



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

MEMORANDUM

SUBJECT: Response to Office of Inspector General (OIG) Final Report No. 22-P-0033, "Brownfields Program-Income Monitoring Deficiencies Persist Because the EPA Did Not Complete All Certified Corrective Actions," dated March 31, 2022

FROM: Barry N. Breen
Acting Assistant Administrator

TO: Sean W. O'Donnell, Inspector General
Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. Following is a summary of the Office of Land and Emergency Management's (OLEM) overall response to the audit findings, along with its position on each of the report recommendations. For those report recommendations with which OLEM agrees, we provide high-level intended corrective actions and estimated completion dates to the extent we are able. For those audit report recommendations with which OLEM does not agree, we explain our position and provide revised corrective actions to the recommendations.

OLEM'S OVERALL POSITION

OLEM agrees with the Office of Inspector General's (OIG) overall findings, with the exception of items noted below.

The subject OIG report states on page 5 that "OLEM did not complete corrective actions for five of the 17 recommendations issued to that office in our prior report, despite the Office of Brownfields and Land Revitalization (OBLR) certifying on behalf of OLEM that it had completed all of the agreed to corrective actions." OLEM disagrees with the OIG's conclusion that the five audit recommendations certified by OBLR were not completed. OBLR implemented the five recommendations and certified them as complete in 2019. Through discussions with regional programs, OBLR strived to sensibly approach the implementation of each recommendation to meet the intent of the high-level corrective action, while preserving limited staff resources needed to fulfill the Agency's grant management responsibilities for over 1,000 open brownfields cooperative agreements. See attachment for details on how OBLR implemented each of the OIG's five recommendations from the 2017 report on Brownfields Revolving Loan Fund (RLF) grants (OIG Report No. 17-P-0368).

In OLEM's December 2021 response to the OIG's draft report, OLEM explained the limitations to our ability to implement the five recommendations from the 2017 report to the extent and within the timeframe that the OIG expects. OLEM initiated corrective actions that will improve tracking and reporting of post-closeout program income (PI) for all existing and future RLF cooperative agreements. However, these actions will not necessarily lead to "full" implementation of the OIG recommendations regarding closed cooperative agreements because: 1) closeout agreements (COAs) are bilateral agreements that cannot be changed by EPA without recipient concurrence, and 2) regional staff can only work on renegotiating COAs for cooperative agreements that are no longer open as their workload allows. Our staff resources are limited.

RLF grants are awarded and negotiated as cooperative agreements that require significant involvement from Brownfields project officers (POs). The Program currently has only 78 regional POs overseeing Brownfields assessment, cleanup, RLF, multipurpose and technical assistance cooperative agreements. This is the level of staffing (i.e., 78 POs) available to the Program, despite the fact that the Program's workload model demonstrates that approximately 167 regional POs are needed to support the basic grant and technical assistance responsibilities of the Program. Therefore, with fewer POs than required to fulfill the Program's grant management responsibilities, the primary mission for the Brownfields Program must be to actively manage open cooperative agreements and award new cooperative agreements.

In this regard, OLEM requests that the OIG recognize that the Brownfields program anticipates receiving up to \$1.5 billion over five years in supplemental appropriations from the Infrastructure Investment and Jobs Act (IIJA), as well as nearly \$92 million in Fiscal Year 2022 appropriations for the CERCLA 104(k) grant program. This increased funding is primarily designated for the award of new brownfield grants; it does not include adequate resources for the Program to add sufficient staff to meet the increasing workload associated with new grants. Consequently, renegotiating the terms and conditions (T&Cs) of closed RLF cooperative agreements will be conducted as time allows, subject to the priority OLEM must give to effectively managing an unprecedented amount of funding.

Since submitting our response to the draft OIG report in December 2021, OLEM completed the following corrective actions to improve tracking and reporting of post-closeout PI:

- 1) **Created the FY 2022 COA Template:** This new COA Template was approved by the Office of General Counsel (OGC), Office of Grants and Debarment (OGD), and all regional program and grants offices for use as of March 2022, and has the following unique characteristics:
 - Combines all COAs for a RLF cooperative agreement recipient (CAR) into a single COA with post-closeout PI tracked under one grant number: *This allows for replacing several COAs in a single action and will streamline PO oversight during the post-closeout period.*
 - Gives notice that EPA plans to update COAs every 5 years (e.g., next change will be in FY 2027): *This should lead to fewer inconsistencies in COAs among RLF recipients in the future and will streamline PO oversight during the post-closeout period.*
 - Standardizes other requirements including:

- Additional clarification on how and where post-closeout PI can be used.
- Parameters for eventual closure of the COA.
- Annual progress reporting and Assessment, Cleanup, and Redevelopment Exchange System (ACRES) reporting that includes current PI balance.

This standardization of closeout requirements will allow OBLR and the regions to track PI more accurately and give CARs opportunities to use PI expeditiously.

- 2) **Issued guidance to regions on process steps for outreach to CARs when negotiating or renegotiating their COAs to the FY 2022 Template:** OBLR has held one-on-one meetings with each regional RLF Lead to review the grant status of each of their RLFs and process steps for contacting CARs.
- 3) **Initiated ACRES enhancements:** Submission of the final Information Collection Request (ICR) to OMB is targeted for the end of May 2022, and ACRES software changes are in process to allow for reporting of PI balances in ACRES.
- 4) **Developed a draft COA PI Monitoring spreadsheet:** Regions will pilot-test this approach on RLF programs where assessment of post-closeout PI was due as of June 21, 2021. POs will then use this to document their annual assessment of post-closeout PI balance in the future.

OLEM's recent actions demonstrate our determined efforts to improve post-closeout tracking and reporting of PI. With these actions, OLEM affirms that new RLF grant awards and amendments to existing open cooperative agreements will include a COA that fully addresses the OIG's recommendations for post-closeout PI tracking and reporting.

As mentioned above, EPA does not have the authority to unilaterally change older COAs. Therefore, any recommended changes to closed RLF cooperative agreements must be negotiated and agreed to by both EPA and the CAR. It is unlikely that the EPA regions will be able to fully implement all of the OIG's recommendations and renegotiate 100% of older COAs because: 1) some COAs are so old that the regions will need to track down hard copies that are in storage, 2) once files are found, CAR contact information may be outdated and new points of contact will need to be found and informed, and 3) as previously indicated, regional workload must prioritize the management of open grants and the awarding of new grants in a timely manner to ensure that IIJA and annual CERCLA 104(k) appropriations achieve their intended purposes. Therefore, OBLR cannot provide a completion date when all COAs will be renegotiated to fully address the OIG's recommendations. As a result, OLEM cannot commit to a completion date for full implementation of the OIG's Recommendations 1, 2, 5, and 6. We can provide completion dates for the revised corrective actions, as outlined in the table below.

OLEM'S RESPONSE TO REPORT RECOMMENDATIONS

Agreements

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion (Quarter and FY)
1	Develop a policy and implement procedures to reduce the balances	1.1 OBLR will revise FY 2022 model cooperative agreement T&Cs used for new grants and amendments to existing grants to include the FY 2022 COA Template which	4 th Quarter FY 2022

	of available program income and establish a time frame for recipients to use or return the funds to EPA.	provides for 1) additional clarifications for use of PI that will allow for quicker reduction in PI balance, and 2) in addition to assessing RLFs where PI is greater than \$500,000 after three years with no subgrant or loan activity, conducting an annual review thereafter. Adopting the FY 2022 COA will be a condition of all new RLF grant awards and all amendments to open RLF cooperative agreements. This change is expected to result in COA updates for most CARs with open grants.	
		1.2 OBLR will work with the regions to maximize the number of older COAs with consistent national closeout T&Cs, as their workload allows. OBLR will request that the regions attempt initial contact with RLF recipients of older COAs who do not have an open RLF grant by the provided completion date in order to begin the renegotiation process. However, EPA cannot unilaterally modify older COAs and will need to work with these recipients on bilateral agreements to incorporate the FY 2022 COA.	4 th Quarter FY 2027
2	Implement a method for tracking program income and compliance with post-closeout reporting requirements.	2.1 OBLR will make enhancements to ACRES software in order to include entries for PI balance and date of latest post-closeout performance report. <i>(Note: at this time, ACRES is not expected to be a repository for these reports as was indicated on page 35 of the final OIG report.)</i>	2 nd Quarter FY 2023
		2.2 If required by their COA, CARs will begin reporting the PI balance as of September 30 th of each fiscal year, along with the date of the latest post-closeout report in ACRES. POs will check ACRES for CAR's entry and review the post-closeout report. For CARs for whom this is not required, POs will add the information to ACRES as it becomes available (ICR approval is required before this can be initiated).	1 st Quarter FY 2024

3	Expand existing guidance to include the requirements and method for the post-closeout tracking of program income and annual reports.	3.1 OBLR will revise the RLF Program Manual to include PO responsibilities for tracking PI and performance reporting under COAs.	4 th Quarter FY 2022
4	Provide training to regional Brownfields Revolving Loan Fund staff and management on the post-closeout tracking and monitoring requirements.	4.1 OBLR will provide training to RLF POs on the “Closeout Procedures” chapter of the RLF Program Manual and discuss their responsibilities for tracking PI and performance reporting under COAs.	1 st Quarter FY 2023
		4.2 OBLR will provide training to RLF recipients and POs on ACRES enhancements and requirements for reporting of PI and post-closeout reporting.	2 nd Quarter FY 2023
5	Expand existing guidance to include a deadline for post-closeout annual report submission.	5.1 This has been completed for COAs executed after June 2021. For RLF recipients of older COAs, OBLR will request that the regions attempt initial contact by the provided completion date to begin the renegotiation process. However, EPA cannot unilaterally modify older COAs and will need to work with these recipients on bilateral agreements to incorporate the FY 2022 COA.	4 th Quarter FY 2027
6	Assess whether any of the \$46.6 million of program income under closeout agreements should be returned to the government.	6.1 Since the FY 2022 COA Template requires that post-closeout reports be submitted by October 31 st with PI balances reported as of September 30 th , POs will <u>begin</u> conducting annual reviews of post-closeout PI every November for RLF grants in post-closeout status with this COA requirement. For those who do not have this COA requirement, POs will review post-closeout PI information every November as it becomes available (i.e., OBLR expects the number of post-closeout grants where PI is tracked to increase over time as POs are able to make contact with CARs with older COAs). For RLFs in post-closeout status that have more than \$500,000 of PI and no recent subgrant or loan activity, OBLR will encourage the regions to increase their	4 th Quarter FY 2024

		efforts in helping the recipient to use the funds on eligible activities, as regional workload allows. OBLR will review on a case-by-case basis whether additional action is needed, including recovery of PI for deposit into the US Treasury as miscellaneous receipts if necessary.	
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CONTACT INFORMATION

If you have any questions regarding this response, your staff may contact the OLEM Audit liaison, Kecia Thornton, at Thornton.Kecia@epa.gov or (202) 566-1913.

Attachment:

Evidence of OBLR's 2019 Certification of Completion for Five Recommendations from 2017
OIG Report

cc: Carlton Waterhouse
David Lloyd
Patricia Overmeyer
Aimee Storm
Rachel Lentz
Nicole Wireman
Kecia Thornton
Jim Drummond, OGC
Tina Lovingood, OIG
Tim Roach, OIG
Lela Wong, OIG

ATTACHMENT:
Evidence of OBLR's 2019 Certification of Completion
for Five Recommendations from 2017 OIG Report

Details on how the Office of Brownfields and Land Revitalization (OBLR) implemented each of the five recommendations for Brownfields Revolving Loan Fund (RLF) grants are provided below, with page numbers from the 2017 report (OIG Report No. 17-P-0368):

- **OIG's 2017 Recommendation 1** (pg 7): *Develop a policy to reduce balances of available program income (PI) of Brownfields RLFs being held by recipients. The policy should establish a timeframe for recipients to use or return the funds to the EPA.*
 - OLEM's 2017 High-Level Corrective Action (pg 44): OBLR will work with the Regions to develop a policy regarding monitoring of accumulated PI on the cooperative agreements. The policy will also establish actions to be taken in certain timeframes to reduce balance of PI or require return of funds to EPA as appropriate.
 - Evidence for OBLR's 2019 Certification of Completion:
 - OBLR provided policy in a 6/21/2018 memo titled "Brownfields RLF Cooperative Agreement Closeout Agreement (COA) Process", and
 - OBLR provided a FY 2018 COA Template that established model closeout terms and conditions (T&Cs) for COAs executed after 6/21/2018. Page 4 of the FY 2018 COA Template included:
 - a timeframe for assessment of PI balances, and
 - the possibility of revoking the COA and returning funds when a recipient has over \$500,000 three years after the closeout date.
 - In Recommendations #5, #11, and #15 of the certification memo, OBLR stated that the policy would apply going forward and renegotiation of older COAs executed prior to the policy date was dependent on renegotiation of bilateral agreements. For example, for Recommendation #15 OBLR stated that it "will work to maximize the number of older cooperative agreement recipients who have the revised term and condition in their agreement. However, EPA cannot unilaterally modify older cooperative agreements terms and conditions and will need to work with these recipients on bilateral agreements in order to incorporate the new terms and conditions." OBLR made the reasonable management decision to ensure that this language is in COAs going forward and continued to work on a strategy for renegotiating older COAs.
- **OIG's 2017 Recommendation 8** (pg 19): *Develop and implement required training for all regional Brownfields RLF staff. Have the training include all program policy and guidance relating to maintaining a Brownfields RLF after the cooperative agreement is closed if PI exists.*
 - OLEM's 2017 High-Level Corrective Action (pg 45): OBLR will work with the Regions to develop and deliver a series of training sessions to regional Brownfields RLF staff. The training will cover all program policies and guidance related to the management of Brownfields RLF after closeout with a focus on cooperative agreements that have PI after closeout. OBLR will use various formats to deliver

- training to project officers (POs), e.g., during regularly scheduled meetings, webinars, sharepoint site, and in-person training etc.
- Evidence for OBLR's 2019 Certification of Completion:
 - Upon release of the updated closeout policy and accompanying COA template, OBLR trained staff in the guidance related to maintaining a Brownfields RLF after the cooperative agreement has closed during two regularly scheduled meetings:
 - a monthly Brownfields Coordinators Call (held 6/20/2018), and
 - a quarterly call with the regional RLF leads (held 10/30/2018).
 - OBLR also stated it was in the process of updating “bootcamp trainings” and one would be dedicated to RLF policies in FY 2019.
 - OBLR did not complete the planned bootcamp training on RLF policies as originally envisioned when OBLR signed the certification memo due to high staff turnover.
 - In lieu of a bootcamp training, OBLR delivered an all-day, in-person training for RLF grant recipients and EPA POs on 12/10/2019 at the National Brownfields Conference. Upon further evaluation of limited staffing resources, OBLR determined that leveraging an in-person conference was the best way to deliver this training instead of an online webinar. OBLR designed the training to address this corrective action.
 - **OIG's 2017 Recommendation 13** (pg 27): *Require regional POs, through a policy, to be assigned and maintain information on all closed cooperative agreements with pre- and post-PI.*
 - OLEM's 2017 High-Level Corrective Action (pg 46): OBLR will work with the Regions to develop and issue a policy regarding the assignment and maintenance of information on all closed cooperative agreements with pre- and post-PI. The policy will outline the mechanism OBLR will use to work with regional management to implement this policy.
 - Evidence for OBLR's 2019 Certification of Completion:
 - OBLR provided policy in a 6/21/2018 memo titled “Brownfields RLF Cooperative Agreement COA Process.” That memo instructed the EPA PO:
 - To remind the CAR via email that the COA T&Cs apply, include the provisions as an attachment to the e-mail, and request that the CAR confirm receipt of this email.
 - If any amendments are made to RLF cooperative agreements awarded prior to FY 2017, to add supplemental funding or otherwise, Regions must ensure that the COA T&Cs are included in the amended cooperative agreement.
 - Through discussions with regional programs, OBLR decided the most sensible implementation of this recommendation was to allow each region to determine the exact mechanism for how to maintain this information.
 - **OIG's 2017 Recommendation 14** (pg 27): *Develop and implement a method for the OBLR to track closed cooperative agreements with pre- and post-PI.*

- OLEM's 2017 High-Level Corrective Action (pg 46): OBLR will work with the regions to develop and implement a method such as a tool, a spreadsheet or a database, to track pre- and post-close out PI until termination of the closed out cooperative agreements in accordance with the reporting requirements listed under the COA. Regional staff will be required to update and/or monitor the tool in accordance with the reporting requirements listed in the COAs. OBLR will work with regional management to ensure proper use of this tool and completion of regular updates. OBLR staff will have access to this tool and will monitor that information is being reported and tracked as required.
- Evidence for OBLR's 2019 Certification of Completion:
 - OBLR provided a FY 2018 COA Template that established model closeout T&Cs for COAs executed after 6/21/2018. Pages 2-3 of the FY 2018 COA Template instructed the CAR to adhere to the following post-closeout reporting requirements:
 - The CAR shall maintain appropriate records to document compliance with the requirements of the COA (i.e., records relating to the use of accrued and post-award PI).
 - EPA may request access to these records to verify that retained and post-closeout PI has been used in accordance with the T&Cs of this COA.
 - The CAR shall submit Annual Reports for the first five (5) years following the effective date of this COA, and thereafter, the CAR shall submit a report once every five years until there is no PI.
 - Through discussions with regional programs, OBLR decided the most sensible implementation of this recommendation was for each region to determine the exact mechanism for how to track pre- and post-closeout PI until termination of the closed out cooperative agreement, as it is their responsibility to manage other aspects of EPA cooperative agreements. Consequently, regional tracking of pre- and post-closeout PI was not done consistently via a shared Access database on sharepoint due to staff turnover and losing necessary expertise.
 - In its 2019 certification memo, OBLR also stated that "updates to the existing ACRES database will allow for easier tracking of RLF cooperative agreements that closed out with program income." OBLR did not certify that updates were completed, but that updates to ACRES are ongoing. These updates have not been completed within the timeframe originally envisioned when OBLR signed the certification memo due to necessary system updates that needed to be built first to support these enhancements.
- **OIG's 2017 Recommendation 16** (pg 29): *Create a method for the OBLR, and EPA regional managers, to track compliance with reporting requirements for closed cooperative agreements.*
 - OLEM's 2017 High-Level Corrective Action (pg 47): OBLR will work with the regions to create a method to track compliance with reporting requirements for closed cooperative agreements. The tracking tool will be distributed to the regions. Regions will be responsible for tracking and making sure that the cooperative agreement recipients are complying with the reporting requirements. OBLR will monitor and

discuss compliance with the regional Brownfield managers during regularly schedule conference calls.

- Evidence for OBLR's 2019 Certification of Completion:
 - OBLR provided a FY 2018 COA Template that established model closeout T&Cs for COAs executed after 6/21/2018. Pages 2-3 of the FY 2018 COA Template instructed the CAR to adhere to specific post-closeout reporting requirements (see "Evidence for OBLR's 2019 Certification of Completion" under OIG 2017 Recommendation 14, above.)
 - Through discussions with regional programs, OBLR decided the most sensible implementation of this recommendation was for each region to be responsible for tracking and making sure that grant recipients were complying with their reporting requirements, as it is their responsibility to manage other aspects of EPA cooperative agreements. Consequently, OBLR determined it unnecessary to distribute a tracking tool to the regions.