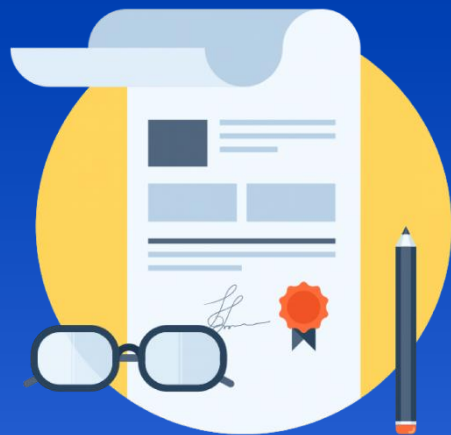




EPA REGION 1 RLF WORKSHOP

APRIL 6-7, 2017



RLF 101
RLF Terms & Conditions
Overview



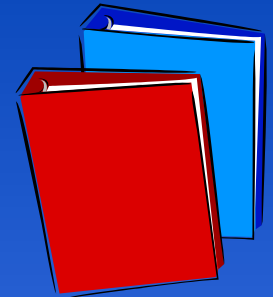
RLF Terms & Conditions

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



RLF Terms & Conditions

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





RLF Terms & Conditions

I - General Federal Requirements

A. Federal Policy & Guidance

1. EPA has approved the Cooperative Agreement Recipient's (CAR) proposal by awarding the Cooperative Agreement (CA).
2. CAR, borrowers, and subrecipients:
 - ✓ Will comply with CERCLA 104(k)
 - ✓ Cleanups will:
 - Follow applicable Federal & State laws and regulations
 - Be protective of human health and the environment
3. Conduct cleanups under appropriate State or Tribal program.





RLF Terms & Conditions

II - Site/Borrower/Subrecipient Eligibility

A. Brownfields Site Eligibility

1. CAR to provide site specific information before incurring costs including:
 - ✓ Site meets CERCLA 101 (39) definition of Brownfields site;
 - ✓ If the CAR is a potentially responsible party and/or has a CERCLA 107 liability defense
2. CAR to provide information if eligible for a property specific determination
 - ✓ Protect human health and environment
 - ✓ Promote economic development
 - ✓ Enable creation, preservation, or addition to parks, greenways, ... or other non-profit purposes



RLF Terms & Conditions

II - Site/Borrower/Subrecipient Eligibility

A. Brownfields Site Eligibility (cont)

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





RLF Terms & Conditions

II - Site/Borrower/Subrecipient Eligibility

A. Brownfields Site Eligibility (cont)

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





RLF Terms & Conditions

II - Site/Borrower/Subrecipient Eligibility

B. Borrower & Subrecipient Eligibility

1. Subawards (aka “subgrants”) can only be made to eligible entities or non-profit organizations that own the site.
2. Subrecipient (aka “subgrantee”) must own site throughout period of subaward & CAR cannot make subaward to itself. (Subawards may be made to separate legal entities affiliated with the CAR in certain circumstances).
3. CAR can discount loans up to 30% not to exceed \$200k per site & cannot discount loans to private entities.



RLF Terms & Conditions

II - Site/Borrower/Subrecipient Eligibility

B. Borrower & Subrecipient Eligibility (cont)

4. CAR may not loan or subaward funds to an entity that is potentially liable under CERCLA § 107.
5. For petroleum sites, person cleaning up site must not be considered potentially liable for contamination.
6. CAR shall maintain documentation supporting the eligibility of sites, borrowers and subrecipients.
7. Borrowers & subrecipients must submit information regarding their environmental compliance history at the site and CAR must use this to evaluate business risk.
8. An entity that is suspended, debarred or ineligible cannot be a borrower or subrecipient.



RLF Terms & Conditions

II - Site/Borrower/Subrecipient Eligibility

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

1. Defines 3 liability protections from CERCLA:

- 1) Bona fide prospective purchaser (BFPP)
- 2) Contiguous property owner (CPO)
- 3) Innocent landowner (ILO)

Must meet threshold criteria including:

- a. Must have performed AAI prior to acquisition
- b. For BFPP & CPO, cannot be potentially liable or affiliated with anyone that is potentially liable
- c. Must comply with continuing obligations
- d. Comply with other CERCLA obligations to maintain liability protection

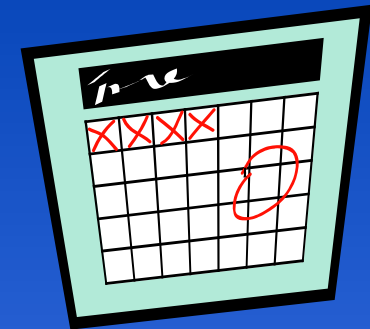


RLF Terms & Conditions

III - General CA Administrative Requirements

A. Term of Agreement

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





RLF Terms & Conditions

III - General CA Administrative Requirements

B. Substantial Involvement

1. EPA substantially involved in overseeing & monitoring the CA.
 - a. Includes monitoring, reviewing and approving procedures, etc.
 - b. Property-specific determinations and site eligibility including technical assistance
 - c. Review of financial reporting & recordkeeping
 - d. Review of substantive loan and subaward terms.
 - e. EPA may waive any of these provisions except for b.



RLF Terms & Conditions

III - General CA Administrative Requirements

B. Substantial Involvement (cont)

2. Effects of substantial involvement includes:

- a. EPA review does not negate CERCLA §128 site determinations, CERCLA in general or any Federal statute.
- b. CAR responsible for ensuring cleanups are protective of human health and the environment, comply with applicable federal, state and tribal laws, and must consult with EPA if changes to cleanup are necessary.
- c. CAR responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.



RLF Terms & Conditions

III - General CA Administrative Requirements

C. Cooperative Agreement Recipient Roles & Responsibilities

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



RLF Terms & Conditions

III - General CA Administrative Requirements

C. Cooperative Agreement Recipient Roles & Responsibilities (cont)

6. If the CAR makes any subawards under this agreement then they become a pass-through entity. As the pass-through entity, the CAR must report on its subaward monitoring activities under [2 CFR 200.331 \(d\)](#) in accordance with the terms and conditions of the CA.
7. The CAR must maintain competency in generating environmental measurement data accordance with [Agency Policy Directive Number FEM-2012-02](#).



RLF Terms & Conditions

III - General CA Administrative Requirements

D. Quarterly Progress Reports

1. CAR must submit quarterly progress reports to PO that contain information outlined in this T&C.
 - ✓ [Region 1 Report Templates](#) are on the EPA website.
2. CAR must maintain records on funds expended on specific properties.
3. CAR will inform EPA of any problems that will impair their ability to meet outputs/outcomes.



RLF Terms & Conditions

III - General CA Administrative Requirements

E. Property Profile Submission

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

F. Final Report

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



RLF Terms & Conditions

IV - Financial Administration Requirements

A. Cost Share Requirement

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



Cost Share must be for eligible and allowable costs and be supported by documentation as required by 2 CFR 200.306. Ineligible administrative costs may not be used for cost share.



RLF Terms & Conditions

IV - Financial Administration Requirements

B. Eligible Uses of the Funds ...

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



RLF Terms & Conditions

IV - Financial Administration Requirements

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

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



CAR must maintain records to support and document these determinations



RLF Terms & Conditions

IV - Financial Administration Requirements

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

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



RLF Terms & Conditions

IV - Financial Administration Requirements

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

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



RLF Terms & Conditions

IV - Financial Administration Requirements

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

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





RLF Terms & Conditions

IV - Financial Administration Requirements

C. Ineligible Uses of the Funds ...

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



RLF Terms & Conditions

IV - Financial Administration Requirements

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

1. Funds shall not be used for:

- g. Paying a response cost at a site where the CAR or recipient of a loan or subaward is liable under CERCLA 107
- h. Paying a cost of compliance with any federal law not applicable to the cleanup
- i. Unallowable costs under 2 CFR 200 Subpart E





RLF Terms & Conditions

IV - Financial Administration Requirements

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

2. Administrative costs and all indirect costs are prohibited by statute even if the recipient has a Federally recognized indirect cost rate.
 - a. Ineligible administrative costs are salaries, benefits, contractual costs, supplies and data processing charges incurred to comply with Uniform Grant Guidance and direct costs for grant and subaward administration not identified in eligible costs.
 - b. See T&C for list of ineligible CAR or subrecipient administration costs. Administrative cost prohibition “flows down” in its entirety to subawards.

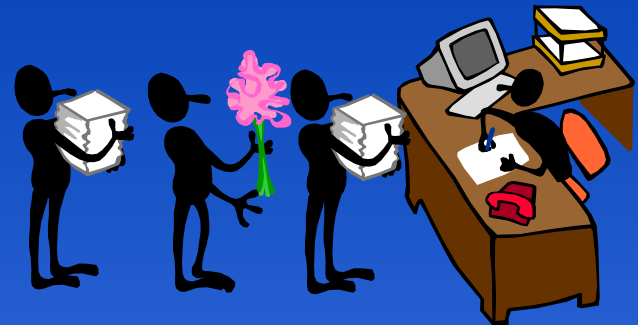


RLF Terms & Conditions

IV - Financial Administration Requirements

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

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





RLF Terms & Conditions

IV - Financial Administration Requirements

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

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



RLF Terms & Conditions

IV - Financial Administration Requirements

D. Use of Program Income

1. CAR may add and use program income under these terms and conditions.
 - ✓ Program income includes repayments, loan interest, account interest, fees, and RLF operations
 - ✓ EPA regulations at 2 CFR 1500.7(c) allow recipients to draw down additional EPA grant fund before using accrued program income.
2. CAR may use program income from fees, loan interest and other eligible program income to meet cost share – **not loan principle.**

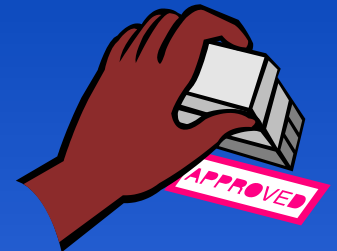


RLF Terms & Conditions

IV- Financial Administration Requirements

D. Use of Program Income (cont)

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





RLF Terms & Conditions

IV - Financial Administration Requirements

E. Closeout Agreement & Use of Post Cooperative Agreement Program Income

1. CAR shall use post-closeout program income in accordance with closeout agreements.
✓ This will be addressed in detail in a subsequent session.

F. Interest-Bearing Accounts

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



RLF Terms & Conditions

V - RLF Environmental Requirements

A. Authorized RLF Cleanup Activities

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



RLF Terms & Conditions

V - RLF Environmental Requirements

B. Quality Assurance (QA) Requirements

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



RLF Terms & Conditions

V - RLF Environmental Requirements

C. Community Relations & Public Involvement ...

1. All loan and subaward sites require a community relations plan including notice, opportunity for involvement and comment on proposed cleanups
2. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved work plan, which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.



RLF Terms & Conditions

V - RLF Environmental Requirements

D. Administrative Record

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





RLF Terms & Conditions

V - RLF Environmental Requirements

E. Implementation of RLF Cleanup Activities

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





RLF Terms & Conditions

V - RLF Environmental Requirements

F. Completion of RLF Cleanup Activities

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



This documentation must be placed in the administrative record





RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

A. Prudent Lending & Subaward Practices

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



RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

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



RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

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

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



RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

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

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



RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

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

- g. Borrowers/subrecipients will conduct cleanup activities as required by the CAR
- h. Subrecipients will comply with 2 CFR Part 200 & 1500 including the procurement standards at 2 CFR 200.317 through 200.326.
- i. Subaward agreements must comply with content requirements at 2 CFR 200.331 (a). EPA Template at Appendix D of Subaward Policy – Not mandatory. <https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>



RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

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

- j. CAR must comply with Davis Bacon Act for contracts and subcontracts awarded all or in part with EPA funds Davis Bacon T&Cs are attached to RLF T&Cs. Additional EPA guidance on [Davis Bacon and Brownfields](#) is available on EPA's website.





RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

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

k. Federal cross-cutting requirements such as:

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





RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

C. Default

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



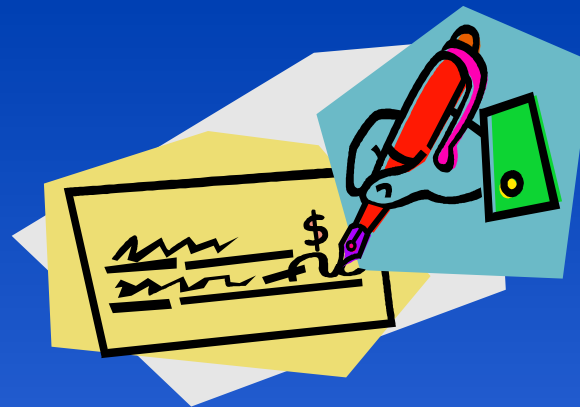


RLF Terms & Conditions

VI - Revolving Loan Fund Requirements

D. Conflict of Interest

1. CAR shall establish and enforce conflict of interest provisions to prevent award of subawards that create real or apparent conflicts of interest as described in COI provisions of the general terms & conditions.



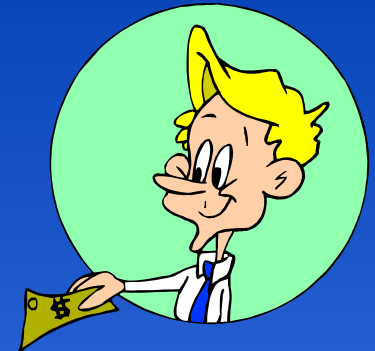


RLF Terms & Conditions

VII - Disbursement, Payment & Closeout

A. Methods of Disbursement

1. EPA to make payments to CAR that minimizes time between transfer of funds from EPA and when CAR pays borrower/subrecipient
 - a. May request payment on actual expense
 - b. May request payment on scheduled method
 - c. Restrictions on disbursement of the entire amount of the loan/subaward
 - d. Subaward funds must be disbursed to the subrecipient in accordance with 2 CFR 200.305.





RLF Terms & Conditions

VII - Disbursement, Payment & Closeout

B. Schedule for Closeout

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





RLF Terms & Conditions

VII - Disbursement, Payment & Closeout

B. Schedule for Closeout (cont)

3. These Terms and Conditions now include an executed closeout agreement governing use of accrued program income and program income received after closeout.
4. Closeout agreement requires all assessments & cleanups be consistent with CERCLA § 107 and site eligibility limitations in these T&Cs.



COMPLIANCE WITH CLOSE OUT AGREEMENT IS IMPORTANT!



RLF Terms & Conditions

VII - Disbursement, Payment & Closeout

C. Compliance with Closeout Schedule

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

D. Final Requirements

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





RLF Terms & Conditions

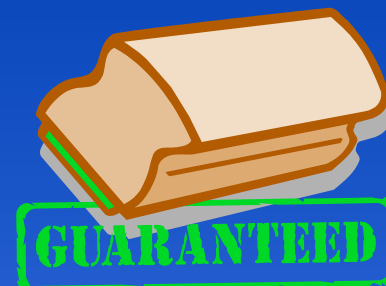
VII - Disbursement, Payment & Closeout

E. Recovery of RLF Assets

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

F. Loan Guarantees

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





Questions?

