some are merely perceived to be contaminated. A report from the General Accounting Office (GAO: Community Development, Reuse of Urban Industrial Sites, June 1995, GAO/ RCED-95-172) finds that:

"As states and localities attempt to redevelop their abandoned industrial sites, they have faced several obstacles, including the possibility of contamination and the associated liability for cleanup ... This situation is caused largely by federal and state environmental laws and court decisions that impose or imply potentially far-reaching liability. The uncertain liability has encouraged businesses to build in previously undeveloped nonurban areas—called 'greenfields'—where they feel more confident that no previous industrial use has occurred."

The National Environmental Justice Advisory Council (NEJAC) has likewise "determined that there exists a compelling need to address issues of economic development and revitalization of America's urban [and rural] communities." The NEJAC has requested that EPA:

"Provide leadership in stimulating a new and vigorous national public discourse over the compelling need to develop strategies for ensuring healthy and sustainable communities in America's urban [and rural] centers and their importance to the nation's environmental and economic future."

In an effort to respond to these concerns, the activities of EPA's Brownfields Initiative can be grouped into four broad and overlapping categories: (1) providing cooperative agreements for brownfields assessment and cleanup pilots; (2) clarifying liability and cleanup issues; (3) building partnerships and outreach among federal agencies, states, municipalities, and communities; and (4) fostering local job development and training initiatives.

Both assessment and cleanup pilots focus on EPA's primary mission—protecting human health and the environment. However, they are an essential piece of the nation's overall community revitalization efforts. EPA works closely with other federal agencies through the Federal Interagency Working Group on Brownfields and builds relationships with other stakeholders on the national and local levels to develop coordinated approaches for community revitalization.

PURPOSE OF BROWNFIELDS CLEANUP REVOLVING LOAN FUND PILOTS

The BCRLF pilots are intended to support self-sustaining efforts by states, local governments, and Indian tribes to clean up brownfields. In particular, these pilots will test revolving loan fund models that facilitate coordinated public and private cleanup efforts. A revolving loan fund is a variant of a bond bank, in which a sponsoring entity (in this case, EPA) provides capitalization funds to a managing entity (for example, a municipality) that are used to make loans for authorized purposes (brownfields cleanups). A revolving loan fund charges interest on the loans, generally at a low interest rate. This fund is termed revolving because it uses loan repayments (principal, plus interest) to make new loans for the same authorized purposes.

From the BCRLF pilot funds, states, political subdivisions, and Indian tribes may provide loans, but not grants, to public and private parties (for example, local political subdivisions and community development organizations) for the purposes of cleaning up brownfields sites that already have been assessed for contamination. Loan repayments provide a continuing source of capital for states, political subdivisions, and Indian tribes to direct and facilitate brownfields site cleanups by providing additional loans to other eligible recipients for brownfields site cleanup.

The following definitions will be used throughout these proposal guidelines:

- A **Proposer** is the state, political subdivision of a state (for example, city, town, county), territory, or Indian tribe that is going to submit or has submitted a proposal for a BCRLF Demonstration Pilot with EPA.
- A **Proposal** is the document submitted to EPA that provides responses to the criteria described below. If the proposal meets the criteria and the proposer is selected by EPA to receive BCRLF pilot funding, the proposer will be requested to prepare a formal application for a cooperative agreement.
- A **Cooperative Agreement** is the document negotiated between EPA and those proposers that EPA has selected as candidates to receive BCRLF pilot funding. The cooperative agreement will award federal funds and outline the specific and standard terms and conditions to be met by the recipient of the funds.
- A **Cooperative Agreement Recipient** is the entity that enters into the cooperative agreement with EPA, will receive the BCRLF pilot funding from EPA, and be responsible for managing the funds, ensuring proper environmental cleanups, and complying with applicable laws and regulations.
 - The **Fund Manager** is the cooperative agreement recipient or its legally designated representative who will be responsible for ensuring that the BCRLF is managed in conformance with the cooperative agreement, applicable laws and regulations, and prudent cleanup and lending practices.

- The **Lead Agency** is the cooperative agreement recipient or its legally designated representative who will be responsible for ensuring that environmental cleanups conducted using BCRLF pilot funds are conducted in conformance with the cooperative agreement and federal and state requirements.
- The **Brownfields Site Manager** is the person appointed by the cooperative agreement recipient or lead agency to oversee cleanups at specific sites.
- The **Borrower** is the public or private entity that will receive and repay loans from the BCRLF under terms and conditions negotiated with the cooperative agreement recipient.

LEGAL AND PROGRAM GUIDELINES FOR THE PROPOSALS

The BCRLF demonstration pilot program is funded under §104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). BCRLF pilot funds must be directed toward environmental response activities. BCRLF pilot funds may not be used to pay for non-environmental response or redevelopment activities (for example, construction of a new facility or marketing of property). Use of BCRLF pilot funds must be consistent with CERCLA, and all CERCLA restrictions on use of funding also apply to BCRLF pilot cooperative agreement recipients.

States, political subdivisions (including cities, towns, and counties), territories, and Indian tribes are eligible cooperative agreement recipients. Proposals from coalitions among the 29 entities eligible in FY97 are permitted to apply, but a single eligible entity must be identified as the legal recipient. Cooperative agreement funds will be awarded only to an eligible recipient, as described above.

The cooperative agreement recipient must act as, or designate, the "lead agency." In turn, the "lead agency" must officially designate a qualified environmental specialist as the "brownfields site manager" who can ensure that any cleanup activities performed by the borrower are consistent with federal and state requirements. The BCRLF pilot proposals must conform to the following guidelines:

Eligible Brownfields Sites

- Use of the of BCRLF pilot funds are limited to brownfields sites that have been determined to have an actual release or substantial threat of a release of a hazardous substance which presents a threat to public health or welfare, or the environment. Funds may also be used at sites with a release or substantial threat of release of a pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. These funds may not be used to pay for non-environmental redevelopment activities (for example, new construction or property marketing).
- However, BCRLF pilot funds may not be used for activities at any sites: 1) listed (or proposed for listing) on the National Priorities List; 2) at which a removal action must be taken by federal or state agencies within six months; or 3) where a federal or state agency is planning or

conducting a response or enforcement action.

- BCRLF pilot funds may be loaned for activities at sites that are: 1) currently publicly owned; 2) publicly owned, either directly by a municipality or indirectly through a quasi-public entity such as a community development corporation; 3) privately owned, with clear means of recouping BCRLF pilot expenditures (for example, through a guarantee by the owner's or developer's security interest or through a lien on real property); or 4) undergoing purchase by a new party who meets the definition of prospective purchaser.

The Borrower

- A party which is determined to be a generator or transporter of contamination at a brownfields site(s) is ineligible for a BCRLF pilot loan for that same site.
- The cooperative agreement recipient's lead agency may initially find that an owner/operator of a brownfields site(s) is an eligible borrower for a BCRLF pilot loan for that same site, only if: the lead agency can determine that an owner/operator would fall under a statutory exemption; or that EPA would use its enforcement discretion and not pursue the party in question under CERCLA, as described by EPA guidance (see list in Appendix B). However, the initial findings made by the lead agency by no means limit the enforcement discretion or authority of the federal or state government. The lead agency must maintain documentation demonstrating the eligibility of the owner/operator.

Pre-Cleanup

- BCRLF pilot funds may not be used to conduct environmental response activities preliminary to cleanup, such as site assessment, site identification, and site characterization. These funds have been designated by EPA's Administrator for cleanup-related activities only. The fund manager may, however, negotiate with the borrower a limit of up to 10% of the total loan to cover both administrative and cleanup response planning costs.
- The cooperative agreement recipient must ensure the pre-cleanup activities and cleanup planning conducted by the potential borrower meet federal, state, and local requirements. The authorized brownfields site manager must review and concur with the plans submitted by the borrower before the fund manager issues the loan.
- The cooperative agreement recipient's lead agency must review the current site conditions and site evaluation information that is required to be provided by the borrower to determine if the planned cleanup action is appropriate.
 - The site evaluation information must include pertinent facts about the discharge or release, such as: its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; the pathways to human and environmental exposure; the potential impact on human health, welfare, and safety and the environment; the potential impact on natural resources and property that may be affected; priorities for protecting human health and welfare and the environment; analysis

of alternative cleanup options; and appropriate cost documentation.

- The cooperative agreement recipient must ensure adequate documentation of the basis for the selection of the cleanup action (including site evaluation information) and the decision to authorize cleanup activities (including the decision to issue a loan). The lead agency and the fund manager shall compile and maintain the documentation including the data, analyses of site information, and other documents that provide the basis for cleanup levels and activities.

Cleanup Activities

- The cooperative agreement recipient must ensure that activities supported by BCRLF pilot funds are carried out consistent with federal and state requirements. The brownfields site manager must monitor the borrower's site activities for compliance with federal and state environmental requirements. The brownfields site manager must monitor the borrower's cleanup activities to determine that the cleanup fully addresses the contamination. If the brownfields site manager determines that the borrower's planned cleanup action is not sufficient and the site requires additional action, the lead agency shall ensure an orderly transition to the additional activities that ensure protection of human health and the environment.
- The lead agency must determine that a potential borrower's proposed activities are consistent with removal activities authorized by CERCLA. The lead agency must determine, on a site-by-site basis, that a removal action is authorized by CERCLA. "Removal" is defined in CERCLA §101(23); and descriptions of removal actions and their requirements are included in 40 C.F.R. §300.415.
 - The lead agency must set community relations standards that ensure that the borrower's activities meet CERCLA public participation requirements. This includes, among other things, required public notice periods, availability of documents to the public, and the designation of a spokesperson who shall inform the community of actions taken, respond to inquiries, and provide information concerning the activities.
 - The lead agency must ensure that the borrower meets all federal and state requirements for worker health and safety at the brownfields cleanup site(s).
 - If the release of the hazardous substance, pollutant, or contaminant involves damage to natural resources as defined under CERCLA, the lead agency must ensure that the removal action plan coordinates with the activities of the designated federal trustee agency.
- The fund manager may allow the borrower to use BCRLF pilot loan funds for site monitoring activities that are reasonable and necessary during the cleanup process. Funds may be used to determine the effectiveness of the cleanup, but may not be used for operation and maintenance. BCRLF pilot funds may not be used for monitoring and data collection necessary to apply for, or comply with, environmental permits under other state and federal laws, unless such a permit is required as a component of the cleanup action.

Other Restrictions

- The cooperative agreement recipient may use BCRLF pilot funds for the lead agency's or fund manager's administrative and legal costs up to 5% of the total award, to be determined during cooperative agreement application negotiations with EPA. Allowable costs may include loan processing, professional services, audit, legal fees, and state program fees.
- BCRLF pilot funds may not be used for job training. Support for job training activities may be available through the Hazardous Material Training and Research Institute, EPA programs, other federal agency programs, and state and local programs.
- BCRLF pilot funds may not be used to support "lobbying" efforts of the cooperative agreement recipient (for example, lobbying members of Congress or State legislatures, or lobbying for other federal grants, cooperative agreements, or contracts).
- BCRLF pilot funds may not be used at sites contaminated by petroleum products except to address a co-mingled hazardous substance, pollutant, or contaminant (for example, used oil). CERCLA expressly excludes petroleum from the definition of hazardous substances.
- Funding cannot be used to cleanup a naturally occurring substance, products that are part of the structure of residential buildings or business or community structures (for example, lead-based paint contamination or asbestos), or public or private drinking water supplies that have deteriorated through ordinary use, except as determined, in consultation with EPA, on a site-by-site basis consistent with CERCLA §104(A)(3) and (4).
- The cooperative agreement recipient cannot use BCRLF pilot funds to match any other federal funds without specific statutory authority. (However, the borrower may use BCRLF pilot funds to match other federal funds.)
- The cooperative agreements are governed by EPA's general grant regulations (40 C.F.R. Part 31) and regulations for cooperative agreements under CERCLA §104(d) (40 C.F.R. Part 35, Subpart C).

EVALUATION OF THE PROPOSALS

Evaluation Process

To ensure a fair evaluation process, EPA will convene a FY97 BCRLF pilot evaluation panel consisting of EPA Regional and Headquarters staff, Economic Development Administration (EDA) staff, and other federal agency representatives. The evaluation panel will assess how well the proposals meet the criteria outlined below. The evaluation panel's evaluations will be presented to EPA senior management for final selection. The evaluations will include recommendations for the number and size of the awards.

Proposals must be clear and decisive, strictly follow the criteria, and provide sufficient detail for the panels to compare the merits of each and decide which proposal best supports the intent of the pilot program. Vague descriptions and unnecessary redundancy may reduce the chance of a

favorable rating. Proposers are encouraged to contact and, if possible, meet with EPA Brownfields Coordinators (see Appendix C).

Cooperative Agreement Award Process

Upon determination of having been selected, proposers will receive a confirmation letter from EPA Headquarters. Since the cooperative agreements are to be awarded by the EPA Regional offices, at the time the selected proposers are notified, appropriate EPA Regional Brownfields Coordinators and Regional Grants Specialists also will be informed. The proposer then will be contacted by the Regional office and asked to submit a formal cooperative agreement application package. The information in the proposal submitted to EPA Headquarters will form a basis for the cooperative agreement application. However, the cooperative agreement application will require more detailed information on specific products, schedule, and budgets. The cooperative agreement application package will include: the standard application and budget forms; a formal work plan that provides a detailed description of the work to be performed, including a schedule, milestones, products, and budget backup information; information related to community relations, health and safety, and quality assurance plans; and the required certification forms. When the applicant is a political subdivision, an additional letter of support will be required from the appropriate state or tribe as an attachment to the cooperative agreement. In addition, as soon as the proposer is notified of having been selected, they will be asked to contact their State Intergovernmental Review office so that the required intergovernmental review process may begin immediately. The EPA Regional Brownfields Coordinator and Regional Grants Specialist will work closely with the applicant to process and finalize the cooperative agreement package.

Proposers that are not selected will be informed in writing. A proposer may choose to revise the proposal for submittal by a deadline announced by EPA at a later date.

STRUCTURE OF THE PROPOSAL

Proposals for BCRLF pilots should consist of the following sections:

- Cover Page (1 page)
- Proposal Overview (1-2 pages)
- Budget (1 page)
- Responses to Threshold Criteria -- Section A (up to 7 pages)
- Responses to Evaluation Criteria -- Sections B-E (up to 14 pages)
- Attachments (as appropriate; please provide an index)

Attachments should be kept to a minimum. Attachments that will be considered during proposal evaluation include maps and letters of commitment, support, or partnership from other government or private entities. Examples of attachments that will not be considered during proposal evaluation include strategies or plans developed for other programs, advertising brochures, newspaper articles, resolutions, statutes, and videotapes. Information in these types of attachments should be distilled and incorporated into the responses to criteria.

To ensure fair and equitable evaluation of the proposals, please do not exceed the above, single-sided page limitations. In addition, all materials included in the proposal (including maps

and other attachments) must be printed on letter-sized paper (8½" by 11") and font sizes may be no smaller than 11 points. Please submit two copies of your proposal materials, including attachments.

Cover Page

This is intended to identify the BCRLF Demonstration Pilot proposer and a point of contact for communication with EPA. This should be on a single page and in the format of your choice.

1. Proposal title: this should be as specific as possible.
2. Location: city, county, and state of the pilot area.
3. Scope and population of the pilot area.
4. Proposer identification: the name of the potential cooperative agreement recipient (for example, state or local agency).
5. Proposal director: the name of the person who is responsible for the proposal. We will contact this person if we need further information.
6. Mailing address of the proposal director.
7. Telephone/Fax/E-mail of the proposal director.
8. Name of the representative of the appropriate political subdivision (Mayor, County Executive, Tribal President, etc.) if different from the proposal director.
9. Mailing address of the representative of the appropriate political subdivision if different from the proposal director.
10. Telephone/Fax/E-mail of the representative of the appropriate political subdivision if different from the proposal director.
11. Date submitted: the date when the proposal is postmarked or sent to EPA via registered or tracked mail.
12. Pilot period: the pilot period for the cooperative agreement must not exceed three years. This will be determined by the proposer's projected implementation schedule for the initial round of lending to be described in "Criteria A.3.: Describe proposed BCRLF Financial Plan" (See pg.
13. When planning the pilot period, take into consideration that a final report is due at the end of the pilot.
14. Community background: demographic statistics on minority, unemployment, and poverty rates or other statistics that demonstrate distress in the pilot area.
15. Cooperative partners: provide a list of the individuals and organizations that have agreed to

participate in the implementation of the pilot without charge.

Proposal Overview

The Proposal Overview is an important opportunity to briefly summarize the overall goals and objectives of a proposed pilot. Some of the information you provide in the Proposal Overview will overlap with the evaluation criteria. Provide an overview of the following topics:

- Overall brownfields goals and objectives.
- How capitalization of a BCRLF will help advance your goals and objectives.
- How the EPA cooperative agreement will be used (for example, administration, loans, financing).

Budget

- Provide a potential budget for your proposal. This should show the distribution of the BCRLF pilot funds, including the portion of funds to be used for loans, and the potential cooperative agreement recipients' administrative costs, legal fees and professional services. A clear and concise budget is a critical element of the package.

THRESHOLD CRITERIA (SECTION A)

A. Ability to Manage a Revolving Loan Fund and Environmental Cleanups

Proposers must meet the threshold criterion—demonstrating an ability to manage a revolving loan fund and environmental cleanups—to be selected for a BCRLF Demonstration Pilot.

The cooperative agreement recipient will serve two primary functions: 1) fund manager, for the purposes of directing and administering the BCRLF pilot; and 2) lead agency, for the purposes of ensuring environmental compliance. The cooperative agreement recipient may enter into agreements with other organizations or individuals to provide these functions, but is ultimately responsible for all actions of the BCRLF pilot. This section addresses the threshold criteria, including management and financial plans (A.2. and A.3.), for eligibility to enter into a cooperative agreement and receive BCRLF pilot funding as a BCRLF fund manager and lead agency. Once a BCRLF pilot proposal is selected, but prior to when the cooperative agreement is signed, proposers will be asked to provide a more detailed management and financial plan.

A.1. Demonstrate your legal authority to manage a revolving loan fund and environmental cleanups (or demonstrate a firm plan to get authority if provided with funding).

Demonstrate your legal authority to perform the actions necessary to manage a revolving loan fund and environmental cleanups, which may include the ability to designate a lead agency or fund manager. Legal authority must include, among other things, the ability to enter into the cooperative agreement, appoint brownfields site managers, hold funds, make loans, enter into loan agreements, hold collateral, charge interest, and collect repayments on a dedicated basis. This authority may be based in statute, regulation, or other authority. The demonstration will most frequently be in the form of a legal opinion from the potential cooperative agreement recipient's legal counsel affirming the authority to carry out all necessary functions, specifically addressing the individual powers noted here and citing the basis for legal authorities.

In some cases, all authority may come from one source. For example, if the potential cooperative agreement recipient is a municipal government, your state may have granted broad powers to all municipalities that include those needed to operate a BCRLF. In some cases, however, such broad authority may not exist. In these cases, the legal opinion must cite specific authorities.

A.2. Demonstrate that you have an effective institutional structure in place or planned. Specifically describe the roles of and relationships between: (1) the potential cooperative agreement recipient; (2) the proposed lead agency; (3) the proposed fund manager; and (4) the brownfields site manager.

Provide background on the institutions and staff proposed to oversee and manage the BCRLF pilot. This background information must include experience doing the types of tasks necessary to manage a revolving loan fund and environmental cleanups. Provide a brief history of the institutions involved, including any past or pending legal actions against the institutions or individuals proposed, how those actions were resolved, and whether any are currently suspended, debarred, or otherwise ineligible to receive federal funding. It also must describe the relationship between the potential cooperative agreement recipient and these institutions and the type of agreement (for example, intergovernmental agreement or contractual agreement) that is planned between the potential cooperative agreement recipient and the administering entity.

Cooperative Agreement Recipient

This is the entity with the authority to enter into the cooperative agreement and ultimately be responsible for implementation of the BCRLF demonstration pilot. The cooperative agreement recipient will be responsible for ensuring that the funds provided by EPA are used for authorized purposes and the use of these funds is specifically tracked, recorded, and reported to EPA. The cooperative agreement recipient will enter into the cooperative agreement with EPA, be the recipient of determined funding, supervise implementation of the BCRLF pilot, and ensure compliance with all federal requirements. The cooperative agreement recipient also will be responsible for overall policy and direction. The recipient may choose to enter into agreements with a policy or advisory committee, such as a Brownfields Task Force or other organization of stakeholders for performance of some of the policy-setting activities.

Administering Entity: Lead Agency

The lead agency is the organization designated to ensure that environmental cleanups conducted using BCRLF pilot funds are conducted in conformance with the cooperative agreement and federal and state requirements. Should a proposer choose to designate a third party to serve as the lead agency, the proposer must ensure that BCRLF pilot funds are used only for authorized purposes. Proposers must demonstrate that the body designated to service this function has, or has access to: (1) Expertise in environmental management, particularly as it relates to CERCLA and other federal and state requirements; and (2) Legal and record-keeping expertise to oversee and report on the environmental activities of the borrower.

Please note: If the cooperative agreement recipient uses pilot funds to enter into agreements with non-governmental entities for these activities, proper procurement procedures must be followed.

Administering Entity: Fund Manager

The fund manager is the organization or individual designated to manage the BCRLF on a day-to-day basis in conformance with the cooperative agreement, federal and state requirements, and prudent lending practices. Proposers must demonstrate that the body designated to service this function has, or has access to: (1) Financial skills to manage the financial health of the fund; (2) Analytical skills to evaluate potential borrowers on both technical and financial criteria; (3) Legal skills to structure loan agreements, collateral arrangements, and repayment instruments; and (4) Record keeping skills to track and report on the activities of the BCRLF and its borrowers (e.g., number of loans, categories of borrowers, program income).

To reduce their administrative costs, cooperative agreement recipients are permitted to designate third parties to serve as the fund manager. Should a proposer choose any of the options described below for BCRLF fund manager, the proposer must ensure that BCRLF pilot funds are used only for authorized purposes: (1) coordinate the administration of the BCRLF pilot with other existing revolving loan funds (e.g., EDA, others); (2) enter into agreements with the state to administer the BCRLF pilot funds; or (3) coordinate the administration of funds with other selected BCRLF cooperative agreement recipients.

The cooperative agreement recipient will be responsible for all actions of the fund manager. Therefore, should a BCRLF pilot cooperative agreement be terminated by EPA, the recipient must appoint a receiver to manage outstanding loans or EPA will appoint a receiver at the Agency's discretion.

Please note: If the cooperative agreement recipient uses pilot funds to enter into agreements with non-governmental entities for these activities, proper procurement procedures must be followed.

Brownfields Site Managers

The cooperative agreement recipient must designate a brownfields site manager for each BCRLF pilot funded project to ensure environmental compliance. The brownfields site manager must be a state or city certified environmental professional. The brownfields site manager must serve as the cooperative agreement recipient's (or lead agency's) agent for the purposes of compliance with all relevant CERCLA provisions and other environmental compliance requirements.

A.3. Describe your proposed BCRLF Pilot Financial Plan.

Briefly outline your proposed financial plans. The financial plan should address the proposed financing structure for the program, such as planned level of fund capitalization, loan schedule, and administrative costs. Once a BCRLF pilot proposal is selected, but prior to when the cooperative agreement is signed, proposers will be asked to provide a more detailed financial plan demonstrating the proposer's financial management capabilities to perpetuate for the time necessary to complete cleanup activities. The financial plan also may, but is not required to, identify anticipated initial loan recipients and level of funding to be provided. The proposer must address the following issues:

- The fund manager must outline a plan for committing and expending all funds allocated under

the BCRLF pilot cooperative agreement as efficiently as possible, and for working with borrowers to ensure that projects are funded and completed in a timely and expeditious manner.

- The fund manager must propose a time frame for disbursement of funds from EPA, based on the proposed fund's financial strategy. Payments to the fund will be subject to EPA's general grant regulations (40 C.F.R. Part 31.21). Therefore, for example, the fund manager must minimize the time elapsing between the transfer of funds by EPA and the disbursement by the cooperative agreement recipient.
- The fund manager must outline procedures for loan processing, disbursement, servicing, and closing under the RLF structure. The fund manager must also outline procedures for establishing collateral requirements to secure loans.
- The fund manager must describe the process for determining the borrower's interest rates and conditions which are most appropriate in achieving the goals of the RLF¹.
- The fund manager must describe a financial reporting plan, which tracks the activity of the BCRLF pilot. The activities tracked may include, but not be limited to, the following: number of loans, rate of disbursement, loan periods and repayment schedules, and borrower profiles.
- The fund manager must propose a BCRLF pilot implementation schedule for the initial round of lending. For example, the proposer may state that "the initial round of lending by the fund manager will be closed within three years of grant approval with no less than 50% of the BCRLF pilot cooperative agreement funds disbursed within 18 months, and 80% within two years." However, the cooperative agreement recipient must agree that failure to comply with these deadlines can result in the deobligation and recovery of undisbursed cooperative agreement funds at the option of EPA.

EVALUATION CRITERIA (SECTIONS B-E)

Those proposers that meet the threshold criterion will be evaluated based on their responses to four evaluation criteria: (1) demonstration of need; (2) commitment to creative leveraging of EPA funds; (3) benefits of BCRLF pilot loans to the local community; and (4) long-term benefits and sustainability.

Your response to the following criteria will be the primary basis on which EPA determines the size of award. EPA's evaluation panel will review the proposals carefully and assess each response based on how well it addresses each criterion.

B. Evaluation Criteria: Demonstration of Need

B.1. Problem Statement and Unique Needs of the Community

Provide demographic measures that demonstrate economic distress in targeted municipalities and neighborhoods. Demographic measures should include population (including distribution of minorities), poverty rates, and unemployment rates. Other measures could include per capita or

family income levels or other measures that demonstrate distress.

The proposal should explain the unique needs of the community, including why certain demographic problems are a priority. Specific goals and strategies developed to deal with problems should be identified. Connecting to environmental justice issues, city or county-wide strategic planning, or comparative risk efforts is encouraged. If specific neighborhoods or communities have been targeted for enhanced development, a brief description of those plans should be included in the proposal.

Provide explanations of interactions with other local, state, or federal economic incentive programs designed to increase jobs and capital investment (for example, federal enterprise communities and empowerment zones, state-designated zones, tax increment financing districts, and public improvement districts). Any public/private investment activities associated with the demographic concerns should be described.

B.2. Description of Potential Borrowers and Property

Detail the types of borrowers expected to benefit from BCRLF pilot financing and provide general information about their financial needs. The proposal should explain the process for identifying and selecting BCRLF pilot prospective borrowers, and detail how they will be certified as qualified borrowers. Identify planned procedures for determining how potential borrowers requesting BCRLF pilot loans are well qualified to direct the proposed redevelopment and have a demonstrated record of success.

Describe specific areas that are to be included in the BCRLF pilot eligibility pool. Maps of eligible areas of emphasis, with clear explanations attached, should be provided. When possible, the proposal should provide descriptions of eligible properties. (Eligible BCRLF pilot areas do not need to correspond to areas being addressed through EPA site assessment pilots.)

B.3. Ability to Finance Cleanups

Provide information on all other currently available or anticipated sources of funding for cleanup in the eligible area, including other federal, state, local, non-profit, and private funding sources. Specific gaps in financing should be highlighted, including a discussion of the ability of prospective borrowers to secure commercial financing.

C. Evaluation Criteria: Commitment to Creative Leveraging of EPA Funds

C.1. Ability to Attract and Support Other Financing

Discuss how you plan to use BCRLF pilot funds to address funding gaps for cleanup of eligible BCRLF pilot area properties (as discussed in Evaluation Criteria B.3). Proposals should demonstrate the extent to which EPA seed funding of a BCRLF pilot will attract other resources and be used in conjunction with those resources to maximum benefit.

Describe how the BCRLF pilot program will be coordinated with other revolving loan funds or financing programs available for environmental assessment and cleanup. Describe the anticipated

impact of BCRLF pilot funding on borrowers' ability to secure other financing (private investment; commercial financing; not-for-profit contributions; federal, state, and local funds).

C.2. Cash and In-Kind Contributions

While proposers are not required to match seed capitalization funds, financial participation is encouraged and will be taken into account in evaluating proposals. Proposers, therefore, should describe their intended financial contributions to capitalizing the proposed BCRLF and the sources of these capitalization funds. This discussion can include both direct cash contributions and access to relevant in-kind services.

C.3. Efficiency of Planned Administrative Structure

Describe the anticipated administrative framework for the BCRLF pilot and discuss how the planned BCRLF pilot structure will be integrated with other programs (for example, other revolving loan fund programs) in a manner that minimizes administrative costs for the BCRLF pilot program.

D. Evaluation Criteria: Benefits of BCRLF Loans to the Local Community

D.1. Announcement and Notification of BCRLF Fund Availability

Describe your procedures for providing for public hearings and Notification of Funds Available (NOFA) when a BCRLF program is being planned and before it is implemented. Describe the public outreach process that must be held for the initial notification of the loan program. If a formal public comment period is provided, and the proposer allows for no action on the program until the comment period is completed, details must be included in the proposal. Documentation of all outreach efforts must be provided to EPA upon the Agency's request.

D.2. Community Involvement in Future Land Reuse

Describe how the proposed BCRLF pilot is community-based or how the proposer plans to involve the community in targeted areas of the pilot. Community meetings will be required as a part of the redevelopment process at a brownfields site when the property owner or developer is accepted as a borrower. Outline how you intend to ensure community involvement.

Describe partnerships with academic associations, environmental justice groups, established community contacts, and organizational networks. Detail the method for including these groups in land reuse decisions. Describe any standards for land-use based environmental cleanups. Include particulars on the community involvement in the determination of the selected environmental cleanup standards.

To demonstrate significant involvement of other community organizations or local agencies, the proposal may include letters of commitment from involved organizations. (These letters are not required; however, the letter from the state mentioned in the Cooperative Agreement Award Process section will be required.)

D.3. Contribution to Community Economic Development Plans

Cooperation among municipal, county, state, federal, and private economic development programs is encouraged. Provide a summary of such partnerships already developed for the delivery of economic benefits to the impacted brownfields area. Provide details on how the partners cooperate for overall economic community development. Describe the relationship envisioned with these partners under the BCRLF pilot program.

If funding of these partners is envisioned under the cooperative agreement, all proper procurement requirements will need to be met.

D.4. Environmental Justice Benefits

Special emphasis will be given to the enhancement or development of partnerships with environmental justice communities. Proposers should have a strong network already established with environmental justice community leaders. Describe the benefits already derived from the network.

To demonstrate significant involvement of other community organizations or local agencies, the proposal may include letters of commitment from involved organizations. (These letters are not required; however, the letter from the state mentioned in the Cooperative Agreement Award Process section will be required.)

D.5 Projected Sustainable Benefits

To ensure that the proposer's brownfields program continues when EPA funds are exhausted, the proposer should present the long-range planning and budget efforts established by the municipal or county agency responsible for implementing the brownfields program.

Describe the environmental and economic benefits of the BCRLF pilot, including the benefits of near-term projects and the projected sustainable environmental protection and economic stability of the community. Projected taxes, job creation, and pollution prevention information, if available, should be presented. Discuss intangible social benefits (for example, increased community pride, improved perceptions that the community is a good place to live and work, decreased fear of crime).

E. Evaluation Criteria: Long-Term Benefits and Sustainability

E.1. National Replicability

Describe the local barriers that you will face in revitalizing brownfields. Describe the financial and environmental management methods, particularly innovative methods, that you plan to implement to address these barriers and facilitate brownfields cleanup and reuse. Methods may include master-planning for environmentally friendly future land use, options for environmental project financing, financing and use of new cleanup technologies, environmental awareness training, environmental justice planning, or other methods to institutionalize environmental policies and financing. Describe how any innovative methods will be implemented.

Given the complexity and local nature of the problem, no single plan will be suitable nationwide, but how you address specific barriers may provide lessons for others with similar problems. Describe how this pilot can serve as a model for others to use in addressing barriers to revitalizing brownfields.

E.2. Measures of Success

Describe your plans for measuring success in achieving your BCRLF pilot goals. Measures of success should be specific and linked to the goals established for your pilot. Measures of success may include environmental indicators, economic indicators, institutionalized environmental or outreach processes, or other indicators of what you would consider a successful brownfields program. Success in this demonstration pilot should be measured in terms of environmental achievement (for example, number of sites cleaned up, acres of brownfields cleaned per dollar invested), revolving loan fund activity (for example, number and amount of loans issued, program income earned, default/delinquency rates, personal equity matches, and prognosis for long-term success of revolving fund), and program strategy (for example private capital leveraged, other public investment leveraged). Provide quantifiable measures wherever possible.

Describe baseline measures that you have developed or plan to develop for the measures of success. If baseline measures have not been developed yet, describe how and when you plan to develop them.

Describe any reports or other deliverables you plan to provide to EPA as documentation of your pilot's progress and success.

SCHEDULE FOR AWARDING EPA'S BROWNFIELDS CLEANUP REVOLVING LOAN FUND DEMONSTRATION PILOTS

June 9, 1997	Proposal deadline for the 29 entities eligible for BCRLF demonstration pilots cooperative agreements.
June 1997	Panels evaluate proposals.
July 1997	Announcement of proposals selected for the 1997 BCRLF demonstration pilots.
September 1997	BCRLF demonstration pilot cooperative agreements awarded.

The BCRLF pilot proposals must be post-marked or sent to EPA via registered or tracked mail by June 9, 1997.

Please send to:
U.S. Environmental Protection Agency
Katherine A. Dawes, Brownfields Team
OSWER Outreach and Special Projects Staff
Mail Code 5101
401 M Street, SW
Washington, DC 20460

Appendix C

Guidance for Preparing an Assistance Funding Package

The United States
Environmental Protection
Agency

Office of Research and
Development
Washington, DC 20460

EPA-600-R-95-019
December 1995



**The United States
Environmental Protection Agency**



**APPLICATION KIT
FOR ASSISTANCE**

 Printed on Recycled Paper



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

Dear Applicant:

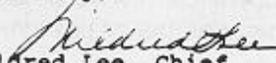
Attached is an application kit for submitting a proposal to the Environmental Protection Agency for federal assistance. In order to assist you in completing your application, we have developed a list of items in the application kit and a brief description of each. We also have included a check list of items that must be submitted in order to make your submission complete. Before you mail your application, please be sure it is complete. Our mailing address is included in the application kit for your convenience. Also, the page entitled "Key Contacts" is very important to ensure that we work with the proper individuals in your organization.

You need to consider whether your proposal is for acquisition or assistance. The SF 424 is only used for submitting proposals for federal assistance. The Federal Grant and Cooperative Agreement Act requires Federal agencies to use a contract to acquire property or services for the direct benefit of the Federal government, and a grant or cooperative agreement to transfer money, property, services, or anything else of value to support or stimulate an activity to accomplish a public purpose of assistance authorized by Federal statute.

The determining factor in choosing acquisition versus assistance is defining the direct beneficiary. If the direct beneficiary is a State or local government or other recipient, and the purpose of support or stimulation is authorized by Federal statute, then a grant or cooperative agreement is the proper legal instrument to use. If the direct beneficiary is EPA, then a contract is the appropriate legal instrument to use and the submission of SF 424 is inappropriate.

If you have any questions about completing your application or have general inquiries about EPA's assistance programs, please feel free to contact my staff on area code (202) 260-9266.

Sincerely,


Mildred Lee, Chief
Grants Operations Branch
Grants Administration Division (PM-216F)

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ITEMS IN YOUR APPLICATION KIT

- APPLICABLE EPA REGULATIONS
- DESCRIPTION OF EPA REGULATIONS
- HELPFUL HINTS
- SUPPLEMENTAL INFORMATION:
APPLICATION FOR FEDERAL ASSISTANCE
(STANDARD FORM 424)
- ADDITIONAL TIPS FOR COMPLETING THE SF-424
- CHECKLIST OF APPLICATION ITEMS TO BE SUBMITTED

- KEY CONTACTS
- SF-424, "APPLICATION FOR FEDERAL ASSISTANCE",
INCLUDING INSTRUCTIONS AND ASSURANCES,
SF 424A AND SF 424B
- PROCUREMENT SYSTEM CERTIFICATION
- CERTIFICATION REGARDING DEBARMENT
AND SUSPENSION
- CERTIFICATION REGARDING LOBBYING, INCLUDING
DISCLOSURE OF LOBBYING ACTIVITIES

APPLICABLE EPA REGULATIONS

available upon request; call (202) 260-9266

(Your business office may have copies of these regulations.
Please check with them first.)

A. STATE and LOCAL GOVERNMENTS and INDIAN TRIBAL GOVERNMENTS

Part 31 - Uniform Administrative Requirements for Grants &
Cooperative Agreements to States & Local Governments

Part 7 - Nondiscrimination in Programs Receiving Federal
Assistance from the Environmental Protection Agency

Part 12 - Nondiscrimination on the Basis of Handicap in Programs
or Activities Conducted by the Environmental Protection Agency

Part 32 - Government-wide Debarment and Suspension (Nonprocurement)
and Government-wide Requirements for Drug-Free
Workplace (Grants)

Part 29 - Intergovernmental Review of Environmental Protection
Agency Programs and Activities

Instructions to Applicants - Intergovernmental Review Procedures
and List of Single Point of Contacts

Part 34 - New Restrictions on Lobbying

B. FOR ALL OTHER TYPES OF APPLICANTS

Part 30 - General Regulations for Assistance Programs

Part 33 - Procurement Under Assistance Agreements

Part 7 - See Above

Part 12 - See Above

Part 32 - See Above

Part 29 - See Above

Part 34 - See Above

DESCRIPTION OF EPA REGULATIONS

PART 30 - GENERAL REGULATION FOR ASSISTANCE PROGRAMS

This regulation applies to all EPA applicants except State, Local and Indian Tribal governments.

If the regulation applies to you, you are required to be familiar with it and to comply with its provisions.

PART 31 - UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

State, Local and Indian Tribal governments are required to be familiar with this regulation and to comply with its provisions.

PART 32 - DEBARMENT AND SUSPENSION UNDER EPA ASSISTANCE, LOANS AND BENEFIT PROGRAMS

All applicants are required to be familiar with the regulation and to submit the certification with their application. In addition, recipients are required to obtain the certification from subrecipients receiving \$25,000 or more.

PART 33 - PROCUREMENT UNDER ASSISTANCE AGREEMENTS AND THE PROCUREMENT SYSTEM CERTIFICATION

The "Part 33 - Procurement under Assistance Agreements" applies to all EPA applicants except State, Local and Indian Tribal governments.

If the regulation applies to you, you are required to be familiar with it and to comply with its provisions. In addition, you are required to complete the "Procurement System Certification".

State governments do not need to self-certify.

PART 34 - NEW RESTRICTIONS ON LOBBYING

All applicants requesting \$100,000 or more from EPA must submit the "Certification Regarding Lobbying" and, if appropriate, complete the "Disclosure of Lobbying Activities". Please note that contractors receiving subagreements of \$100,000 or more are also required to certify and disclose to the individual or organization awarding the subagreement.

PART 29 - INTERGOVERNMENTAL REVIEW PROCEDURES

The EPA program for which you are applying may be subject to your State's Intergovernmental review process and or the consultation requirements of Section 204, Demonstration Cities and Metropolitan Development Act. You must contact your State's single point of contact to find out if the program was selected for coverage by the State process and, if the program was selected, to receive information about your State's review process requirements and procedures. If you do not know who your Single Point of Contact is, please call (202) 260-9266. If the program in which you are applying is subject to Section 204, you must notify areawide metropolitan or regional planning agencies and/or general government units authorized to govern planning for the locale of your project.

PARTS 7 and 12 - NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY - FINAL RULE

These rules implement the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and handicap. All applicants for EPA assistance are required to be familiar with these rules and to comply with their provisions.

HELPFUL HINTS

APPLICATION FOR FEDERAL ASSISTANCE (STANDARD FORM 424, STANDARD FORM 424A, AND STANDARD FORM 424B)

Based on the inquiries we frequently receive, we have developed the following information augmenting the instructions in the "Application for Federal Assistance" (Standard Form 424). Reading this information in conjunction with the instructions in the application form will speed up the preparation of your application and will reduce our processing time on your application.

The application is divided into three parts:

- (1) the "Application for Federal Assistance" (Standard Form 424) with accompanying instructions;
- (2) the "Budget Information -Non-Construction Programs" (Standard Form 424A) with accompanying instructions; and
- (3) the "Assurances -Non-Construction Programs" (Standard Form 424B).

SUPPLEMENTAL INFORMATION:**APPLICATION FOR FEDERAL ASSISTANCE (STANDARD FORM 424)**

Please refer to the instructions for SF 424. The items that require special attention are discussed below.

ITEM 5: If the "Name and telephone number of the person to be contacted for matters involving this application" is different from that of the Project Manager, i.e., the person who will be our contact for technical matters if the application is funded, please provide the name, title, address and telephone number of the Project Manager (Principal Investigator) on the key contact list.

In addition, please submit a biographical sketch of the Project Manager incorporating information on education, background, and other qualifying experience for the project. Also list the name and training or discipline of other key personnel engaged in the project. Identify other projects in which the Project Manager is engaged and the amount of time he or she devotes to each. Provide a summary of employment, including contracts and consultancies, for the present and for the past two years for the Project Manager and each of the key personnel.

ITEM 9: Please insert the name, if applicable, of the EPA person(s) from whom you have received preapplication assistance. This information assists us in routing your application to the appropriate EPA office for review.

ITEM 10: Insert the Catalog of Federal Domestic Assistance Number and Title, if known.

ITEM 13: The "Start Date" and "Ending Date" should reflect the amount of time that will be required to complete the entire scope of work in your application (i.e., the "project period"). However, in accordance with our regulations and administrative procedures, your project period may be divided into a series of "budget periods". The definitions of a project period and a budget period are as follows: Project Period: The length of time EPA specifies in the assistance agreement for completion of all project work. It may be composed of more than one budget period. Budget Period: The length of time EPA specifies in an assistance agreement during which the recipient may expend or obligate Federal funds. The guidance provided below for completing the budget instructs you to give the dates for each budget period.

ITEM 15: The amounts under "Estimated Funding" are the amounts requested or to be contributed during the first budget period.

ITEM 18: If EPA awards a grant or cooperative agreement pursuant to your application, we will mail the official copies of the award agreement to the authorized representative listed in Item 18.

DESCRIPTION OF PROJECT: Your application should include a section that provides the following information:

* **Objective:** Describe the principal and subordinate objectives of the project. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring solution. Supporting documents from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included and footnoted.

* **Results or benefits expected:** Identify results and/or benefits accruing to the project. [Important: Include all primary and secondary benefits accruing to the recipient, the population served, the public and the environment in general]; for example: compliance with water quality standards or ambient air quality standards, advancements in the state of the art of pollution abatement, etc.

* **Approach:**

a. Provide a detailed work plan for the accomplishment of the scope and detail of the proposed project. Cite factors that might accelerate or decelerate the work. Indicate why this approach has been taken rather than alternatives. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time or extraordinary social and community involvement.

b. Describe all facilities presently available for use in carrying out the project.

c. For all applications list by name all non-Federal sources of funds and facilities to be utilized in the performance of the proposed project.

d. List in chronological order a schedule of accomplishments, progress, or milestones that are anticipated over the length of the project.

e. Indicate by whom each element of the work plan will be carried out including supporting agencies, consultants and contractors.

f. Describe sampling and data collection procedures, analytical methods, and methods for evaluating the results of the project.

* General Project Information:

a. Identify the kinds of data to be collected (and maintained) and discuss the criteria to be used to evaluate the results and successes of the project. Indicate whether research or demonstration will involve human subjects or research animals.

b. Discuss: (1) the effect of this project on or its relationship to other work planned, anticipated, or underway by the grantee, recipient of the funds, or other Government agencies; (2) Federal, State, interstate, and local programs with which the work will be coordinated and the extent and nature of the coordination.

QUALITY ASSURANCE: If your project involves environmentally related measurements or data generation, the recipient shall develop and implement quality assurance practices sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. Applicants who are State, Local, or Indian Tribal governments, see EPA regulation 40 CFR 31.45. Other applicants, see EPA regulation 40 CFR 30.503.

BUDGET: The application includes a two-page sheet, "Budget Information - Non-Construction Programs" (Standard Form 424A). (You do not need to read the "Instructions for the SF-424A".)

Please complete "Section B - Budget Categories". Use one column for each budget period and insert the total for the project period in Column 5. Attach an extra sheet if your project will have more than four budget periods. The dates for each budget period should be entered at the top of each column, on the "Object Class Categories" line.

Most EPA programs require that you cost share at least 5% of total costs. The amounts you insert in Section B should include EPA's share plus your cost sharing and the cost sharing from all other sources except other federal agencies. Under "Totals" on Line K, please squeeze in the EPA amount requested for each budget period and for the project period. On Line 7, "Program Income, enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Your detailed itemization of direct costs, which is described below, should show the nature and source of this income.

You need not complete Sections A, C, D, or E of the budget page. In Section F, under "Remarks" please enter the type of indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the budget period, the rate, the base to which the rate is applied, and the Federal agency with whom your rate is negotiated. (Not applicable when indirect costs are not budgeted in Section B.)

For the budget period currently under consideration please submit a separate sheet(s) itemizing the direct costs of Lines (a) thru (j) of Section B. Guidelines for the itemization are provided below.

DETAILED ITEMIZATION OF COSTS:

* **Line A - Personnel:** List all participants in the project by position title. Give the percentage of the budget period for which they will be fully employed on the project (e.g., half-time for half the budget period equals 25 percent, full-time for half the budget period equals 50 percent, etc.). Give the annual salary and the total cost over the budget period for all personnel listed.

* **Line C - Travel:** If travel is budgeted, show destination and purpose of travel as well as costs.

* **Line D - Equipment:** Identify all equipment to be purchased.

* **Line E - Supplies:** If the supply budget is less than 2% of total costs, you do not need to itemize.

* **Line F - Contractual:** Specify the nature and cost of such services. EPA may require review of contracts for personal services prior to their execution to assure that all costs are reasonable and necessary to the project.

* **Line G - Construction:** Contact the Grants Administration Division for additional instructions prior to completing your application if your budget includes construction costs.

* **Line H - Other:** Specify all costs included under this category. If you are applying for a training project, your itemization of "Other" should include a breakdown of costs for trainee tuition and fees, book allowance, stipends and travel.

* **Line J - Indirect Costs:** Provide an explanation of how indirect charges were calculated for this project. Please attach a copy of your current negotiated Indirect Cost Rate Agreement. If you do not have a current negotiated rate, a rate must be negotiated within 90 days from receipt of an EPA assistance agreement.

ADDITIONAL TIPS FOR COMPLETING THE SF-424

- (1) If your application is being submitted under the Federal Demonstration Project, please indicate it in Block 11 on Page 1.
- (2) If your project requires an Environmental Impact Statement and/or and Environmental Assessment, please indicate it on a separate sheet of paper.
- (3) If your project involves human testing studies, please indicate it on a separate sheet of paper.
- (4) If your project involves animal testing studies, please indicate it on a separate sheet of paper.
- (5) Please fill out the reverse side of the "Assurances - Non-Construction Programs" (Standard Form 424B) and have the authorized certifying official sign that page as well as the 1st page.
- (6) If you wish to receive notification that we have received your application, please fill in your address on the enclosed application receipt letter. EPA will fill in the pertinent information regarding your project and mail the letter back to the addressee.

KEY CONTACTS

Authorized Representative: Original awards and amendments will be sent to this individual for review and acceptance, unless otherwise indicated.

Name: _____

Title: _____

Complete Address: _____

Phone Number: _____

Payee: Individual authorized to accept payments.

Name: _____

Title: _____

Complete Address: _____

Phone Number: _____

Administrative Contact: Individual from Sponsored Programs Office to contact concerning administrative matters (I.e., indirect cost rate computation, rebudgeting requests etc.)

Name: _____

Title: _____

Complete Address: _____

Phone Number: _____

Principal Investigator: Individual responsible for the technical completion of the proposed work.

Name: _____

Title: _____

Complete Address: _____

Phone Number: _____

APPLICATION FOR FEDERAL ASSISTANCE		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction Pre-application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
5. APPLICANT INFORMATION		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
Legal Name		Organizational Unit	
Address (give city, county, state, and ZIP code)		Name and telephone number of the person to be contacted on matters involving this application (give area code)	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): [] [] [] - [] [] [] [] [] [] [] [] [] []		7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/>	
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If revision enter appropriate letter(s) in boxes: <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify) _____		A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify) _____	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: [] [] [] [] [] [] [] [] [] []		8. NAME OF FEDERAL AGENCY:	
TITLE		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)			
13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?	
a. Federal	\$.00	a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____	
b. Applicant	\$.00	b. NO <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372	
c. State	\$.00	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
d. Local	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?	
e. Other	\$.00	<input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No	
f. Program Income	\$.00	18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED	
g. TOTAL	\$.00	a. Typed Name of Authorized Representative	
		b. Title	
		c. Telephone number	
		d. Signature of Authorized Representative	
		e. Date Signed	

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|---|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District or any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

SF 424 (REV 4-88) Back

BUDGET INFORMATION — Non-Construction Programs

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	SECTION A - BUDGET SUMMARY		ESTIMATED UNOBLIGATED FUNDS		NEW OR REVISED BUDGET		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)			
1		\$	\$	\$	\$	\$	\$	
2								
3								
4								
5. TOTALS		\$	\$	\$	\$	\$	\$	\$
SECTION B - BUDGET CATEGORIES								
6. Object Class Categories		(1)	(2)	(3)	(4)			Total (5)
a. Personnel		\$	\$	\$	\$			\$
b. Fringe Benefits								
c. Travel								
d. Equipment								
e. Supplies								
f. Contractual								
g. Construction								
h. Other								
i. Total Direct Charges (sum of 6a - 6h)								
j. Indirect Charges								
k. TOTALS (sum of 6i and 6j)		\$	\$	\$	\$	\$	\$	\$
7. Program Income		-\$	\$	\$	\$	\$	\$	\$

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Standard Form 424A (4-86)
 Provided by the State of California

Appendix C, Part 2 Guidance for Preparing an Assistance Funding Package

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8	\$	\$	\$	\$	\$
9					
10					
11					
12	TOTALS (sum of lines 8 and 11)				
SECTION D - FORECASTED CASH NEEDS					
13	Total for Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Federal	\$	\$	\$	\$	\$
14	Nonfederal				
15	TOTAL (sum of lines 13 and 14)				
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Year)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16	\$	\$	\$	\$	
17					
18					
19					
20	TOTALS (sum of lines 16 - 19)				
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21	Direct Charges:		22. Indirect Charges:		
23	Remarks				

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For *new* applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For *continuing* grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B 14-881
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED	

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460		Form Approved OMB No. 2030-0020 Approval Expires 06/30/96
 PROCUREMENT SYSTEM CERTIFICATION		
APPLICANT'S NAME	ASSISTANCE APPLICATION NUMBER	
APPLICANT'S ADDRESS		
SECTION I - INSTRUCTIONS		
The applicant must complete and submit a copy of this form with each application for EPA Assistance. If the applicant has certified its procurement system to EPA within the past 2 years and the system has not been substantially revised, complete Part A in Section II, then sign and date the form. If the system has not been certified within the past 2 years, complete Part B, then sign and date the form.		
SECTION II - CERTIFICATION		
A. I affirm that the applicant has within the past 2 years certified to EPA that its procurement system complies with 40 CFR Part 33 and that the system meets the requirements in 40 CFR Part 33. The date of the applicant's latest certification is:		MONTH/YEAR
B. Based upon my evaluation of the applicant's procurement system, I, as authorized representative of the applicant: <i>(Check one of the following.)</i>		
<input type="checkbox"/> 1. CERTIFY that the applicant's procurement system will meet all of the requirements of 40 CFR Part 33 before undertaking any procurement action with EPA assistance		
Please furnish citations to applicable procurement ordinances and regulations		
<input type="checkbox"/> 2. DO NOT CERTIFY THE APPLICANT'S PROCUREMENT SYSTEM. The applicant agrees to follow the requirements of 40 CFR Part 33, including the procedures in Appendix A, and allow EPA preaward review of proposed procurement actions that will use EPA assistance.		
TYPED NAME AND TITLE	SIGNATURE	DATE

PA Form 5700-48 (Rev. 11-90) Previous edition is obsolete

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PROCUREMENT SYSTEM CERTIFICATION

Paperwork Reduction Act Notice

Public reporting burden for the collection of this information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; and to the Paperwork Reduction Project, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 200503.

EPA Form 5700-48 (Rev. 9-90)



EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)

Instructions

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or subagreement participant thereunder must complete the attached certification or provide an explanation why they cannot. For further details, see 40 CFR 32.510, Participants' responsibilities, in the attached regulation.

Where To Submit

The prospective EPA grant, loan, or cooperative agreement recipient must return the signed certification or explanation with its application to the appropriate EPA Headquarters or Regional office, as required in the application instructions.

A prospective prime contractor must submit a completed certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a completed certification or explanation to the prime contractor for the project.

How To Obtain Forms:

EPA includes the certification form, instructions, and a copy of its implementing regulation (40 CFR Part 32) in each application kit. Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors.

Additional copies/assistance may be requested from:

Compliance Branch
Grants Administration Division (PM-216F)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460
(Telephone: 202/475-8025)

EPA Form 5700-09 (11-88)

EPA PROJECT CONTROL NUMBERCERTIFICATION REGARDING LOBBYINGCERTIFICATION FOR CONTRACTS, GRANTS,
LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award of documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

TYPED NAME & TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE OF AUTHORIZED REPRESENTATIVE DATE

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

Approved by OIG
11-4-2004

<p>1. Type of Federal Action:</p> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<p>2. Status of Federal Action:</p> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<p>3. Report Type:</p> <input type="checkbox"/> a. Initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
<p>4. Name and Address of Reporting Entity:</p> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> Congressional District, if known: _____
<p>6. Federal Department/Agency</p>	<p>7. Federal Program Name/Description</p> CFDA Number, if applicable: _____	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> \$ _____	
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> <p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first Name, MI):</p> <p style="text-align: center;">(attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>		
<p>11. Amount of Payment (check all that apply):</p> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<p>13. Type of Payment (check all that apply):</p> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
<p>12. Form of Payment (check all that apply):</p> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in item 11:</p> <p style="text-align: center;">(attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes: <input type="checkbox"/> No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Revised by OAL
3/16/04

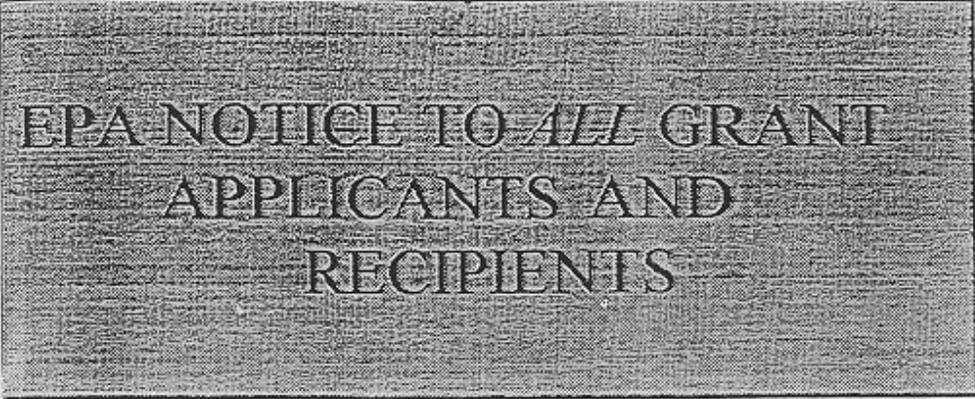
Reporting Entity: _____ Page _____ of _____

Authorized for Local Report
Standard Form - 441-A

CHECKLIST OF APPLICATION ITEMS TO BE SUBMITTED

- SF-424 APPLICATION FOR FEDERAL ASSISTANCE WITH ORIGINAL SIGNATURES (Including Assurances for Non-Construction Programs)
- RESEARCH PROJECTS: Original and 10 copies + 5 additional copies of abstract
- 5700-48 PROCUREMENT SYSTEM CERTIFICATION
- 5700-49 DEBARMENT AND SUSPENSION CERTIFICATION
- LOBBYING CERTIFICATION AND DISCLOSURE (If applying for more than \$100,000)
- NARRATIVE STATEMENT (Including statement on how this project supports your environmental program)
- QUALITY ASSURANCE NARRATIVE STATEMENT (if applicable)
- ITEMIZED BUDGET (Detailed)
- BIOGRAPHICAL SKETCH OF THE PROJECT MANAGER (Principal Investigator) AND OTHER KEY PERSONNEL
- COPY OF NEGOTIATED INDIRECT COST RATE AGREEMENT (if applicant does not have a negotiated indirect cost rate agreement indicate under itemized budget)
- COPY OF STATE CLEARINGHOUSE APPROVAL NOTIFICATION (Applicable Only if "Yes" under block number 16, page 1 of application)
- KEY CONTACT LIST
- SELF-ADDRESSED, STAMPED POST CARD

U.S. Government Printing Office: 1996 - 751-221



EPA NOTICE TO ALL GRANT
APPLICANTS AND
RECIPIENTS

All grant applications submitted after October 1, 1997 must include a completed Form 4700-4. If the completed Form is not included, the grant application will not be processed.

If you do not have this Form or have any questions, please contact the appropriate EPA office listed on the reverse side of this page for assistance.

EEO Officers

Region	I	James Younger	(617) 565-3427
Region	II	Dana Williams	(212) 637-3531
Region	III	Cynthis Burrows	(215) 566-5326
Region	IV	Rafael Santamaria	(404) 562-8312
Region	V	Robert Thayer	(312) 353-3158
Region	VI	Nellie Roblez	(214) 665-6506
Region	VII	Joe Solis	(913) 551-7203
Region	VIII	Bobby Hodges	(303) 312-6782
Region	IX	Rebecca Tudisco	(415) 744-1699
Region	X	Cecilia Contreras	(206) 553-2899

 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, DC 20460 Preaward Compliance Review Report For All Applicants Requesting Federal Financial Assistance		Form Approved OMB No. 2090-0014 Expires 4-30-99
Note: Read instructions on reverse side before completing form.		
I. A. Applicant (Name, City, State)	B. Recipient (Name, City, State)	C. EPA Project No.
II. Brief description of proposed project, program or activity.		
III. Are any civil rights lawsuits or complaints pending against applicant and/or recipient? If "yes", list those complaints and the disposition of each complaint.		___ YES ___ NO
IV. Have any civil rights compliance reviews of the applicant and/or recipient been conducted by any Federal agency during the two years prior to this Application for activities which would receive EPA assistance? If "yes", list those compliance reviews and status of each review.		___ YES ___ NO
V. Is any other Federal financial assistance being applied for or is any other Federal financial assistance being applied to any portion of this project, program or activity? If "yes", list the other Federal Agency(s), describe the associated work and the dollar amount of assistance.		___ YES ___ NO
VI. If entire community under the applicant's jurisdiction is not served under the existing facilities/ services, or will not be served under the proposed plan, give reasons why.		
VII. Population Characteristics		
1. A. Population of Entire Service Area		Number of People
B. Minority Population of Entire Service Area		
2. A. Population Currently Being Served		
B. Minority Population Currently Being Served		
3. A. Population to be Served by Project, Program or Activity		
B. Minority Population to be Served by Project, Program or Activity		
4. A. Population to Remain Without Service		
B. Minority Population to Remain Without Service		
VIII. Will all new facilities or alterations to existing facilities financed by these funds be designed and constructed to be readily accessible to and usable by handicapped persons? If "No", explain how a regulatory exception applies (40 CFR 7.70).		___ YES ___ NO
IX. Give the schedule for future projects, programs or activities (or of future plans), by which service will be provided to all beneficiaries within applicant's jurisdiction. If there is no schedule, explain why.		
X. I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law.		
A. Signature of Authorized Official	B. Title of Authorized Official	C. Date
For the U.S. Environmental Protection Agency		
___ Approved ___ Disapproved	Authorized EPA Official	Date

EPA Form 4700-4 (Rev. 1-90) Previous editions are obsolete

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Instructions	ITEMS
<p style="text-align: center;">General</p>	
<p>Recipients of Federal financial assistance from the U.S. Environmental Protection Agency must comply with the following statutes.</p>	<p>IA. "Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance.</p>
<p>Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Act goes on to explain that the title shall not be construed to authorize action with respect to any employment practice or any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment).</p>	<p>IB. "Recipient" means any entity, other than applicant, which will actually receive EPA assistance.</p>
<p>Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act provides that no person in the United States shall on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Federal Water Pollution Control Act, as amended. Employment discrimination on the basis of sex is prohibited in all such programs or activities.</p>	<p>IC. Self-explanatory.</p>
<p>Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified handicapped individual shall solely by reason of handicap be excluded from participation in, be denied the benefit of or be subjected to discrimination under any program or activity receiving Federal finance assistance. Employment discrimination on the basis of handicap is prohibited in all such programs or activities.</p>	<p>II. Self-explanatory.</p>
<p>The Age Discrimination Act of 1975 provides that no person on the basis of age shall be excluded from participation under any program or activity receiving Federal financial assistance. Employment discrimination is not covered. Age discrimination in employment is prohibited by the Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission.</p>	<p>III. "Civil rights lawsuits" means any lawsuit or complaint alleging discrimination on the basis of race, color, national origin, sex, age or handicap pending against the applicant and/or entity which actually benefits from the grant. For example, if a city is the named applicant but the grant will actually benefit the Dept. of Sewage, civil rights lawsuits involving both the city and the Dept. of Sewage should be listed.</p>
<p>Title IX of the Education Amendments of 1972 provides that no person on the basis of sex shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution.</p>	<p>IV. "Civil rights compliance review" means any review assessing the applicant's and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age or handicap. If any part of the review covered the entity which will actually benefit from the grant, it should be listed.</p>
<p>The information on this form is required to enable the U.S. Environmental Protection Agency to determine whether applicants and prospective recipients are developing projects, programs and activities on a nondiscriminatory basis as required by the above statutes.</p>	<p>V. Self-explanatory.</p>
<p>Submit this form with the original and required copies of applications, requests for extensions, requests for increase of funds, etc. Updates of information are all that are required after the initial application submission.</p>	<p>VI. The word "community" refers to the area under the applicant's and/or recipient's jurisdiction. The "community" might be a university or laboratory campus, or a community within a large city. If there is a significant disparity between minority and nonminority populations to receive service, not otherwise satisfactorily explained, the Regional office may require a map which indicates the minority and non-minority population served by this project, program or activity.</p>
<p>If any item is not relevant to the project for which assistance is requested, write "NA" for "Not Applicable."</p>	<p>VII. This information is required so that reviewers may determine if a disparity in the proposed provision of services will exist in the event the application is approved for funding. Give population of recipient's jurisdiction, broken out by categories as specified.</p>
<p>In the event applicant is uncertain about how to answer certain questions, EPA program officials should be contacted for clarification.</p>	<p>In the event the applicant cannot provide the requested information because the funds will be distributed over a wide demographic area which is yet to be determined, an explanation may be provided on a separate sheet. For example, a State applying for a capitalization grant under the State Revolving Fund program may not know which cities and counties will apply for, and receive, SRF loans.</p>
<p>EPA FORM 4700-4 (Rev. 1/90) Reverse</p>	<p>VIII. Self-explanatory.</p>
	<p>IX. "Jurisdiction" means the geographical area over which applicant has the authority to provide service.</p>
	<p>Self-explanatory.</p>
	<p style="text-align: center;">"Burden Disclosure Statement"</p>
	<p>EPA estimates public reporting burden for the preparation of this form to average 30 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to U.S. Environmental Protection Agency, Chief, Information Policy Branch (PM-223), 401 M. Street, S.W., Washington, D.C. 20460, and to the Paperwork Reduction Project, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.</p>

Appendix D, Part 1

Sample Cooperative Agreement Application

**The Brownfields Economic Redevelopment Initiative
Brownfields Cleanup Revolving Loan Fund Proposal**

Location: City of Louisville, Kentucky

Scope and population of pilot area: Attachment 3 to this proposal contains a map of the pilot area. The 1990 population of this area was 78,247.

Proposer identification: City of Louisville - Office of Health and Environment

Proposal director: Bonnie Biemer, Administrator
Office of Health and the Environment
601 W Jefferson Street, Room 106
Louisville, KY 40202-2728
Telephone: 502-574-3271
FAX: 502-574-1389
E-mail: bbiemer@louky.org

Mayor of Louisville: Jerry Abramson
601 W Jefferson Street
Louisville, KY 40202-2728
Telephone: (502)574-3061
Fax: (502)574-4201
E-mail: jabrams@louky.org

Date submitted: June 9, 1997

Project period: September 1997 - September, 2000

**Community background:
(Empowerment Zone)** 47.7% are below poverty level
74.6% of residents are minority
53.9% without high school diploma

Cooperative partners: The Office of Health and Environment, The Federal Reserve Bank, the Office of Economic Development



City of Louisville
OFFICE OF THE MAYOR



JERRY E. ABRAMSON
MAYOR

601 W. Jefferson Street · Louisville, KY 40202-2728
1502) 574-3081 · Fax 1502) 574-4201
TDD 1502) 574-4091

June 9, 1997

Ms. Katherine A. Dawes
OSWER Outreach and Special Projects Staff
Mail Code 5101
401 M Street, SW
Washington, DC 20460

Dear Ms. Dawes:

Thanks for the opportunity for the City of Louisville to be selected for a Brownfields Cleanup Revolving Loan Fund. As Mayor, I have been involved in the agency's Brownfields program since its inception. Our City, a Brownfields Pilot Grant recipient, has been very active in changing the cleanup process in ways that encourage recycling of brownfields for economic development. The loan money would give us an opportunity to fund actual remediations at low cost.

As conceived, the fund is ideally suited to a City of our size with the kinds of brownfield sites that predominate here. We are faced with old, industrial areas located in close proximity to neighborhoods, many of which are not highly contaminated, but which carry the stigma of contamination. Many are 3 to 5 acres, and many more, smaller in size.

Now that we have a new process nearly complete, we are ready to complete site assessments. The loan fund with its low interest rates gives us another tool to address the next step, remediation, which will be followed by redevelopment.

Our Louisville Community Development Bank, which received its charter and opened for business in January of this year, is ideally suited to manage the loan fund in conjunction with its other neighborhood-oriented loan programs. It is dedicated to serving the previously underserved parts of our City. Both our Brownfield program and the Bank are outgrowths of our community-based Empowerment Zone application process. As I have said many times, the genie is out of the bottle on how we do business in the City of Louisville. Our communities must be involved. I have pledged to them my support in carrying out their strategies and the grant of this loan fund would further our efforts.

Sincerely,

Jerry E. Abramson
Mayor

Proposal Overview

The City of Louisville, with the help of a 100 member Empowerment Zone Community Board, adopted a strategic plan and applied for a federally designated Empowerment Zone in the winter and spring of 1994. The Department of Housing and Urban Development ultimately awarded Louisville Enterprise Community status. The intense and extraordinary work of the hundreds of people that worked to pull together the EZ plan has permanently changed the way Louisville approaches neighborhood and community development. Mayor Abramson, with the full support of the Empowerment Zone Board, made a commitment to continue to pursue the EZ strategies developed by the community, with or without EZ designation and the federal dollars that come with it. Two very important elements of that strategy have already been put into place and, with approval of this proposal, will be pulled closer together in a unified mission to redevelop brownfields.

The Louisville Community Development Bank (LCDB) is the economic power at the heart of the EZ strategic plan. The LCDB was able to secure millions of dollars in private investment to capitalize the bank and its major non-profit affiliate, the LCDB Enterprise Group. A major milestone was crossed when the bank received its state charter and opened for business in January of this year. The Louisville Community Development Bank's target area encompasses all of the Louisville Empowerment Zone (the federally-designated Enterprise Community) and a few additional neighborhoods in Louisville's West End. The target area is characterized by extreme poverty and a steady decline of commercial and employment opportunities. Over 47% of residents live in poverty, with 29% receiving some form of public assistance.

There has been a systematic deterioration of the physical and economic infrastructure of this area. The LCDB is designed to bring new economic opportunity to the area. A central part of this mission will increase employment opportunities for the predominantly African-American residents of the Empowerment Zone, by creating opportunity for minority-owned businesses which will, in turn, create opportunity for minority employees.

The brownfields program is another important element of Louisville's EZ strategic plan that has come to fruition. The Brownfields Working Group consists of about 25 community volunteers that first came together as the Environmental Practitioners Group for the Empowerment Zone application process. The City's brownfields agenda received a major boost in July of 1995 when we were selected to receive a \$200,000 national assessment pilot grant from the EPA. The work of the Louisville pilot has made it possible for a number of former industrial properties to be redeveloped that would otherwise continue to lay fallow for an indefinite period of time. There is much more work to be done, however. The City's brownfields assessment pilot

has focused on the redevelopment of brownfields properties owned and controlled by the City acquired through foreclosure or other methods. There are many more brownfields that remain in private hands. Owners of these properties are too often faced with a choice between losing money by cleaning up and redeveloping the property at great expense, or doing nothing with the property, perhaps losing less money, and allowing continued decay.

Local barriers confronting brownfield redevelopment efforts in Louisville are the common problems faced by most inner-city revitalization efforts. The brownfields are concentrated in the inner city, adjacent to rail lines and service, but may have obsolete on-site buildings and/or small lots, may be adjacent to residential areas that developed near manufacturing and related activities before zoning was adopted, and may be plagued with relatively high neighborhood crime. The sprawl experienced in the Louisville metropolitan area is similar to that occurring elsewhere, as central city properties have been abandoned for greenfields.

The proposed Brownfields Cleanup Revolving Loan Fund will be used to establish a new loan product that is not currently available at the Louisville Community Development Bank, nor is there any similar loan product available elsewhere in the Louisville financial market. It will provide an important incentive to brownfields owners to move ahead with redevelopment plans.

There are three critical elements to successful implementation of the BCRLF program in Louisville: (1) The fund must be managed by an entity with sufficient lending expertise; (2) Oversight support must be provided by an entity with sufficient environmental expertise; and (3) Everyone involved in the program must be sensitive to the needs of the community. The Office of Health and Environment has the brownfields program experience necessary to administer the program and oversee the technical aspects of cleanup projects. The LCDB is a natural fit as the fund manager. The LCDB has ample lending expertise and is unique among the local banking community in its place-based strategy. To this team we have added the University of Louisville's Center for Environmental Management (CEM), with its ability to evaluate community impacts. CEM's role will be to assist in screening loan applicants to maximize community impacts, and to perform baseline measurements and periodic evaluations of the actual community impacts. The Justice Resource Center (JRC), which will ensure adequate attention to community involvement and environmental justice concerns, is a fourth partner in Louisville's program. The JRC is a community based civil rights organization that has worked toward environmental justice for residents of the investment area targeted for this revolving loan program.

Working together, these four organizations can provide the best mix of expertise available in Louisville to successfully manage the BCRLF and provide a model suitable for other cities to follow.

BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROPOSAL BUDGET

The City of Louisville is the designated Cooperative Agreement Recipient and Lead Agency for the Brownfields Cleanup Revolving Loan Fund. The Louisville Community Development Bank is the assigned Fund Manager and has developed the Financial Plan included in this proposal. US EPA Brownfields Economic Redevelopment Initiative funds are to be expended as follows:

Brownfields Cleanup Loans (Community Development Bank)	\$332,500.00
Administrative Costs (Office of Health and the Environment)	17,500.00
1. Professional Services	
a. Loan Screening Process Development and Measurement Criteria Implementation	5,000.00
b. Oversight Costs/Brownfields Site Coordinator (CERCLA Requirements/Cleanup Schedule Monitoring)	5,700.00
2. Outreach	
a. BCRLF Loan Program Outreach	
Marketing Materials (Brochures, etc.)	1,600.00
Advertising (Legal Ads, etc.)	1,200.00
b. Site-Specific Outreach	
Public Notice/Legal Ads (6-7 sites)	2,000.00
Public Meetings	<u>2,000.00</u>
	17,500.00
Total Funding	\$350,000.00

Threshold Criteria

A. Ability to Manage a Revolving Loan Fund and Environmental Cleanups

A.1.a. Demonstration of legal authority to manage a revolving loan fund.

The Louisville Community Development Bank, an independent for-profit institution created to target Louisville's underserved communities, will be the fund manager under this proposal. The bank is state chartered and may issue loans for home ownership, business expansion and new business development and other purposes aimed at community development. The Louisville Development Bancorp (parent company of LCDB) reflects an exemplary collaboration by Louisville's Banking Community.

- The Louisville Community Development Bank was the first community development bank in the Nation to have equity investment from virtually all of the commercial banks in its community.
- It was the first development bank to model seamless, collaborative deal development with existing banks, extending to small business the partnership that Louisville area banks had already forged to enhance the creation of affordable housing.
- It was the first denovo banking institution to receive an award from the CDFI Fund, the development banking initiative spearheaded by President Clinton.
- The grant-funded, non-voting stock investment that the Louisville Community Development Bank secured from the US Department of Housing and Urban Development is a first, helping to create a model that HUD can use with other development banks around the country.
- Fannie Mae, a shareholder in the Louisville Community Development Bank, chose Louisville as its first partner for its Community Partnership Plan.
- It was the first Development Bank created in a City of Louisville's size.
- It is the first start-up institution to begin operations with a substantial portfolio of deposits, representing broad endorsement for its revitalization mission, and putting the bank on a sound financial footing.

The Louisville Development Bankcorp's spirit of innovation makes it ideally suited for a substantial and meaningful role in remedying the problem of inner-city brownfields.

A.1.b. Demonstration of legal authority to manage environmental cleanups.

In Kentucky, cities are creatures of State law. Municipal corporate powers are detailed in Kentucky Revised Statutes (KRS) Section 82.081. They include: capacity to sue and be sued, to contract and be contracted with and to acquire and dispose of property. KRS Section 82.082 provides:

(1) A city may exercise any power and perform any function within its boundaries, including the power of eminent domain in accordance with the provisions of the Eminent Domain Act of Kentucky, that is in furtherance of a public purpose of the city and not in conflict with a constitutional provision or statute.

(2) A power or function is in conflict with a statute if it is expressly prohibited by a statute or there is a comprehensive scheme of legislation on the same general subject embodied in the Kentucky Revised Statutes including, but not limited to, the provisions of KRS Chapters 95 and 96. (These sections deal with city police and fire departments and utilities in cities.)

The City's own ordinances provide for the establishment of a Department of Finance and Budget (Louisville General Ordinances, Sec. 34.015), which has "exclusive control, unless otherwise provided by law, of all matters pertaining to the financial affairs, policies, programs and activities of the city."

The Department of Finance and Budget has a Division of Budget and Planning (LGO Section 34.033), whose powers include: "To identify sources of governmental or charitable grants which may be available to departments and agencies of the city and to supervise and monitor the process of application, receipt, and use of such funds." This office also serves as a clearing house for all grant applications made by departments and agencies of the city.

Kentucky's environmental cleanup statute is KRS 224.01-400. That statute makes no distinctions for local governments who possess or control hazardous substances, pollutants, or contaminants released to the environment. Its definition of "person" is an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body."

All have not only the authority, but the obligation to take one of four actions regarding releases of hazardous materials: (1) Demonstrate that no action is necessary to protect human health, safety and the environment; (2) Manage the release in a manner that controls and minimizes the harmful effects of the release and protects human health, safety and the environment; (3) Restore the environment through removal of the

hazardous substance, pollutant or contaminant; or (4) Perform any combination of these remedies.

In the 1996 Kentucky Legislature, a new law which originated with the Louisville Brownfields Working Group was passed to further the state's brownfield cleanup efforts. The entire statute contemplates a city or other local government entity acquiring land and working with a prospective purchaser and state regulators to arrive at an appropriate cleanup plan for the intended use of the property. The state would then issue a "No Further Remediation Letter" which remains with title to the land. This statute provides protection from liability for the site to the innocent purchaser, to local government as well as to financial institutions who may become involved in lending money on the deals.

A legal opinion from the Director of Law for the City supporting this proposal is included in Attachment 1.

A.2. Demonstration that Louisville has effective institutional structures in place.

Cooperative Agreement Recipient

The City of Louisville, acting through its Office of Health and Environment (OHE), is the proposed cooperative agreement recipient. OHE has the authority to enter into a cooperative agreement with the EPA, with the University of Louisville, and with the Louisville Community Development Bank as detailed in Section A.1, above. OHE has experience with management and reporting on EPA grant funds through its Brownfields Assessment Demonstration Pilot.

Administering Entity: Lead Agency

OHE will also serve as the lead agency on environmental cleanups carried out by BCRLF loan recipients. The OHE Administrator is an attorney with experience on environmental matters, and has chaired Louisville's Brownfields Working Group since its inception. OHE staff includes environmental professionals with experience in cleanup work performed under the State analog to CERCLA, and an administrative assistant with responsibilities for tracking budgets. OHE also has "level of effort" type contracts in place with eight different contractors that can provide expertise on this kind of work. These contracts, which are currently being used for site assessment work under Louisville's Brownfields Assessment Pilot grant, were competitively bid in accordance with federal contracting requirements.

Administering Entity: Fund Manager

The Louisville Community Development Bank (LCDB) will serve as the BCRLF fund manager. The LCDB is a state-chartered commercial bank. Its president is a former senior vice-president of PNC Bank, and its senior lender, who will be the official responsible for this revolving loan fund, is a former vice president of National City Bank.

For further information on the bank's operations, see portions of the bank's business plan included as Attachment 2 to this proposal.

Brownfields Site Managers

The brownfields site manager appointed to each BCRLF funded project will be either an Office of Health and Environment staff person, or a consultant working under contract to OHE (reference discussion under the *lead agency* section above). Neither the State of Kentucky, nor the City of Louisville, operate a certification program for environmental professionals. OHE has staff, and contractors with contracts in place, that have training and experience in environmental cleanup work. The OHE Administrator will be responsible to ensure that the brownfields site manager designated for each project has necessary expertise in CERCLA and any other environmental programs applicable to the site.

A.3. Description of Proposed BCRLF Pilot Financial Plan

The City of Louisville is requesting \$350,000, the maximum amount available from the EPA for this revolving loan fund. As described in our budget, the City will incur administrative costs, not to exceed \$17,500 (5% of the grant total). This will cover the costs of advertising the program, setting up the applicant screening criteria (described below), gathering baseline data to support the ongoing success measurements that we plan to perform as the program is implemented, providing for brownfields site managers, and site-specific public participation.

The LCDB already has the people and the administrative structure in place to manage this loan program, so there will not be any other costs associated with instituting this program. The costs of loan origination will be 1% of the loan amount, charged to the borrower at closing. The ongoing loan servicing costs incurred by LCDB will be covered by a minimal spread, not to exceed 2%, in the interest rate charged.

We anticipate that, because the LCDB's focus is on small businesses, the BCRLF loans will be used to fund relatively small cleanup projects. The average size of the loans is expected to be in the \$40,000-50,000 range, with six or seven loans issued in the initial round of lending. The money can be disbursed to the borrower within 2 days of the time the funds are received by the bank. The disbursement schedule will also be dependent on the nature and progress of the cleanup project, however. If it is a short-term project (less than one month in duration), an initial disbursement will be made to cover material and wage costs. A hold back will be disbursed upon completion and a final inspection of the project. Longer term projects will require multiple draws that are tied to milestones in the cleanup plan's schedule.

Borrowers will be screened through a variation of the typical loan qualification process that a bank routinely goes through. Environmental and economic development

factors will be added to the regimen of financial tests that are typically used. The University of Louisville has agreed to assist the city in developing an applicant screening process. Reference the discussion on our partnership with the university under Section C.2. We anticipate that the process will follow these basic steps:

- (1) The "bankability" of the project will be determined...is approval of this loan application a sound business decision? Prudent banking guidelines will be used to ensure that loans are properly collateralized.
- (2) Establish an estimate of the extent of need for a subsidized interest rate based on the project's financials.
- (3) Projects will then be reviewed for probable off-site economic and environmental impacts. This review would emphasize the extent to which any one project will enhance the likelihood that other area projects will go forward and/or property values will increase due to new willingness to invest near the brownfield site. Environmental justice concerns will be taken into account in this part of the evaluation.

The implementation schedule for the initial round of lending will be as follows. This schedule starts with the date funds are actually available from the EPA for lending. The initial outreach activities and finalization of the loan screening methodology will be completed within three months. The initial round of lending will be closed within three years, with no less than 50% of the funds disbursed within 18 months, and 80% in two years. The LCDB will track this disbursement activity, the loan periods, repayment schedules, and borrower profiles. The format and timing of reporting this information to the City (and hence to the EPA) will be negotiated in the cooperative agreement between the City and LCDB.

Evaluation Criteria

B. Demonstration of Need

B.1. Problem Statement and Unique Needs of the Community

Centered around land that has formed the core of Louisville's heavy industrial corridor for more than a century, the target area of the Louisville Community Development Bank encompasses the City's most distressed neighborhoods. As much as 25% of this land is old industrial property that is vacant or severely underutilized (converted to cheap warehouse space), including large tracts and obsolete structures boarded up and overgrown with weeds. These are Louisville's brownfields.

All of the neighborhoods heavily affected by the brownfields issue suffer from extreme poverty, with an average of 47.7% of the Empowerment Zone (EZ) residents living in poverty. In addition, these neighborhoods suffer from a 30 year population drain, including a nearly 20% loss in population in the last decade. They are home to the State's highest concentrations of minority residents, with an African-American population of 74.6%. Attachment 3, taken from the LCDB's application for funding from the Community Development Financial Institutions Fund, provides more detailed demographic information about each neighborhood in the EZ, as well as the surrounding neighborhoods that are included in the Louisville Community Development Bank's investment area. It also provides specific information about unmet needs of the investment area. To summarize, western Louisville has experienced a significant level of disinvestment relative to other parts of the Metropolitan Statistical Area and other comparable cities.

The African-American community has borne the brunt of this disinvestment as evidenced by numerous measures of economic activity. Note that the bank was created in response to the realization that no other institution in Louisville exists that has, as its primary mission, the place-based permanent revitalization of the most distressed areas in Louisville. One of the specific goals in carrying out this mission is to enhance the availability of business loans, particularly to African Americans. The brownfields cleanup revolving loan fund will enhance the bank's ability to carry out this mission, and will nicely compliment other products and services offered by the bank.

There are a number of other initiatives under way, in addition to the creation of the LCDB, that are designed to increase jobs and capital investment in the target area. The LCDB Enterprise Group was established to foster business and is committed to building successful companies and accelerating their growth to create jobs and increase wealth for business owners and residents in its target area neighborhoods. The Enterprise Group is affiliated with the Louisville Development Bancorp, a bank holding company,

and the Louisville Community Development Bank, a commercial banking subsidiary of the Louisville Development Bancorp. Working with these partners, the Enterprise Group provides business management and technical assistance to businesses seeking or which have acquired capital from bank and non-bank lenders, and provides non-bank financing to companies with job creation and development potential. The LCDB Enterprise Group operates a business incubator, which houses small businesses and provides marketing and management services for its tenants and other emerging firms in the area. It will also manage a non-bank revolving loan fund to finance pre-bankable businesses, develop commercial projects in the investment area, and create a streamlined system for brokering skills training and providing necessary support for neighborhood residents so that they can successfully gain employment. The LCDB Enterprise Group will also make referrals to the LCDB for loan products, such as the BCRLF, that will meet its customers needs.

The LCDB is physically located across the street from the Nia Center, which brings together the essential components of the Louisville Empowerment Zone economic development strategy. Along with the LCDB Enterprise Group, the Nia Center Campus houses a Business Information Center managed by the Small Business Administration, a Neighborhood Travel Center managed by the Transit Authority of River City (TARC), and the Workforce Development Partnership Center. The Workforce Development Partnership Center has several elements designed to create an effective, self-sustaining and entrepreneurial intermediary that will create economic opportunity for residents of the Empowerment Zone through skills development and job placement:

- Workforce Skills Academy - modeled after Detroit's Project Hope Fast Track program and San Antonio's Project Quest program, will provide work-readiness training through a contextual learning approach. It will provide remedial skills development (self-paced computer and one-to-one tutorial assistance) training to meet functional grade level requirements of the employers; industry-specific pre-trade skills training, other employment-related skills development training (i.e., basic computer literacy, including word processing and other software packages, life skills, pre-employment skills).
- Career Resources, Incorporated (CRI) - will provide total assessment, case management, career consulting, and job placement services. CRI will broker all training and support dollars for the Workforce Development Partnership Center and through the Private Industry Council, serve as personnel agent for staffing.
- Child Care Component - funds of "last-resort" will be available for Empowerment Zone residents enrolled in the Workforce Skills Academy. A child care voucher system will provide access to child care providers located within the Empowerment Zone. These funds will enable trainees to successfully engage in job training activities provided at or through the Workforce Skills Academy.

- Community Network - locating potential new employees for the Algonquin Center will be the mission the Empowerment Zone Community Support Network. This network represents an array of agencies who embrace the Workforce Development Partnership Center's training component. Forty-eight active partners derive from disciplines including: education, social justice, health, welfare, religion and recreation. The partners have committed themselves to active participation by referring residents of the Enterprise Community to the Workforce Development Partnership Center on a continual basis.

Because the Louisville Community Development Bank, the LCDB Enterprise Group and the Workforce Development Partnership Center share not only the same campus but complementary missions, they will work in concert to support efforts to revitalize Louisville's inner-city Brownfields. Community outreach, access to capital, and business development within former brownfields will all be enhanced by this public-private partnership.

The Park DuValle revitalization project is a HUD-funded effort to redevelop two of Louisville's oldest housing projects in one of the highest crime areas of the city (the southwest section of the EZ). These two housing projects are being torn down, along with some structures on adjoining property that has been acquired, and an entirely new neighborhood is being developed. The new neighborhood will include a mixture of single family owner-occupied housing, market rate rental housing, and subsidized rental housing. A commercial marketplace is also included in the plans. This is the largest project of its kind in the United States. It encompasses an area of over 200 acres and will take about ten years to complete.

B.2. Description of Potential Borrowers and Property

Due to several unknowns, including the timing of the availability of the BCRLF, it is difficult to predict at this time who the borrowers will be, or exactly what properties the BCRLF funds will be directed toward. A few examples of current properties and/or business opportunities that have come to the attention of the Brownfields Working Group that may benefit from this revolving loan fund can be given, however.

The Exmet site is an abandoned facility located on a 3.25 acre parcel on Merriwether Street in the southern tip of the eastern section of the Empowerment Zone. While in operation, the company accepted hazardous waste as a feedstock that was processed and used for fertilizer production. The Exmet Company went bankrupt, leaving behind a large quantity of this hazardous waste, along with a baghouse filled with hazardous waste, and some large above ground tanks containing hydrochloric acid, ammonia, and other chemicals. The State of Kentucky was able to get a court order requiring the generator of the remaining hazardous waste to remove it and some of the tanked materials. The State is planning to demolish a building in order to remove the

Appendix D, Part 2 Sample Cooperative Agreement Application

remaining tanks, the baghouse and the materials stored in them at a total cost of around \$300,000. The city is planning to foreclose on the property, due to delinquent taxes, and characterize subsurface contamination utilizing our brownfields assessment grant funds. A prospective purchaser has approached the city and the state, expressing interest in constructing a recycling plant on the property. This would be a compatible use for this site, as it is directly across the street from the city's Solid Waste Management Services waste collection center. BCRLF funds could be used by the prospective purchaser for cleanup of any remaining waste and contaminated soil or groundwater after the city completes the characterization.

The abandoned warehouse that took up an entire city block on Rowan Street between 21st and 22nd Streets burned to the ground last month (reference news article in Attachment 4). This warehouse was once used for illegal storage of hazardous waste and is believed to have contained some sort of flammable chemicals at the time of the fire. The city will probably place liens on the property for the cost of responding to the fire and removal of debris from the site afterwards. The building supply business that was operating out of the warehouse went bankrupt. This property may be a good candidate for a BCRLF financed cleanup of soil contamination that is believed to be present at the site. It is about 2.5 acres of level land situated directly across the street from a Western Middle School.

The City of Louisville has had some encouraging results with efforts to redevelop inner city industrial parks as described in news articles contained in Attachment 5. Both the completed Station Park and the planned Shippingport project are within the Empowerment Zone. The environmental condition of properties within Shippingport varies, and the City anticipates that some environmental cleanup work will be needed. The Baughman Group property, discussed at the end of the news article, is a good example of where BCRLF funds could contribute to the success of a large scale economic development project. This particular cleanup project (removal of contaminated soils) is expected to be complete by August of 1997, however.

Another example of a property/borrower that could be a good target for financing of environmental cleanup with BCRLF money is a 3 acre property at 15th and Main Street, immediately adjacent to (across Main Street from) the Shippingport area. There is an 80,000 ft² building on the property that has been used as a machine shop during much of its 100 year history. This vacant property is now under contract, but the prospective purchaser is concerned about moving forward on the deal due to probable environmental problems identified in the Phase I Environmental Assessment, namely contamination of the dirt floor with lubricating oils and degreasing solvents. This prospective purchaser is a seed and dried bean company that employs 45 people and has outgrown its current location. Though the company would prefer to stay in the city, the owner is considering the alternative of relocating on a greenfield site outside of Louisville. He has approached the city, asking if there is any assistance available to him

through our brownfields program. We may assist him by paying for the site characterization work with assessment grant money, but that may not be enough to move the deal forward. The BCRLF financing of cleanup activities could assist with bringing this and other similar deals to fruition.

The projects discussed above have been identified through interested parties coming to either the Office of Health and Environment or to the Office of Economic Development and asking what the brownfields program might offer to them. They know about the brownfields program through various outreach activities that have been carried out over the past two years. We also receive requests on a regular basis for help in identifying brownfield sites that may fit a particular need through the use of our GIS database that was developed as a key element of Louisville's brownfields program. We continue to expand and improve that database, so it is expected that its use as a tool to identify sites will likewise grow. In addition, the Community Development Bank does a substantial amount of outreach in its target area. Outreach is further described in Section D, below.

B.3. Ability to Finance Cleanups

The public-private partnerships created to reverse the disinvestment within Louisville's Enterprise Community bring to bear new sources of capital to establish new businesses, improve housing stock and create jobs. The BCRLF would close a gap by providing funds directed to revitalizing brownfields. These funds are currently within short supply within the Enterprise Community. See the discussion under Section C below for further information on how we plan to leverage BCRLF funds by requesting the participation of commercial banks.

C. Commitment to Creative Leveraging of EPA Funds

C.1. Ability to Attract and Support Other Financing

The Louisville Community Development Bank's commercial lending unit has targeted small manufacturing, industrial and service firms which are minority owned and/or are located in or near the investment area. SBA guarantees will be a specialty of the bank that will be relied on to manage risk associated with lending to promising entrepreneurs who have limited business or personal assets to pledge as collateral. These same small business customers are expected to be the primary source of borrowers of BCRLF funds. A BCRLF loan will reduce the amount and the cost of the SBA guaranteed commercial loan needed, making brownfield redevelopment a more attractive option. Preference will be given to making loans to projects that would not be economically viable without BCRLF funding.

Our ultimate approach to leveraging of other funds specifically for cleanup activity will depend largely on the level of demand for these loans. Generally, participation by private lending institutions will only occur if these loans can be made at the prime rate or above. Loans at interest rates below the prime will result in the lending institution taking a loss on the loan. Though the banks have an interest in any loan product that will generate credits for them under the Community Reinvestment Act, that is secondary to their need to be profitable. Assuming that these loans can be profitable, there are three options that we have identified to approach leveraging funds from private institutions.

First, we can ask the banking community for matching funds. The Louisville Branch of the Federal Reserve Bank of St. Louis (The Fed) has agreed to assist us in seeking matching funds from private institutions. Reference the letter of support from the Fed in Attachment 6. The Fed has an established network of local bankers that they deal with regularly regarding Community Reinvestment Act compliance and other issues. This network of contacts and the Fed's assistance have already been invaluable to Louisville's brownfields program. We have had four brownfields outreach meetings directed specifically toward lenders that were hosted by the Federal Reserve. These meetings have been educational in nature, with guest speakers making presentations on various brownfields issues. The lenders have thus been "warmed up" to the idea that lending on brownfields properties can make good business sense. They are also well aware that these types of loans will help their rating under the Community Reinvestment Act. The LCDB is able to set up and manage pools of funds with multiple participants.

Second, we are proposing to make BCRLF funds available to guarantee loans made by private institutions in addition to being able to lend the funds directly. This could result in significant leveraging of funds, as the guarantee would only cover a percentage of the loan. A 20% loan guarantee, for example, could result in a \$1 million loan with a commitment of only \$200,000 in BCRLF funds. The loans covered by these guarantees would be required to meet the same eligibility requirements as BCRLF loans themselves.

Third, the Louisville Community Development Bank can sell loans on the secondary market. This could be an effective tool in accelerating the recapitalization of the revolving loan fund after the initial round of lending is complete.

C.2. Cash and In-Kind Contributions

In-kind contributions will take several forms. The Office of Health and Environment will not expect reimbursement from the fund for administration, contract management, and in-house technical support that it provides. The LCDB will tie this loan product into outreach activities that are routinely conducted at no cost to the fund. The services of the Land Bank, the revenue given up by the taxing authorities, and

possible discounted property sale prices are in-kind contributions that could have a role in some BCRLF deals. See section E.1, below, for a complete explanation of the role the Land Bank plays in some brownfields deals. Overhead and some direct costs of evaluation and impact assessment activities carried out by the University of Louisville are in-kind contributions. The Office of Economic Development's participation in recruiting small businesses that may be borrowers is another.

The City of Louisville has a capital account set up that could be used to supplement BCRLF funds. See Attachment 7 for a description of this fund, the current funding level (\$100,000 funded in the '96-'97 budget year) and the amounts requested for each year through 2002. A portion of this money could be used to supplement BCRLF funds or to pay for brownfields site manager expenses if this expense is higher than anticipated. This money can also be used for brownfields acquisition costs and cleanup expenses directly incurred by the city. Until we know what the actual demand for BCRLF funds is, and the actual funding levels provided to this account in future years, we prefer to maintain maximum flexibility in how these funds are spent. Note that, if this funding is used to purchase property or to pay for a portion of cleanup costs with the balance funded through a BCRLF loan, it would still be a significant commitment of local funds that will contribute to the overall success of brownfields projects and the BCRLF.

C.3. Efficiency of Planned Administrative Structure

Use of the Louisville Community Development Bank as fund manager is a key aspect of Louisville's proposal that will contribute to administrative efficiency. The LCDB is a natural choice for this role because, much like the brownfields program and the BCRLF pilot in particular, the LCDB has economic revitalization of distressed areas of the city as its primary mission. The LCDB also is an institution that has experience in lending and is already established. Sustainability of its products is also a necessity to the long-term success of the bank; another attribute important to the BCRLF. The LCDB is a private institution that is dependant on both good business decisions and successful economic revitalization for its long-term survival. The LCDB has much more contact with the rest of the Louisville banking community than does any governmental institution. We expect this to add efficiency to the loan availability notification process, and make it easier to leverage other private financing with BCRLF funding.

D. Benefits of BCRLF Loans to the Local Community

D.1. Announcement and Notification of BCRLF Fund Availability

Notification of the availability of BCRLF funds will be accomplished in at least three ways. First, an advertisement will be placed in *The Courier-Journal*, *Business First*, *The Defender*, *American Builder and Contractor*, and *Homebuilders Association*.

Second, we plan to print 5,000 brochures that will describe the loan program and distribute them to every bank in Louisville, the Office of Economic Development, the Small Business Administration, The Federal Reserve Bank, the Justice Resource Center, and others. The City and the LCDB will continue to keep these stakeholders informed on the status and availability of the BCRLF loan funds. They will serve as effective conduits of information to potential borrowers. These stakeholders and their roles are as follows.

The Louisville Community Development Bank (LCDB), which will serve as the fund manager, will have direct contact with potential borrowers within its target geographic area. Besides having the brochure available, the bank has a physical presence. It is in a stand alone building, located within the lending target area, that attracts visits from customers that come to the bank to pursue project funding. Other forms of communications with potential borrowers will be in the form of indirect communications through the LCDB's investor banks. Every bank that does business in the Louisville metropolitan area, with one exception, has purchased an equity stake in the LCDB. These investor banks are all a part of LCDB's communication network. Note that the LCDB differs from regular commercial banks in the higher level of involvement/assistance that it offers to its customers. Reference Attachments 2 and 3 for further information on the bank's operations.

The Louisville Branch of the Federal Reserve Bank of St. Louis, which is represented on Louisville's Brownfields Working Group, has also committed to assist the City with outreach to private lending institutions. These lending institutions will, in turn, be able to identify customers that have a need for this type of loan, and direct them to the Community Development Bank. These lenders have incentive to assist in this way because these loans will reduce their risk on projects that include cleanup activities. This activity is consistent with the Federal Reserve's mission in helping banks comply with their Community Reinvestment Act obligations. Reference the letter of support from the Federal Reserve in Attachment 6.

The Justice Resource Center (JRC), which will be the partner performing community outreach activities for specific loans/cleanup projects under this proposal, may also be able to help identify small businesses and brownfield properties within the community that could benefit from a BCRLF loan. The JRC has the advantage of having the closest ties to the community of all the partners involved in this proposal.

The Office of Economic Development (OED) is a joint city-county agency that assists in the development and expansion of area businesses. Local businesses and businesses that are considering expansion into the Louisville area will often come to OED with inquiries about the availability of funds for development projects.

The Kentucky District Office of the Small Business Administration (SBA), which is located in Louisville, has regular contact with small businesses that are seeking capital. SBA has agreed to distribute our brochures and otherwise inform small businesses about our BCRLF program as appropriate.

D.2. Community Involvement in Future Land Reuse

It is anticipated that a remediation plan will have already been developed at the time a potential borrower applies for a BCRLF loan. Prior to approving a loan application under this program, a public notice will be issued. This public notice will solicit comments on the remediation plan and the appropriateness of the loan itself. The public notice will describe the planned future use of the property and offer the opportunity for a public meeting on the proposed loan and remediation plan. The public notification will also be sent directly to everyone on a brownfields mailing list that will be maintained. The Justice Resource Center, which is a local civil rights group active with environmental justice issues, has agreed to take on a partnership role in implementing the BCRLF program. The JRC will handle the public notification process, will maintain a copy of the administrative record on each project, and will chair the public meetings.

The University of Louisville's Center for Environmental Management is another partner in this process. Their role, which is described in greater detail in Section E.2, will include prediction of the future community impacts that a proposed loan would have, and measuring the actual impacts of completed BCRLF-funded cleanups on their surrounding communities.

The State of Kentucky does not have standards specific to land-use based environmental cleanups. It is anticipated that most, if not all, cleanups funded with BCRLF funds will be performed in accordance with Kentucky's response to release requirements found in KRS 224.01-400. Though this statute does not contain explicit provisions for land-use based cleanups, it does provide for a remediation option of "Managing the release in a manner that controls and minimizes the harmful effects of the release and protects human health, safety, and the environment". Kentucky has an effort underway to establish a voluntary cleanup program that would be more explicit with regard to land-use based cleanups and presumptive remedies for management of contaminants in place at commercial and industrial sites.

D.3. Contribution to Community Economic Development Plans

The geographic area that Louisville has dubbed its empowerment zone (the federally designated enterprise community) is within the area targeted for BCRLF loans. Reference the map included in Attachment 3. This area is also part of the state

designated enterprise zone. More information on specific economic development efforts that support this area is included in Section B.1, above.

D.4. Environmental Justice Benefits

The geographic area that will be targeted for BCRLF loans is a predominantly minority area and has high levels of poverty associated with it. The simple fact that this area was selected demonstrates the City's commitment to address environmental justice and "economic justice" concerns that exist within these parts of our City.

The Office of Health and Environment (OHE) has an established relationship with the Reverend Louis Coleman who heads up the Justice Resource Center. The Justice Resource Center (JRC) is the local organization that is most active in environmental justice issues in Louisville, as evidenced by JRC's selection last year to receive a \$20,000 environmental justice grant from the EPA. OHE has worked with Reverend Coleman through involvement in the West County Community Involvement Project, the Chickasaw Lake dioxin contamination problem, the Park DuValle redevelopment Environmental Subcommittee. OHE also made a presentation on Louisville's brownfields program at a February 27, 1997, town hall meeting that was hosted by the Justice Resource Center and sponsored by the Environmental Justice Resource Center from Clark Atlanta University. The primary benefit derived from our work with the JRC is that we have gained a much better understanding of what the community sees as the top priorities from an environmental standpoint. In order to ensure that environmental justice concerns are not overlooked, we have solicited help from the JRC in implementing the community outreach portion of our BCRLF pilot. Reverend Coleman has agreed to this arrangement.

The West County Community Involvement Project (WCCIP) mentioned above is closely aligned with an EPA-sponsored project being carried out by the University of Louisville known as Environmental Justice through Pollution Prevention. The text of the grant proposal that describes this work is included as Attachment 8 to this proposal. The geographic focus of this project has considerable overlap with the Community Development Bank's target area that will be the focus of the BCRLF funds. The clear environmental priorities of the west Louisville community, established through extensive outreach activities of the WCCIP, are focused almost exclusively on air quality concerns. In response to this, we will give preference to redevelopment projects that have minimal impacts on air quality.

D.5. Projected Sustainable Benefits

The Office of Health and Environment (OHE) is the municipal agency primarily responsible for implementing the brownfields program. It is difficult to project at this time, especially beyond the three year period for completing the initial round of lending,

what the workload associated with this and other environmental programs of the city will be. This is the reason that our budget includes funding for a consultant to serve as the Brownfields Site Manager on BCRLF projects, as opposed to performing this function entirely in-house. OHE already has "level of effort" type contracts in place with eight different contractors that can do this kind of work. These contracts were competitively bid in accordance with federal contracting requirements, and are renewable annually for up to five years total. We are currently in second year of the five, and it is anticipated that the contracts will be rebid before the end of the five years. These are the same contracts that are currently being used for site assessment work under our Brownfields Pilot grant. Though we anticipate that the BCRLF funds will cover the costs of the brownfields site managers, we do have other resources available. OHE does have sufficient technical/regulatory expertise to perform this function in-house for a limited number of projects. We also have a capital account established that is targeted for the acquisition and remediation of brownfields properties, and/or to supplement the BCRLF funds provided by the EPA. See Attachment 7 for a description of this fund, the current funding level (\$100,000 funded in the '96-'97 budget year) and the amounts requested for each year through 2002. A portion of this money could be used to pay for brownfields site manager expenses.

One of the benefits of having the Louisville Community Development Bank (LCDB) serve as the fund manager for the BCRLF is that LCDB is a fully chartered bank that is expected to be doing business with this community for a long time to come. The LCDB has an urban mission that is very consistent with the goals of the brownfields program.

It is anticipated that the availability of BCRLF funds will make it economical to clean up and redevelop some brownfields properties that would otherwise lay fallow for some time to come. There are both direct and indirect environmental benefits resulting from these projects moving forward. The direct benefit is that contamination is cleaned up, eliminating the risk of exposure. The indirect benefit is that after the property is redeveloped, it will presumably be maintained. It will be much less likely to become a dump site for debris such as waste tires, old wood pallets, appliances, etc. that we have found to be a common characteristic of most brownfields sites in Louisville.

Economic benefits are derived from increased property tax revenue and from jobs provided to the community. As an example, one specific brownfields redevelopment project we are currently evaluating could result in 45 jobs being retained in Louisville that could otherwise be relocated out of town and, possibly, out of state. This 3 acre property is currently vacant, and is located immediately adjacent to the Shippingport Center target area (See Attachment 5). The successful redevelopment of the property would provide valuable momentum toward the success of the overall Shippingport redevelopment effort. The business is also a non-polluting industry.

E. Long-Term Benefits and Sustainability

E.1. National Replicability

The major innovation Louisville has now launched is the Louisville Community Development Bank - the entity that will serve as the Fund Manager. The LCDB has a sharp spatial and community focus - on an area that includes a major concentration of brownfield sites - and then empowers it to work on redevelopment of brownfields. With major backing from area commercial banks and loan pools financed by other institutions, as well as a capacity to broker loans and form lending consortia, the LCDB provides a model for the extent to which brownfields redevelopment can be stimulated and accelerated simply through the presence of a financial institution with an interest in such investments. The availability of the revolving loan fund as an investment tool that increases the potential to provide subsidized capital for brownfields redevelopment strengthens the hand of the CBD and enhances its funds from major commercial lenders to directly leverage the small revolving loan pool for brownfield projects.

The LCDB is already focused on contaminated sites and those with contamination stigma. Local financial institutions are already prepared to work through the LCDB to participate in loans that contribute to their improved performance relative to Community Reinvestment Act criteria. Thus the financial community has already institutionalized some level of investment in brownfields. The Revolving Loan Fund will (a) demonstrate another mechanism for funding brownfield cleanups, (b) accelerate redevelopment by making available loans for cleanups, a type of loan many financial institutions are not willing to provide, and (c) increase the probability of success of redevelopment proposals by providing a subsidy to the projects, in the form of below market rate loans for cleanup costs.

Having a revolving loan fund will also contribute to improved management of brownfield redevelopment efforts city-wide. This impact will arise from the need to target and prioritize the limited loan funds available, and from the resulting cooperative applicant recruitment and screening processes being developed by the LCDB, the local Office of Economic Development and the Office of Health and Environment, the lead agency for this project.

National replicability will depend on the nature of available financial institutions. There is no reason an institution other than a community development bank could not play the role Louisville is assigning to the LCDB. Thorough documentation of the project development and screening processes and loan decisions, along with monitoring of the loan outcomes in terms of pollution changes, business developments and neighborhood impacts will help establish the conditions appropriate for replication of the Louisville approach.

Another aspect of Louisville's brownfields program that may be useful as a model to other communities is our adaptation and use of the Land Bank Authority (LBA) to foreclose on, and hold title to, tax delinquent property. The LBA is an entity that was set up to represent all four taxing jurisdictions in mass foreclosure actions on tax delinquent property. Liens for delinquent taxes are cleared upon foreclosure by the Land Bank. The Land Bank normally would then sell the property and split the proceeds among the four taxing jurisdictions. The LBA has historically dealt only with residential property. We are close to an agreement with the four taxing entities that will institutionalize the LBA's role in brownfields. Under this agreement, the LBA will, at the request of one of its board members, foreclose on brownfields properties and clear the tax liens as described above. The innovative part of this is that the sale proceeds will be placed in a separate fund for use in the acquisition and cleanup of future brownfields sites, rather than splitting the money up between the member jurisdictions. This will not have a bearing on all BCRLF deals, but it will provide a source of properties that will be targeted for BCRLF financed cleanups, such as the Exmet property described in Section B.2, above. It is also possible that a portion of a cleanup would be performed by the city, and payed for with this special fund. The cleanup could then be completed by a purchaser using BCRLF funds.

E.2. Measures of Success

The impacts of the Brownfields Cleanup Revolving Loan Pilot will be measured in several dimensions: financial performance, economic development measures, and removal of environmental barriers.

Financial performance will be measured in terms of the dollar volume of loans approved, the rate of default, and the volume of dollars leveraged with BCRLF funds.

Economic development measures will be the number of jobs created or retained at the cleanup site, new enterprises created, and the number/size of properties returned to the tax rolls. To the extent that data is available, we will also measure changes in property values for the brownfield sites themselves and properties in the neighborhoods that are in close proximity to these sites. We will also quantify the changes in tax revenues associated with these changes in property values.

Environmental progress will be measured in terms of the actual volume of land cleared of environmental barriers and delivered to the market for development. We will also quantify reductions in actual environmental risks associated with each brownfield cleanup, to the extent practical given the data and toxicological information available for the site.

Regular monitoring of individual project and overall program impacts will be conducted under the leadership of the Center for Environmental Management of the

University of Louisville (CEM). See the letter of support from the University, included as Attachment 6 to this proposal. We list here the criteria to be used, the measures to be employed, and the data required to construct the measures. These are standard assessment tools, with the exception of the Neighborhood Impacts measures. CEM has been involved in deriving means of estimating this impact - the increases in area property values resulting from cleanup of a site. All items except the last are transferable to other comparable settings; tax revenue increases depend on the structure of local taxation.

CRITERION	MEASURE	DATA
Environmental Cleanup	contamination removed	pre- & post-mitigation site assessments
Envir. Barriers Removed	acreage redeveloped	totals across funded projects of redeveloped land; acreage redeveloped/\$
Loan Performance	loan default, call, payback	loan data, by type, size of project
Fund Maintenance	depletion of revolving funds	interest credited to fund annually minus administration costs charged
Financial Leverage	non-RLF \$\$s used in projects	leveraged funds used in cleanups; loans made for redevelopment after cleanup
Property Value Impact	increased site property value	site's new assessed value after redevelop
Neighborhood Impacts	area property value increases	change in sales, rental prices in the immediate area of redeveloped sites
Employment Impacts	net new jobs created	# jobs resulting from projects, adjusted for relocation, displacement effects
Income Impacts	net new payroll, profits	data on businesses created, expanding
Tax Increases	property values; net new jobs	from tax rates and estimated impacts

Data will be analyzed by CEM, using student interns and faculty guidance as needed. Findings will be updated and reported annually to OHE. This annual report will presumably fulfill most of the reporting requirements that will be negotiated as part of the BCRLF cooperative agreement between the EPA and the City of Louisville.

BCRLF List of Attachments

- Attachment 1...Legal opinion from City Law Director
- Attachment 2...Portions of the Louisville Community Development Bank's Business Plan
- Attachment 3...Portions of LCDB's application for a Community Development Financial Institutions grant
- Attachment 4...News article on Warehouse fire
- Attachment 5...News article on Station Park/Shippingport
- Attachment 6...Letters of support
- Attachment 7...City budget sheets/descriptions
- Attachment 8...U of L EJPP grant (text only)

Attachment	Description	Page
1	Legal opinion from City Law Director	1-2
2	Portions of the Louisville Community Development Bank's Business Plan	3-10
3	Portions of LCDB's application for a Community Development Financial Institutions grant	11-15
4	News article on Warehouse fire	16
5	News article on Station Park/Shippingport	17
6	Letters of support	18-20
7	City budget sheets/descriptions	21-25
8	U of L EJPP grant (text only)	26-30

Appendix E Entities Selected for FY97 BCRLF Pilot Program

REGION 1
Bridgeport, CT
Boston, MA

REGION 2
Trenton, NJ
Rochester, NY

REGION 3
Baltimore, MD
Philadelphia, PA
Pittsburgh, PA
Richmond, VA

REGION 4
Birmingham, AL
Louisville, KY
St. Petersburg, FL* \$350,000

*Part of a special package of assistance the White House initiated in response to the civil disturbances in early 1997.

REGION 5
Detroit, MI
State of Illinois
West Central Municipal Conference, IL
Indianapolis, IN
State of Indiana
State of Minnesota
Cuyahoga County (Cleveland), OH

REGION 6
New Orleans, LA
Dallas, TX

REGION 7
St. Louis, MO

REGION 8
West Jordan, UT
Denver, CO

REGION 9
Sacramento, CA

Appendix F

List of the U.S. EPA Brownfields Policy and Guidance

- Policy on the Issuance of Comfort/Status Letters (November 12, 1996)
- Soil Screening Guidance Fact Sheet (July 1996)
- Revised Model Comfort Letter Clarifying NPL Listing, Uncontaminated Parcel Identifications, and CERCLA Liability Involving Transfers of Federally-Owned Property (January 16, 1996)
- Underground Storage Tank Lender Liability Rule (September 7, 1995)
- Land Use in the CERCLA Remedy Selection Process Directive (May 25, 1995)
- Community Reinvestment Act Regulations and Home Mortgage Disclosure (May 4, 1995)
- Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions (May 3, 1995)
- Military Base Closure: Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels Under CERCLA Section 120(h)(4) (April 19, 1994)
- Guidance on Agreements with Prospective Purchasers of Contaminated Property (May 24, 1995)
- Policy Toward Owners of Property Containing Contaminated Aquifers (May 24, 1995)
- Recently Enacted "Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996"
- The Effect of Superfund on Involuntary Acquisitions of Contaminated Property by Government Entities (December 11, 1995)
- Policy on CERCLA Enforcement Against Lenders and Government Entities that Acquire Property Involuntarily (September 22, 1995)

Appendix G

Key Regional and National Brownfields Contacts

EPA REGION 1

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Appendix H

Approved Deviation Request



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

SEP 26 1997

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Class Deviation from Sections of 40 CFR Part 35, Subpart O
FROM: Gary M. Katz, Director
Grants Administration Division (3903R)
THRU: Harvey G. Pippen, Jr., Director
Office of Grants and Debarment
TO: Timothy Fields, Jr.
Acting Assistant Administrator for
Solid Waste and Emergency Response

This is to inform you that I have approved a class deviation for recipients of EPA's Brownfields Cleanup Revolving Loan Fund (BCRLF) Demonstration Pilot Cooperative Agreements. Because of your expressed interest in the Brownfields Initiative, I am providing you with a copy of this approval.

OGC has advised we do have legal authority to use CERCLA funds for revolving loans and has both reviewed and approved this deviation.

Attachment

cc: Al Pesachowitz

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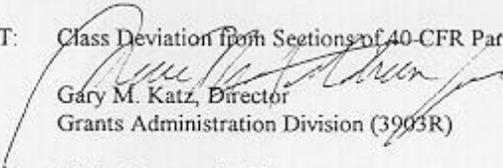


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 26 1997

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Class Deviation from Sections of 40 CFR Part 35, Subpart O
 FROM: 
 Gary M. Katz, Director
 Grants Administration Division (3903R)
 TO: Linda Garczynski, Director
 Outreach/Special Project Staff
 Office of Solid Waste and Emergency Response

This is in response to your August 29, 1997, request for a class deviation from certain specific requirements of the regulations included in 40 CFR Part 35, Subpart O under EPA's Brownfields Cleanup Revolving Loan Fund (BCRLF) Demonstration Pilots.

Action

I am approving a deviation from those portions of 40 CFR 35.6105(a), (incorporated by reference at 40 CFR 35.6205(a)) which requires the recipient to submit with its application site-specific information.

Background

EPA's Brownfields Economic Redevelopment Initiative is designed to empower states, local governments, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely cleanup and sustainably reuse brownfields. As part of this initiative, EPA will award Brownfields Cleanup Revolving Loan Fund (BCRLF) Demonstration Pilots to the states, cities, towns, counties, territories, and Indian tribes to test BCRLF and facilitate coordinated public and private cleanup efforts.

For the 1997 fiscal year (FY97), only entities that have been awarded National or Regional brownfields assessment pilots prior to October 1995 will be eligible to apply to EPA's BCRLF demonstration pilots. The Agency will initiate follow-up cleanup grants of up to \$350,000 each to capitalize revolving loan funds for 29 pilot recipients who completed the initial brownfield pilot stage

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The BCRLF demonstration pilot cooperative agreements will be funded under §104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA).

Conclusion

Exploring such a pilot as the BCRLF was not envisioned at the time 40 CFR Part 35 Subpart O was promulgated. To allow the states to demonstrate, on a pilot basis, their ability to meet their stated objectives, a deviation is needed from those portions of 40 CFR 35.6105(a), as referenced in 40 CFR 35.6205(a) and (c), which require the recipient to submit with its applications site-specific information because site identification will not occur at the application phase of the cooperative agreement. OSWER states it is not reasonable for EPA to require recipients to identify specific sites in cooperative agreement applications since one purpose of the program is to empower states and local governments to work with other stakeholders in economic redevelopment to identify sites that warrant cleanups under the BCRLF pilot program. Cooperative agreement recipients will submit all site-specific information required under 40 CFR 35.6105(a) to EPA once a site is identified and the information becomes available.

You also requested a deviation from 40 CFR 35.6205(d) to allow EPA to waive the state cost share assurance for removal costs on behalf of a political subdivision for the BCRLF pilot cooperative agreements. The Office of General Counsel (OGC) has provided clarification of CERCLA cost share requirements in the case of removal cooperative agreements. OGC has advised us that no deviation is required from this provision because such assurance is only required when a fund-financed remedial action is undertaken. Thus, because the BCRLF demonstration pilot cooperative agreements are to be limited to removal actions, a deviation covering remedial actions is unnecessary.

All other requirements of 40 CFR Part 35, Subpart O will apply to the BCRLF pilot cooperative agreements.

Appendix I BCRLF Financial Scenarios

This appendix presents the results of four hypothetical alternative loan fund structures that vary based on differences in key design elements. While it is impossible to show all potential fund structures, it is intended that these four structures will show the impact of differences in key components on the fund corpus and loaning potential. The components of each fund's structure which will likely have the most significant impact include:

- *Additional capitalization* -- the BCRLF pilot program encourages (although does not require) non-federal contributions to the capitalization of the fund;
- *Loan term* -- the BCRLF pilot program does not establish any requirements on the length of loans, but each cooperative agreement recipient is expected to use sound judgement when establishing loan durations;
- *Interest rate charged on loans* -- the BCRLF pilot program only requires that rates be set at between 0 percent and the prevailing market rate; and
- *Fees charged to loan applicants* -- the BCRLF pilot program does not establish any guidelines on the level of such fees.

For demonstration purposes, each of the four components described above will be altered in the four example fund structures presented in this appendix. In addition to these components, numerous decisions will need to be made by fund managers that also will affect the fund's structure and lending capacity. Other structural components that will affect the fund corpus and loaning potential include provision for administrative costs, interest earned on loan balances, and method/timing of disbursement to borrowers.

For illustrative purposes, the funds have been named based on their distinguishing characteristics, as follows:

- *"Bank-like" Fund* -- characterized by non-subsidized interest rates, relatively high loan processing fees, and short loan terms.
- *"Subsidy" Fund* -- characterized by highly subsidized interest rates, no loan fees, and long loan terms.
- *"Average" Fund* -- characterized by moderately subsidized interest rates, moderate loan fees, and medium-length loan terms.
- *"Additional Capitalization Average" Fund* -- characterized by the same interest rates, loan fees and loan terms as the "Average" Fund, but with additional non-federal capitalization.

"BANK-LIKE" FUND

The "Bank-like" Fund charges interest rates of 6 percent and 2 percent loan fees. The average term of a loan from the "Bank-like" Fund is two years. Such short loan durations facilitate quick repayment and relending of funds. The structure of the "Bank-like" Fund makes borrowing costs

higher, but enables assistance to be given to a larger number of projects. As a result, the leverage ratio of total loaned funds to federally awarded dollars is high (e.g., in year 10 as structured here, 5.79).

“Bank-like” Fund Inputs			Value
Award amount (\$)			\$350,000
Non-federal capitalization			\$0
Interest rate on loans			6.0%
Loan fees (upfront)			2.0%
Average term (years)			2
“Bank-like” Fund Outputs	Nominal	PV (\$ Year 1)	Leverage Ratio (\$Loans : Fed\$)
\$ Value Loans, Year 3	\$696,062	\$662,412	1.89
\$ Value Loans, Year 5	\$1,193,550	\$1,091,992	3.12
\$ Value Loans, Year 10	\$2,431,247	\$2,025,065	5.79
\$ Value Loans, Year 15	\$3,656,309	\$2,784,006	7.95
Cash Balance, Year 15	\$136,712	\$75,911	
Value of Outstanding Payment Stream (Per 15 on)	\$197,414	\$106,104	

“SUBSIDY” FUND

In contrast to the “Bank-like” Fund, the “Subsidy” Fund charges loans a highly subsidized interest rate of 2 percent and no loan fees. In addition, the “Subsidy” Fund spreads repayment out over a much longer loan term, an average of 8 years in this example. Borrowing costs are thus kept very low and loan terms are attractive. Due to the long loan terms and subsidies, however, fewer loans will be made (i.e., fewer projects assisted) over a given time. The leverage ratio in year 10 of the “Subsidy” Fund as structured here is only 2.10 loaned dollars per dollar of federal award.

“Subsidy” Fund Inputs			Value
Award amount (\$)			\$350,000
Non-federal capitalization			\$0
Interest rate on loans			2.0%
Loan fees (upfront)			0.0%
Average term (years)			8
“Subsidy” Fund Outputs	Nominal	PV (\$ Year 1)	Leverage Ratio (\$Loans : Fed\$)
\$ Value Loans, Year 3	\$365,216	\$353,718	1.01
\$ Value Loans, Year 5	\$486,263	\$458,214	1.31
\$ Value Loans, Year 10	\$853,226	\$733,818	2.10
\$ Value Loans, Year 15	\$1,209,020	\$953,938	2.73
Cash Balance, Year 15	\$40,896	\$22,708	
Value of Outstanding Payment Stream (Per 15 on)	\$293,886	\$146,394	

“AVERAGE” FUND

It is anticipated that many BCRLF pilot loan funds will be structured in a manner that they fall in between the two extremes of “Bank-like” and “Subsidy”. Such funds will be able to provide low cost loans to borrowers while maintaining a viable fund that recycles loans in a timely manner enabling the assistance of many projects. An “Average” Fund example has been provided here to demonstrate one of the many ways such a fund could be structured. This structure in no way is meant to represent the ideal fund structure. The actual structure for each fund will be determined by the needs of the borrowers and capacity of the fund to supplement borrowing subsidies with additional matching capitalization.

As structured here, the “Average” Fund charges an interest rate of 4 percent and loan fees of 1 percent. This interest rate is somewhat subsidized (depending upon borrowers’ alternate sources and prevailing market rates), giving borrowers reduced cost loans, but not drastically impeding the ability of the fund to recoup lending costs. The average loan term is 5 years, which is short enough to recycle funds in a timely fashion, while at the same time giving the borrower a reasonable time frame for repayment. As a result, the leverage ratio of loaned funds to federally awarded dollars is moderate (e.g., in year 10 as structured here, 2.91).

“Average” Fund Inputs			Value
Award amount (\$)			\$350,000
Non-federal capitalization			\$0
Interest rate on loans			4.0%
Loan fees (upfront)			1.0%
Average term (years)			5
“Average” Fund Outputs	Nominal	PV (\$ Year 1)	Leverage Ratio (\$Loans : Fed\$)
\$ Value Loans, Year 3	\$437,733	\$420,957	1.20
\$ Value Loans, Year 5	\$637,985	\$593,416	1.70
\$ Value Loans, Year 10	\$1,203,292	\$1,020,119	2.91
\$ Value Loans, Year 15	\$1,759,606	\$1,364,762	3.90
Cash Balance, Year 15	\$63,664	\$35,350	
Value of Outstanding Payment Stream (Per 15 on)	\$278,295	\$143,931	

“ADDITIONAL CAPITALIZATION AVERAGE” FUND

BCRLF programs have the opportunity to add non-federal funds to the funds received from US EPA capitalization awards. The “Average” Fund could, for instance, contribute \$300,000 of additional non-federal capitalization. This additional capitalization would enable the “Average Fund” to have a high leverage ratio very similar to that of the “Bank-like” Fund which did not have additional capitalization, despite the “Average” Fund’s lower borrowing costs and longer loan terms. The leverage ratio of loaned funds to federally awarded dollars is substantially higher than without such funds (e.g., in year 10 as structured here, 5.77).

“Additional Capitalization Average” Fund Inputs			Value
Award amount (\$)			\$350,000
Non-federal capitalization			\$300,000
Interest rate on loans			4.0%
Loan fees (upfront)			1.0%
Average term (years)			5
“Additional Capitalization Average” Fund Outputs	Nominal	PV (\$ Year 1)	Leverage Ratio (\$Loans : Fed\$)
\$ Value Loans, Year 3	\$871,014	\$839,949	2.40
\$ Value Loans, Year 5	\$1,270,583	\$1,184,062	3.38
\$ Value Loans, Year 10	\$2,377,263	\$2,019,489	5.77
\$ Value Loans, Year 15	\$3,468,608	\$2,695,567	7.70
Cash Balance, Year 15	\$124,893	\$69,348	
Value of Outstanding Payment Stream (Per 15 on)	\$546,152	\$282,459	

COMPARISON OF THE FOUR STRUCTURES

The following chart compares the cumulative loans made under each of the four alternative fund structures. Values are given in year 1 dollars for year 3, year 5, year 10, and year 15 of the program.

ASSUMPTIONS

All the example fund structures are based on the following assumptions:

- Once at least \$25,000 in repaid principal is available to re-lend, new loans are made;
- Interest rate earned on balances of repaid principal is 4 percent;
- 100 percent of interest (on loans and fund balances) and fees and 10 percent of initial award are used for administrative costs (this is less than the limits set by the program of up to 100 percent of interest earned and fees, up to 15 percent of initial award, and up to 10 percent of principal repayments);
- All principal is returned to fund for re-lending;
- For simplicity, scenarios assume no default or delay in loan payments;
- All loans are made at the beginning of the year;
- Three-year drawdown of federal funds (50 percent, 30 percent, and 20 percent, respectively);
- Repayment commences at the end of the year, for that year;
- Loans are made for 30 years and then stop; and
- Repayment schedule is semi-annual.

**Cumulative Dollars Loaned (Year 1 Dollars)
Comparison of Four Fund Structure Examples**

